(2007) 01 MP CK 0034

In the Madhya Pradesh High Court

Mamta and Others — APPELLANT

Vs

Ganesh and Others — RESPONDENT

Date of Decision : 10-01-2007

Acts Referred:

Citation : (2007) 2 ACC 379

Hon'ble Judges : Shahi Kant Kulshreshtha, J;S.K. Seth, J

Bench : Division Bench

Judgement

1. This appeal is directed against the award dated 4.2.2006 of the 21st Additional Motor Accident Claims Tribunal, Indore, passed in Claim Case No. 106/2005 by which, on account of death of Mangat in an accident with a tractor, the Tribunal has awarded compensation of Rs. 4,40,000 as against the compensation of Rs. 10,00,000 claimed. Mangat was husband of appellant No. 1, father of appellant Nos. 2 to 5 and son of appellant No. 6. It was alleged that when on 3.6.2004, at about 2.00 p.m. deceased Mangat was coming to his house, as he reached Bhogava Road, Tractor No. MP 10 A 5279 collided with him, on account of rash and negligent driving of the said tractor by respondent No. 1 - Ganesh s/o Rajaram Bhil. The Tribunal, finding that the death had occurred on account of the said accident, proceeded to calculate the compensation awardable to the appellant. Though it was contended that Mangat was in receipt of Rs. 3,750 as salary, the Tribunal, on over all assessment of all facts and circumstances, came to the conclusion that his income was Rs. 3,000 per month and deducting 1/3rd for his peronal expenses, assessed the dependency of the appellants in the sum of Rs. 2,000 per month i.e., Rs. 24,000 per annum. Mangat was 32 years old and, therefore, the Tribunal selected the multiplier of 17 and multiplying Rs. 24,000 by 17, assessed the loss of dependency in the sum of Rs. 4,08,000. In addition, Rs. 2,000 were awarded for funeral expenses and Rs. 30,000 (Rs. 5,000 to each of the appellants) for the loss of consortium and love and affection. Learned Counsel for the appellant has strenuously urged that when there was direct proof that Mangat was in receipt of Rs. 3,750, the Tribunal erred in holding that the income must not have been more than Rs.

3,000 per month.

2. We find from the record that apart from the bare al legation and examination of Mamta Bai (A.W. 1), Kishore (A.W. 2) and Munna (A.W. 3), no documentary evidence was tendered except a salary certificate issued by the employer to substantiate the said claim. Kishore Panchal (A.W. 2) has admitted that the deceased had joined his establishment in 2003 and had thereafter left the same and it was only about 20 days prior to the accident that he had come for service. There is no evidence to show as to what was his income during the period of interregnum. He has also admitted that he was paying Rs. 50 to Rs. 80 to the boys engaged by him and Rs. 100 to Rs. 130 to the skilled workers. For absence, the amount was duly deducted. Under these circumstances, the evidence is wavering with regard to the income of the deceased and the income assessed at Rs. 3,000 per month, does not call for any intereference.

3. Learned Counsel has further urged that looking to the size of the family of the deceased, 1/3rd should not have been deducted towards his personal expenses. We find that there are as many as six claimants/dependents and, therefore, prior to the death of Mangat, there were seven members in his family. Under these circumstances, the normal deduction of 1/3rd of the salary would be unrealistic and harsh. Accordingly, we are inclined to deduct only 1/4th from his salary and if the amount of 1/4th i.e., Rs. 750 is deducted, the monthly dependency comes to Rs. 2,250 i.e., Rs. 27,000 per annum. If multiplier of 17 is applied to the said annual dependency, the loss of dependency comes to Rs. 4,59,000. The Tribunal has already awarded for funeral expenses and loss of love and affection in the sum of Rs. 32,000. If the said sum is added to Rs. 4,59,000, the total amount payable as compensation to the appellants, comes to Rs. 4,91,000.

4. We are, therefore, of the view that the appellants deserve to be awarded sum of Rs. 4,91,000 as compensation for the death of Mangat instead of Rs. 4,40,000 awarded by the Tribunal. The enhanced amount shall bear interest at the rate of six per cent per annum from the date of application. With the above modification in the award, this appeal is disposed of with no order as to costs.