(1992) 02 MP CK 0035

In the Madhya Pradesh High Court

Case No : M.A. No. 158 of 1983

Madhya Pradesh State Road Trans. Corpn. APPELLANT

Vs

Rajendra Kumar and Others RESPONDENT

Date of Decision : 19-02-1992

Acts Referred:
Motor Vehicles Act, 1939 — Section 110A, 110D

Citation : (1993) 1 ACC 276 : (1994) ACJ 88

Hon'ble Judges : S.K. Dubey, J

Bench : Single Bench

Advocate : M.L. Dhupar, for the Appellant;

Final Decision : Dismissed

Judgement

S.K. Dubey, J.—The appellant, M.P. State Road Transport Corporation, Bhopal (for short, the ''Corporation'') has come up in appeal u/s 110-D of the Motor Vehicles Act, 1939 (for short, the ''Act'') against the award dated 1.3.1983, passed in M.V.A. Claim Case No. 205 of 1978, by the Second Additional Motor Accidents Claims Tribunal, Indore (for short, the ''Tribunal'').

2. The facts of this case are not much in dispute. In the intervening night of 25.9.1978 and 26.9.1978 at about 2.30 a.m., motor vehicle No. CPE 8801 was carrying passengers, which dashed against a bicyclist, namely, Bhagwatiprasad, from behind, who was crushed under the wheels and died instantaneously. The claimants/applicants/ respondents filed an application u/s 110-A of the Act and claimed compensation of Rs. 1,60,000/- stating the earnings of the deceased to be at Rs. 600/-p.m. The claim was contested by the Corporation on the ground that the accident was inevitable because of the latent defect in the brake, which failed suddenly. The Tribunal, after appreciating the evidence, observed that the best person who could have proved whether the accident was because of sudden failure of brakes, was the driver of the vehicle, who was not examined, no other legal and cogent evidence was adduced by the Corporation to prove that before the accident the vehicle was being kept in a proper and fit condition. As regards

compensation, the Tribunal awarded only Rs. 36,000/- by applying the multiplier of 12 with interest at the rate of 6 per cent per annum from the date of the application till realisation.

3. Mr. M.L. Dhupar, learned counsel for the appellant Corporation, contended that the Tribunal''s findings are perverse; therefore, the appeal is liable to be allowed.

4. After hearing counsel and on going through the evidence on record, I am of opinion that this appeal has no merit. Law is well settled that unless some illegality is pointed out or detected, the findings of the trial court are not liable to be interfered in appeal. The eye-witnesses to the accident were examined before the Tribunal, who had the advantage, which this court sitting in appeal does not enjoy, in having the witnesses before it and of observing the manner in which they gave their testimony. When there is a conflict of oral evidence on any matter in issue and its resolution turns upon the credibility of the witnesses, the general rule is that the appellate court should permit the findings of fact rendered by the trial court to prevail unless it clearly appears that some special feature about the evidence of a particular witness has escaped the notice of the trial court or there is a sufficient balance of improbability to displace its opinion as to where the credibility lies. (See Madhusudan Das Vs. Smt. Narayanibai (Deceased) by Lrs. and Others,

5. Next, it was contended by Mr. Dhupar that the Tribunal found the deceased aged about 50 years; therefore, the multiplier of 12 fixed by the Tribunal was excessive, hence, the amount of compensation awarded after calculating the monthly dependency is also excessive.

6. In my opinion, this contention has also no merit. It has been held by a Division Bench of this court in State of M.P. v. Ashadevi 1988 ACJ 846, that where the deceased persons were in their thirties and/or forties, it is proper to select the multiplier of 15. In the cases of deceased persons who were in their twenties and were on the threshold of their career, the multiplier of 16 should be applied. (See also Malti Vishwakarma v. Sunder Transport Co. 1988 MPLJ 213. Therefore, the multiplier of 12 fixed by the Claims Tribunal is on the lower side. But, as the claimants-respondents have not preferred any appeal or cross-objections for enhancement of the compensation, the compensation awarded by the Tribunal cannot be enhanced.

7. As regards interest, the Tribunal awarded interest at the rate of 6 per cent per annum from the date of the application till realisation, which deserves to be enhanced in view of Order 41, Rule 33, CPC and the highest judicial pronouncements in R.L. Gupta and Others Vs. Jupitor General Insurance Company and Others, , Jagbir Singh v. General Manager, Punjab Roadways 1987 ACJ 15 and Narcinva V. Kamat v. Alfredo Antonio Doe Martins 1985 ACJ 397 . A Full Bench of this court, following the mandate of the Apex Court in the aforesaid cases, took the same view in Prakramchand Vs. Chuttan and Others, In Madhiya v. Ramchandra 1987 (I) MPWN 223 and Union of India v. Balwant Kaur 1986 (II)

MPWN 198, the Division Benches of this court also took the same view. Therefore, interference in the absence of any appeal or cross-objections by the respondents-claimants is warranted to mould the relief of interest to the extent that the claimants shall be entitled to interest at the rate of 12 per cent per annum on the amount of compensation so awarded from the date of the application till payment.

8. In the result, the appeal has no merit and is dismissed. The claimants-respondents shall be entitled to interest at the rate of 12 per cent per annum on the total amount of Rs. 36,000/- from the date of the application till payment. The Corporation will, of course, get credit for the amount already paid or deposited by it with the Tribunal and interest shall be calculated taking into account such payment, if already made.

9. As no one has appeared in this court on behalf of the respondents-claimants to contest the appeal, there will be no order as to costs.

