

(2007) 11 MP CK 0015
In the Madhya Pradesh High Court

Kanhialal (deceased) through L.Rs.	Vs	APPELLANT
Vishnu Giri and Others		RESPONDENT

Date of Decision : 30-11-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2009) ACJ 942

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Judgement

N.K. Mody, J.—This is an appeal filed by the claimants u/s 173 of the Motor Vehicles Act against an award dated 5.9.2006, passed by Additional M.A.C.T., Jhabua in Claim Case No. 220 of 2005. By impugned award, the Claims Tribunal has awarded a total sum of Rs. 3,23,500 with interest to the claimants for the death of one Kanhialal, who died in a vehicular accident. According to the claimants, the compensation awarded is on the lower side and hence, it needs to be enhanced. It is for the enhancement in the compensation awarded by Claims Tribunal, the claimant has filed this appeal. So the question that arises for consideration is whether any case for enhancement in compensation awarded by the Tribunal on facts/evidence adduced is made out in the compensation awarded and, if so, to what extent?

2. It is not necessary to narrate the entire facts in detail, such as how the accident occurred, who was negligent in driving the offending vehicle, who is liable for paying compensation, etc. It is for the reason that, firstly, all these findings are recorded in favour of the claimants by the Tribunal. Secondly, none of these findings though recorded in claimants' favour are under challenge at the instance of any of the respondents such as owner/driver or insurance company either by way of cross-appeal or cross-objection. In this view of the matter, there is no justification to burden the judgment by detailing facts on all these issues.

3. Learned Counsel for appellants submit that appellants are legal representatives of the deceased Kanhialal, who sustained injuries in a motor

accident, which took place on 27.6.1997. It is submitted that deceased Kanhiyalal sustained grievous injuries for which he was treated at Mumbai, Jhabua, Indore and Dahod. It is submitted that after filing of the claim petition Kanhiyalal died on 19.11.2001. Learned Counsel submits that the learned Tribunal awarded a sum of Rs. 3,18,500 on account of medical expenses incurred by deceased Kanhiyalal. It is also submitted that since Kanhiyalal died, therefore, the appellants are entitled for only pecuniary losses and not entitled for non-pecuniary losses. It is submitted that on account of loss of income, travelling expenses, special diet and expenses incurred on attendants no amount has been awarded.

4. For this contention reliance has been placed on a decision in the matter of Smt. Bhagwati Bai and Another Vs. Bablu @ Mukund and Others, , wherein Full Bench of this Court has held that the claim petition after death of injured would survive only for pecuniary losses to the estate of injured.

5. Further reliance has been placed on a decision in the matter of Umed Chand Golcha Vs. Dayaram and Others, , wherein Division Bench of this Court in a case where personal injuries sustained by the claimant in accident, Tribunal passed an award in favour of the claimant which has been challenged in appeal and during pendency of appeal claimant died, it was held that legal representatives of the claimant can seek impleadment and defend the decree under the award. It was further held that the amount of decree is accretion to the estate of the deceased, claim for enhancement would not survive to his legal representatives but they can pursue the claim for enhancement of claim for loss to the estate.

6. Learned Counsel submits that claim petition was filed in the year 1997, which was decided on 5.9.2006, but the learned Tribunal has awarded interest from the date of award without assigning any reason. Learned Counsel submits that interest ought to have been decided from the date of accident/claim petition. For this contention reliance was placed on a decision in the matter of Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another, , wherein Division Bench of Hon'ble Supreme Court has held that interest can be granted even without the claimant specifically pleading for it. It is consequential in the eyes of law; claimant has been kept out of money which ought to have been paid to him.

7. Learned Counsel for the respondent No. 3 submits that substantial amount has already been awarded to the appellants towards medical expenses. Apart from this, a sum of Rs. 5,000 has also been awarded towards loss to estate. So far as interest is concerned, learned Counsel submits that learned Tribunal has held that because of negligent attitude of the appellants the interest has been awarded from the date of award.

8. I have gone through the evidence adduced by the claimants. After taking into consideration all the evidence on record it appears that injuries sustained were grievous in nature for which the deceased was treated at a number of places.

After his death appellants are entitled for pecuniary loss, the amount of Rs. 5,000 awarded appears to be on lower side. In my opinion, appellants are entitled for a further sum of Rs. 25,000 towards other pecuniary losses. So far as interest is concerned the claim application was filed in the year 1997, the award passed in the year 2006. It was not clarified by the learned Tribunal from what date to what date appellants were lethargic in conducting the case.

9. From perusal of the record it appears that being aggrieved by the interim order passed by learned Tribunal, revision petition was filed by respondent No. 3, which took time. Thereafter, for a long time the Presiding Officer of the Tribunal was not available for which appellants cannot be blamed. In the facts and circumstances of the case appellants shall be entitled for interest from the date of filing of application at the rate of 6 per cent per annum.

10. With the aforesaid modifications the appeal stands disposed of. No order as to costs.