(1995) 08 MP CK 0051

In the Madhya Pradesh High Court

General Manager, M.P. State Road Transport Corporation and Another — APPELLANT

Vs

Sodrabai and Others — RESPONDENT

Date of Decision : 08-08-1995

Acts Referred:

Citation : (1995) 2 ACC 644

Hon'ble Judges : Subhash Balwant Sakrikar, J

Bench : Single Bench

Judgement

S.B. Sakrikar, J.—This is an appeal against award dated 18.1.1988 passed by Member, Motor Accidents Claims Tribunal, Dewas in Claim Case No. 71-A/83 whereby the learned Claims Tribunal awarded compensation of Rs. 70,000/- with interest at the rate of 6% per annum from the date of application, in favour of claimants-respondents 1 & 2 and against the appellant and respondent No.3.

2. Facts of the case in brief are that deceased Rameshchandra aged about 20 years died in a motor accident on 24.1.1983,at about 4.30 p.m. near Rasulpur bridge, when he was returning from the factory to his home. Respondents 1 and 2, i.e., mother and father of the deceased filed an application for compensation of Rs. 76,300/- for the death of their son Rameshchandra, occurred in the motor accident.

3. The application was opposed by the appellant and respondent No. 3. On the basis of the evidence on record, learned Claims Tribunal partly allowed the application of the claimants-respondents and passed the impugned award against the appellant and respondent 3. Being aggrieved by this award, the appellant has filed this appeal.

4. Claimants-respondents 1 & 2, on service of notice of appeal filed cross-objection under the provisions of Order 41, Rule 22 C.P.C. praying for enhancement in the amount of compensation.

5. On the objections pressed in the memo of appeal and at the time of

arguments on behalf of the appellant, following points appear before me for decision of this appeal.

(1) Whether the alleged accident caused due to rash and negligent driving of driver Manohar, and

(2) Whether the compensation awarded by the Tribunal is excessive in view of monthly income of the deceased.

6. Learned Counsel for the appellant stated that on the evidence of the witnesses rashness and negligence of the driver is not proved. Learned Counsel stated that the Tribunal has not considered the aspect that at the time of accident, one more matador was going in front of the appellant. As per case of the appellant the deceased himself collided with the matador which resulted in his death. On perusal of the evidence on record, it is not proved that the deceased collided with the matador which was going ahead. No evidence was led on behalf of the appellant in this regard. Contrary to it, P.W. 2 Parmanand examined on behalf of the claimants, who happened to be an eye witness of the accident, specifically stated that on the day of the accident at about 4.30 p.m. deceased Rameshchandra was going from his factory to his home on his bicycle. The witness was also going behind Rameshchandra on another bicycle. When they were going from Rasulpur bridge, a passenger bus of M.P.S.R.T.C. coming from Dewas side, which was driven rashly and negligently, gave a dash to deceased Rameshchandra, which resulted in an accident and his death. In his statement he has categorically stated that before the accident, the driver of the bus was driving it with high speed and negligently. From the statement of Parmanand (P.W. 2) it is amply proved that the accident occurred due to rash and negligent driving of the bus by its driver Manohar respondent No. 3. Thus the finding recorded by the Tribunal in this regard, requires no interference.

7. On the point of quantum, learned Counsel for the appellant stated that P.W. 4 Poonamchand examined on behalf of the claimants stated that deceased Rameshchandra was working in the factory named M/s. H. & R. Rohnsons Ltd. Dewas, on daily wages at the rate of Rs. 7.75 per day whereas, contrary to this, the learned Tribunal assessed the monthly income of deceased Ramesh at Rs. 600/- per month taking into consideration that he was earning on an average Rs. 25/- per day. Learned Counsel''s contention is that monthly income of the deceased assessed by the Tribunal is contrary to the evidence on record.

8. On a perusal of the evidence led by the claimants it is true that P.W. 4 Poonamchand in his statement has stated that Rameshchandra was working in the factory on daily wages and he was getting Rs. 7.75 per day, but at the same time he also stated that Rameshchandra worked in his factory only for 20 days. Contrary to this statement, P.W. 2 Parmanand and P.W. 1 Sodrabai, who is the mother of deceased Rameshchandra stated that Ramesh was getting about 10 rupees per day from the factory and he was also earning Rs. 15 to Rs. 20/- per day from work of motor repairing. Similar is the statement of P.W. 2 Parmanand

who has also stated that deceased Rameshchandra was working in M/s. H & R Johnsons Factory on daily wages and also doing work of motor repairing and from which he was earning about Rs. 20/ to 25/- per day. In view of the statements of Sodrabai and Parmanand, in my opinion, the learned Tribunal has rightly assessed monthly income of deceased Rameshchandra at Rs. 600/- per month.

9. The learned Tribunal has not adopted multiplier method for assessing the dependency. In General Manager, Kerala State Road Transport Corpn. v. Mrs. Susamma Thomas and Ors. AIR 1984 SC 1631 : (1994) 1 ACC 346 (SC) : 1994 ACT 1. It has been held that for assessing the dependency, application of proper multiplier is the proper way to assess the dependency. If we apply the principle laid down by Honourable Supreme Court in the aforesaid case, taking into consideration the monthly income of the deceased at Rs. 600/- per month, deducing one-third amount for his own expenses and then applying the multiplier of 13, the total amount of dependency comes to:

600-200= 400 x 12 x 13= 62,400 rupees.

To this Rs. 3,000/- more can be awarded in favour of the claimants under the head consortium. Thus total amount of compensation comes to Rs. 62,400+3000= 65,400/-.

10. The Tribunal has awarded interest at the rate of Rs. 6% per annum, which in view of the Full Bench decision of this Court in the case of Prakramchand v. Chhuttan and Ors. 1991 JLJ 733 should have been Rs. 12% per annum. Thus, in view of the aforesaid Full Bench decision of this Court, if the fate of interest is enhanced at Rs. 12% per annum payable from the date of application till realisation; the total amount of compensation arrived will be the same which was awarded by the Tribunal. Therefore I find that the compensation awarded by the Tribunal requires no modification.

11. For the reasons stated in the foregoing paragraphs in my opinion, the compensation awarded by the Tribunal appears to be just and proper in vie w of the facts and circumstances of the case and the position of law. Therefore, enhancement in compensation as prayed for in the cross-objection filed by claimants-respondents 1 & 2 is not at all required and the cross-objection deserves to be dismissed.

12. In the result, both the appeal and the cross-objection are dismissed, with no order as to costs.

