(2008) 04 MP CK 0079

In the Madhya Pradesh High Court

Manju and Others — APPELLANT

Vs

New India Assurance Co. Ltd. and Others — RESPONDENT

Date of Decision : 29-04-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2009) ACJ 1500

Hon'ble Judges : Rajendra Menon, J;A.K. Gohil, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Abhay Gohil, J.—This is claimants'' appeal filed u/s 173 of the Motor Vehicles Act, 1988, seeking enhancement of compensation, being aggrieved by the award dated 20.3.2003, passed by Seventh Additional Motor Accidents Claims Tribunal, Gwalior in Claim Case No. 14 of 2001.

2. Brief facts of the case are that on 23.11.2000, deceased Tahsildar Singh was travelling on a motor cycle bearing registration No. MP 07-K 187 as a pillion rider. One Tilak Singh was driving the motor cycle and coming from Gohad to Gwalior. The motor cycle reached near Gurikha Chowki, one truck bearing registration No. MBW 1883 was going from Gwalior to Gohad and at the same time another tanker bearing the registration No. UP 78-B 0863 was coming from Gohad side. The tanker overtook the motorcyclist. At the same time, there was a collision between the truck and tanker, thereby the tanker was pushed back on account of the said push and tanker also hit the motor cycle. The motorcyclist could not see and realize the aforesaid situation. As a result there was an accident in which both persons travelling on the motor cycle, namely, Tilak Singh and Tahsildar Singh died on the spot. The matter was reported to the Police Station, Malanpur, where Crime No. 127 of 2000 was registered.

3. The claimants, who are the minor son and widow including the parents have filed a claim application for compensation u/s 163-A of the Motor Vehicles Act,

1988. The Claims Tribunal found that the accident took place because of the negligence of the driver of the tanker and the deceased died because of the injuries sustained in the accident. An objection was taken by the insurance company that the respondent No. 3 was not having any valid driving licence and driving the vehicle contrary to the terms and conditions of the policy. Tribunal answered the question in negative and held that insurance company is liable. The insurance company has not challenged this finding. Tribunal awarded compensation of Rs. 2,56,800.

4. The claimants have filed this appeal, in which the only question of enhancement of compensation is involved. It was submitted before the Tribunal that deceased was engaged in teaching the students and was earning his livelihood through tuitions. The Tribunal has considered the income of the deceased as Rs. 1,800 per month and Rs. 21,600 per annum and dependency as Rs. 14,400 per annum.

5. We have heard the learned Counsel for the parties. Mr. B.D. Verma, learned Counsel for the appellants submits that the Tribunal has not considered the income of the deceased properly. It was argued that he was earning Rs. 5,000 per month from the tuitions. He was graduate and was also preparing for M.P. Civil Services Exam. There is no dispute that deceased was aged between 30 and 35. There is no rebuttal of this fact that he was engaged in tuitions, therefore, on the basis of oral evidence, it can be held that for his livelihood, he was engaged in teaching through tuitions. It is true that the principle of notional income is applicable in a case where the person is not earning member. In this case deceased was a married person having one child, therefore, it can be held that he must be earning some amount for his livelihood and for the family members. In that case even in the absence of the documentary proof on record, it can be held that the deceased must be earning Rs. 2,500 per month and Rs. 30,000 per annum and must be spending Rs. 10,000 for his personal use. After deducting this amount, the amount of dependency would come to Rs. 20,000 per annum. Since the claim petition is filed u/s 163-A of the Motor Vehicles Act, 1988, therefore, the compensation has to be calculated on the basis of structured formula prescribed under Second Schedule to the Act. The Tribunal has applied the multiplier of 17 on the age between 30 and 35, which appears to be reasonable. On application of this multiplier the total amount of compensation is worked out to Rs. 3,40,000. The Tribunal has awarded Rs. 12,000 in other heads as per the Schedule which is reasonable. Therefore, total amount of compensation is worked out to (Rs. 3,40,000 + Rs. 12,000) = Rs. 3,52,000. This enhanced amount shall carry interest at the rate of 8 per cent per annum from the date of filing of this appeal. Counsel''s fee Rs. 1,000.

6. Consequently, this appeal is allowed as indicated above.

