

(2001) 07 MP CK 0001
In the Madhya Pradesh High Court

Nathu and Others

APPELLANT

Vs

New India Insurance Co. and Others

RESPONDENT

Date of Decision : 23-07-2001

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2001) 2 ACC 691

Hon'ble Judges : Jayant Govind Chitre, J;A.M. Sapre, J

Bench : Division Bench

Judgement

A.M. Sapre, J.—With the consent of parties the appeal is heard finally.

2. Claimants are in appeal u/s 173 of Motor Vehicles Act against an award dated 12.1.2001 passed by Additional Member, M.A.C.T. Kukshi, District Dhar in Claim Case No. 61/1999 by which the claim petition of claimants (appellants herein) is partly allowed awarding them a total compensation amounting to Rs. 94,000/- with interest for the death of one Anbai, wife of Ram Singh.

On 8.5.1999, at about 12.30 p.m. Anbai who was a pillion rider on a motor cycle driven by her husband Ram Singh met with an accident with one bus bearing No. MP-09/G/B/0023 owned by respondent No. 3 and driven by respondent No. 2. As a result of this accident, Anbai died on the spot whereas Ram Singh sustained injuries. The offending bus at the relevant time was insured with the respondent No. 1, Insurance Company.

3. This led to filing of claim petition by the present appellants (claimants) before the Claims Tribunal claiming compensation for the death of their mother. It was not contested by driver and owner but was contested on the limited defence available to them under the Act.

4. The Claims Tribunal after recording of the evidence came to a conclusion that Anbai was aged 40 years and was earning Rs. 700/- per month by doing work. Applying the multiplier of 15, the Tribunal awarded a sum of Rs. 94,000/- after holding that the accident was due to rash and negligent driving of the bus driver.

5. Heard Mr. Martish Jain, learned Counsel for the appellant and Mr. Swami, learned Counsel for the respondent No. 1.

6. Submission of learned Counsel for the appellant while assailing the impugned award was two-fold. Firstly he urged that in the facts of this case multiplier of 16 in place of 15 should have been applied as per Schedule. His second submission was that on the strength of evidence, it could be held safely that deceased monthly income was Rs. 1,500/- and not Rs. 700/- as held by the Tribunal.

7. Learned Counsel for the respondent supported the impugned award and prayed for its upholding.

8. Having heard the learned Counsel for the parties and having examined the record of the case we find some substance in the submission of learned Counsel for the appellant and hence we are inclined to enhance the compensation in part by the appeal in part.

9. In our opinion, the Tribunal taking into consideration the age of the deceased and the keeping before it the parameters contained in Schedule should have applied the multiplier of 16 in place of 15. Now so far as the evidence of monthly income of deceased Anbai is concerned it is brought on record in evidence that she was earning Rs. 50/- per day. The only reasoning of Tribunal in holding that monthly income of deceased was Rs. 700/- was that in agriculture field one is not required to work every day. We do not subscribe to this reasoning for reducing the wage. In our opinion, taking into consideration that deceased was admittedly held to be working and earning, one can easily conclude that she must be getting a monthly salary of Rs. 1,000/-.

10. Accordingly, after deducting one-third of her expenses, the yearly dependency comes to Rs. 8,000/- x 16: Rs. 1,28,000/- to the appellants are held entitled to Rs. 1,28,000/-. Thus, the appeal is partly allowed, impugned award is modified and compensation is enhanced to Rs. 1,28,000/-. The enhanced compensation will carry interest at the rate of 9% from the date of application till realisation.

11. All other findings shall remain same as it is. They are upheld including the liability of the respondents. Let the awarded amount be deposited by the Insurance Company the respondent No. 1 within four months from the date of order.