(2005) 07 MP CK 0092

In the Madhya Pradesh High Court

Dr. Pramodchandra and Others APPELLANT

Vs

Ashwani Arora and Others RESPONDENT

Date of Decision : 04-07-2005

Acts Referred:

Citation : (2006) 2 ACC 242 : (2007) ACJ 959

Hon'ble Judges : R.V. Raveendran, C.J;A.M. Sapre, J

Bench : Division Bench

Judgement

R.V. Raveendran, C.J.—As these two appeals arise from the same judgment - one by the claimants (M.A. No. 947 of 2001) and other by the insurance company (M.A. No. 912 of 2001), they are heard together by consent and disposed of by this common judgment. As the ranks of the parties in the two appeals differ, the parties will be referred to by their ranks in the claim petitions.

2. The claimants are the husband and two minor children of one Dr. Shobha Shukla, who died in a motor accident on 20.3.1999 caused on account of negligence of the driver of truck bearing No. MP 09-D 7008 (of which respondent Nos. 1, 2 and 3 are respectively the owner driver and insurer). Deceased was 39 years old and was working as Assistant Professor in Chemistry in Government Post Graduate College, Mhow. She was a postgraduate in science and held a doctorate in chemistry. Her basic pay at the time of death was Rs. 10,475 and with allowances, her total salary was Rs. 13,827. The claimants filed the Claim Case No. 157 of 1999 claiming a compensation of Rs. 50,00,000 before the Motor Accidents Claims Tribunal, Mhow.

3. After appreciating the evidence the Tribunal by judgment and award dated 8.3.2001 allowed the claim petition in part. Tribunal held the truck driver negligent. It awarded a compensation of Rs. 5,10,295 with interest at the rate of 12 per cent per annum from the date of petition till date of payment. The Tribunal deducted 30 per cent from the salary towards income tax, thereafter it deducted one-third for personal and living expenses of the deceased and again deducted another 50 per cent on the ground husband of the deceased who was

employed as Associate Professor was having similar income.

4. Feeling aggrieved the claimants have filed M.A. No. 947 of 2001 for increasing the compensation. The insurance company has filed M.A. No. 910 of 2001 contending that the licence held by the driver of the truck was fake and, therefore, there was a breach of conditions of insurance policy and consequently it ought to have been exonerated. Therefore, two points, arise for our consideration in this appeal:

(i) Whether the compensation awarded is low and requires to be increased?

(ii) Whether the insurer is to be exonerated from liability?

Re: Point (i)

5. We find that the Tribunal committed several errors in calculating the loss of dependency and compensation. It did not take note of basic exemption when deciding upon the deduction for income tax. It had also not taken note of the fact that deceased would have earned yearly increments. It also committed a serious error in deducting 50 per cent after deducting one-third for personal and living expenses. We will, therefore, recalculate the compensation to which the claimants will be entitled.

6. Exh. P15 is the salary certificate which shows that the basic pay of the deceased was Rs. 10,475 and total monthly salary was Rs. 13,827. Annual income of the deceased was, therefore, Rs. 1,65,924. Taking note of the fact that she would have earned increments in future and taking note of the income tax and profession tax payable, we deduct Rs. 10,924 from the annual income (towards income tax and profession tax) leaving the net income as Rs. 1,55,000.

7. The family of the deceased consisted of herself, her husband and two minor children. In view of it, one-third will have to be deducted as standard deduction for the personal and living expenses of the deceased, to arrive at the contribution to the family per year. Thus the annual loss of dependency would have been Rs. 1,03,330. As the deceased was aged 39 years, proper multiplier would be 16. Therefore, total loss of dependency will be Rs. 16,53,280. To this we add a sum of Rs. 11,720 under conventional heads, i.e., Rs. 5,000 as loss of consortium, Rs. 4,000 loss to estate and Rs. 2,720 funeral expenses. Thus, the total compensation to which the claimants will be entitled is determined as Rs. 16,65,000.

8. The Tribunal has awarded interest at the rate of 12 per cent per annum with reference to the rate of interest prevailing at that time. Having regard to the present rate of interest (on deposits with nationalised banks) we award interest at the rate of 6 per cent per annum on the enhanced amount.

Re : Point (ii)

9. The insurer contended that the driver had a fake licence. The Tribunal had rejected this contention holding that the insurer failed to prove its contention.

10. The matter is now covered by the decision of Supreme Court in National Insurance Co. Ltd. Vs. Swaran Singh and Others, , apart from the earlier decisions in New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., ; United India Insurance Company Ltd. Vs. Lehru and Others, . Having regard to the principles laid down in the said decision the insurer cannot escape liability.

11. Accordingly the appeals are disposed of as follows:

(i) M.A. No. 912 of 2001 is dismissed.

(ii) M.A. No. 947 of 2001 is allowed in part and the compensation is increased from Rs. 5,10,295 to Rs. 16,65,000.

(iii) While the amount awarded by the Tribunal will carry interest at the rate of 12 per cent per annum, the increased compensation will carry interest only at the rate of 6 per cent per annum from the date of petition till date of payment.

(iv) We apportion the compensation at the rate of 40 per cent each to the two children and 20 per cent to the husband.

(v) In regard to deposits, the directions issued by the Tribunal will apply.

(vi) Parties to bear their respective costs in both appeals.