
(2011) 12 MP CK 0018
In the Madhya Pradesh High Court
Case No : M.A. No. 337 of 2008

Kamla Rajput and Others

APPELLANT

Vs

Vijay Singh Gujar and Others

RESPONDENT

Date of Decision : 13-12-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2013) 2 ACC 653 : (2013) ACJ 967

Hon'ble Judges : J.K. Maheshwari, J

Bench : Single Bench

Advocate : Avtar Singh, for the Appellant; Sanjay Agrawal and Mr. P.K. Sahu, for the Respondent

Final Decision : Allowed

Judgement

J.K. Maheshwari, J.—Assailing the award dated 29.9.2007 passed by the Third Additional Motor Accidents Claims Tribunal, Hoshangabad in Claim Case No. 98 of 2006 on the point of inadequacy of the compensation and also challenging the finding of contributory negligence, the appellants have preferred this appeal u/s 173 of the Motor Vehicles Act, 1988. The appellants had filed the claim petition u/s 166 of the Motor Vehicles Act, 1988 seeking compensation to the tune of Rs. 75,79,734 on account of death of deceased Harisingh in an accident that took place on 7.3.2006. It was pleaded by the claimants, i.e., widow and children that the sole bread-earner of the family has died in the accident having his earnings from agriculture and milk vending, however the compensation as prayed for in the claim petition may be awarded.

2. The reply to the claim petition was filed and after recording the evidence, the Claims Tribunal has awarded the total sum of Rs. 2,69,800, out of which for loss of dependency Rs. 2,62,800 accepting the earnings of the deceased as Rs. 18,000 per annum, applying the multiplier of 18 and after deducting 1/5th towards the personal expenses. The Claims Tribunal has also awarded some amount under conventional heads, i.e., funeral Rs. 2,000, consortium Rs. 5,000

by the impugned award. The Claims Tribunal has also recorded a finding of contributory negligence in the ratio of 50:50.

3. As the incident occurred, negligence of driver of driving the offending vehicle, the issue of liability jointly and severally to pay compensation have been decided recording the findings in favour of the appellants by the Tribunal and none of those findings have been assailed at the instance of the respondents, i.e., owner, driver or insurance company by filing the cross-appeal or cross-objection, it is not necessary to narrate the entire facts in detail to burden the judgment on the said issues. It is only the inadequacy of the compensation which has been assailed, however the arguments in detail have been considered in succeeding paras.

4. Mr. Avtar Singh, the learned counsel representing the appellants, contends that due to the said accident Harisingh has died, who was the sole bread-earner of the family. The compensation awarded by the Claims Tribunal is inadequate, because the earnings has not been duly assessed and the multiplier has also not been properly applied while determining the loss of dependency. Under conventional heads, i.e., funeral, consortium, loss of love and affection, loss to estate the amount as awarded is on lower side and deserves enhancement. In view of the foregoing submissions, the enhancement in the compensation so awarded by the Tribunal has been prayed for.

5. On the other hand, Mr. Sanjay Agrawal, with Mr. P.K. Sahu, learned counsel, representing the respondent insurance company contends in support of the findings of the Claims Tribunal and submitted that compensation as awarded by the impugned award appears to be just and reasonable, however, interference by this court for enhancement of the compensation is not warranted.

6. After having heard learned counsel appearing for the parties and on perusal of the record, it is clear that the truck bearing registration No. MP 07-G 4315 was standing on a road in the midnight. When the deceased was driving the motor cycle, it dashed the said truck which was standing without any signal. In such a case, the finding of contributory negligence to the extent of 50 per cent is unreasonable. In the opinion of this court, the deceased may be held responsible only to the extent of 25 per cent particularly when the truck was standing without any signal in the midnight. In such circumstances, the finding of contributory negligence is modified to the above said extent.

7. Now coming to the point of enhancement of compensation. If the earnings of the deceased is accepted at Rs. 100 per day, then annually it comes to Rs. 36,000. Looking to the number of dependants, if the deduction of 1/4th is made, then the loss of dependency comes to Rs. 27,000 per annum. Looking to the age of the deceased, if the multiplier of 17 is made applicable, then the total loss of dependency comes to Rs. 4,59,000. If an amount of Rs. 25,000 is further added under conventional heads, i.e., funeral, consortium, loss of love and affection and loss to estate, then the total compensation comes to Rs. 4,84,000. As per the

percentage of contributory negligence, if 25 per cent of the said amount is deducted, then the total compensation comes to Rs. 3,63,000. If we deduct the compensation awarded by the Claims Tribunal, i.e., Rs. 2,69,800 (sic Rs. 1,34,900), then the net enhanced amount comes to Rs. 93,200 (sic Rs. 2,28,100) which shall be payable along with interest from the date of filing of the claim petition.

8. In view of the foregoing discussions, the appeal succeeds and is hereby allowed in part. Appellants are held entitled to receive the enhanced amount of Rs. 93,200 (sic Rs. 2,28,100) in addition to the amount of compensation already awarded by the Claims Tribunal. The enhanced amount shall carry interest at the rate of 6 per cent per annum from the date of filing of claim petition till its realization. The said amount be paid within a period of three months from the date of the award otherwise interest at the rate of 7.5 per cent shall be leviable. In the facts of the case, parties are directed to bear their own costs.