

(2002) 09 MP CK 0058
In the Madhya Pradesh High Court
Case No : M.A. No. 452 of 2001

Neetu Jain and Others

APPELLANT

Vs

Sitaram and Brothers and Others

RESPONDENT

Date of Decision : 13-09-2002

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A
Motor Vehicles Act, 1988 — Section 166

Citation : (2004) ACJ 461

Hon'ble Judges : Sugandhi Lal Jain, J;Shahi Kant Kulshreshtha, J

Bench : Division Bench

Advocate : V.K. Jain, for the Appellant; Aaditya Sanghi, for the Respondent

Final Decision : Allowed

Judgement

S.L. Jain, J.—Appellants-claimants had filed an application u/s 110-A of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act" for short) for the award of compensation initiating the proceedings arising out of an accident involving a motor vehicle, a tanker lorry/ truck bearing its registration No. GTS 6130 wherein Manoj Kumar Jain, son of appellant Nos. 2 and 3 and husband of appellant No. 1, had met with untimely death at the age of 29 years.

2. The Motor Accidents Claims Tribunal, Jabalpur, on consideration of the evidence and the materials brought on record by the various parties, had determined that the present appellants, i.e., the wife and parents of the deceased were entitled to an amount of Rs. 3,02,400 towards loss of dependency, Rs. 5,000 towards loss of consortium and Rs. 2,000 for the expenses of the last rites of the deceased, total of which comes to Rs. 3,09,400. Rounding up the figure, the Tribunal awarded a total sum of Rs. 3,10,000 specifying that the driver, owner and the insurance company shall be liable to pay the compensation jointly and severally. The learned Tribunal also awarded interest on the aforesaid amount at the rate of 9 per cent per annum with an embargo that the appellants shall not be entitled to interest for a period of two

years as they themselves are responsible for the delay in the disposal of the case.

3. Feeling aggrieved by the aforesaid award wife and the parents of the deceased have filed the present appeal seeking enhancement of the amount of compensation to Rs. 3,88,800 instead of Rs. 3,02,400.

4. We have heard Mr. V.K. Jain, learned counsel for appellants and Mr. Aaditya Sanghi, learned counsel for respondents.

5. Mr. Jain submitted that the age of deceased was 29 years at the time of accident and in case of death of a person of this age the multiplier used by the Tribunal ought to have been 18, but the Tribunal has applied the multiplier of 14 only and thus, has not awarded a just, fair and reasonable compensation. He also submitted that the rate of interest awarded by the Tribunal is very low. It ought to have been 12 per cent per annum. He further contended that the Tribunal was not justified in giving a finding that the appellants shall not be entitled to interest for the period of two years as they have been negligent in proceeding with the trial of the case and they are responsible for the delay in disposal of the case.

6. Per contra, the learned counsel appearing for the respondents, supporting the award of the Tribunal, submitted that the Tribunal has awarded a just and fair compensation. Respondent Nos. 1 and 2 were ex parte before the Tribunal even then the appellants took a long time in getting the claim petition disposed of. Therefore, the learned Tribunal was justified in refusing interest for the period of two years.

7. We have given our anxious consideration to the rival submissions made by the learned counsel for the parties and carefully perused the record. As the respondents have not filed any appeal, the finding of the Tribunal that the accident took place due to rash and negligent act of the driver of the offending vehicle, has become final.

8. So far as the age of the deceased is concerned, there is ample evidence on record to show that the deceased was 29 years of age at the time of his death. Naval Kumar Jain, AW 1, has stated that the age of the deceased was 29 years. Bhagchand, AW 2, who is the father of the deceased, has stated that the age of the deceased was 29 years at the time of his death. These statements of the witnesses were not challenged in their cross-examination. Before us also, the learned counsel appearing for the respondents did not dispute the age of the deceased, therefore, we find that the deceased was 29 years of age at the time of the accident.

9. The finding of the Tribunal with regard to income of the deceased has also not been questioned. Naval Kumar Jain, AW 1, who is the brother-in-law of the deceased, has stated that deceased earned Rs. 15,000 per month. Bhagchand, AW 2, has stated that the deceased was earning Rs. 10,000 to Rs. 15,000 per month. Neetu Jain, AW 3, also stated that her husband used to earn Rs. 5,000

per month by way of money lending and agricultural income was about Rs. 1,00,000 a year. After appreciation of the evidence adduced by the appellants, learned Tribunal came to the conclusion that the income of the deceased was Rs. 3,000 per month, as he used to help his father in the business and in the agricultural operations. We do not find any justifiable reason to disagree with the Tribunal on this count and we find that the income of the deceased was Rs. 3,000 (rupees three thousand) per month.

10. Regarding the dependency learned Member of the Tribunal applied the unit method taking one unit each for the deceased himself, his wife Neetu Jain and mother Sumat Rani. Regarding Bhagchand the father of the deceased, the Tribunal observed that he was himself an earning member and was not dependent on the deceased. The learned Tribunal deducted Rs. 1,200 for the expenses of the deceased and found that the yearly dependency was Rs. 21,600. On this point also, no controversy has been raised before us and, therefore, we find that the annual dependency of the appellants was Rs. 21,600.

11. The learned counsel for the appellants has emphatically submitted that the multiplier applied by the Tribunal is 14 only which is very low. Our attention was drawn to the Schedule appended to the Act. According to this Schedule, the multiplier of 18 is prescribed for persons of the age group of 25 to 30 years. It is true that the multiplier suggested in the Schedule cannot be adopted as a straitjacket formula and the court may deviate from it depending upon the facts and circumstances of the particular case. Because of the increased life expectancy in the country, the court should adopt a higher multiplier. Tribunal has misdirected itself by departure from the multiplier suggested in the Schedule. The appropriate multiplier of 18 should have been applied to assess the compensation. Thus, applying the multiplier of 18, we find that the compensation assessed by the Claims Tribunal ought to have been Rs. 3,88,800 instead of Rs. 3,02,400.

12. Regarding the quantum of interest, keeping in view that very recently, the nationalised banks have reduced rate of interest on deposits, it cannot be said that the interest awarded by the Tribunal at the rate of 9 per cent per annum is not proper. Therefore, the finding of the Tribunal on this point calls for no interference.

13. So far as the rejection of claim of interest for the period of two years is concerned, we have perused the record of the Tribunal and we find that the delay in disposal of the claim case cannot be attributed to the claimants. They, in good faith, tried to compromise the matter and on their request the matter was sent to Lok Adalat. Some adjournments were inevitable due to the fact that the learned Member of the Tribunal was on leave or the advocates were on strike. Therefore, the learned Tribunal committed an error in attributing the delay in disposal of the case to the appellants. The learned Tribunal was not justified in refusing the interest for the period of two years.

14. As a result of aforesaid discussion, we find that the appellant Nos. 1 and 3 are entitled to Rs. 3,88,800 (rupees three lakh eighty-eight thousand eight hundred) towards the loss of dependency, Rs. 5,000 (rupees five thousand) towards the loss of consortium and Rs. 2,000 (rupees two thousand) for expenses for last rites of the deceased. The total of aforesaid sum comes to Rs. 3,95,800 (rupees three lakh ninety-five thousand eight hundred), out of which the appellant No. 1 shall be entitled to 75 per cent (seventy-five per cent) and the appellant No. 3 will get remaining 25 per cent (twenty-five per cent) thereof.

15. Accordingly, this appeal stands allowed with the modification in the impugned award as indicated in para. 14 above. However, there shall be no order as to costs.