
(2013) 02 MP CK 0041

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 1107 of 2005

Om Prakash Gupta and Others

APPELLANT

Vs

Wajeer Ahmed Ali Nayak Wadi and Another

RESPONDENT

Date of Decision : 27-02-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 173
Penal Code, 1860 (IPC) — Section 304A

Citation : (2013) ACJ 2498 : (2014) 1 AnWR 17 : (2013) ILR (MP) 877 : (2013) 5 MPHT 172 : (2013) 1 MPJR 233 : (2013) 2 MPLJ 306

Hon'ble Judges : U.C. Maheshwari, J

Bench : Single Bench

Advocate : Anvesh Jain, for the Appellant; Mahesh Goyal, for the Respondent

Judgement

U.C. Maheshwari, J.—The appellants/claimants have filed this appeal u/s 173 of the Motor Vehicles Act (in short "the Act") for enhancement of the sum awarded by the Vth MACT, Morena in Claim Case No. 31/04 vide award dated 12-8-2005 whereby their claim with respect of vehicular death of Tarun aged 22 years the son of appellant No. 1 and 2 while brother of appellant Nos. 3 and 4, has been awarded against the respondents for the sum of Rs. 2,43,500/- along with interest at the rate of 6% per annum from the date of filing the claim petition if the payment is made within two months and if the payment is made beyond this period then @ 9% per annum. The liability to pay such sum is saddled jointly and severally against both the respondents. The facts giving rise to this appeal in short are that the appellants herein filed the claim petition in the aforesaid tribunal contending that on 19-8-2003 at about 12 O" clock in the night, the aforesaid Tarun Agarwal, aged 22 years while riding his Yamaha motorcycle MH-14-T/1057 reached in front of the gate of Court compound, Pune. At the same time from the side of Kamguar statute a PMT bus bearing Registration No. MH-12-AR/7942 driven by respondent No. 1 in a rash and negligent manner, came and dashed his motorcycle from the front side, resultantly, he fell down. The pillion rider Sandeep (AW-2) also fell down. In such incident, Tarun Agarwal

sustained fatal injuries on his head and subsequently succumbed to such injuries. As per further averments such bus was registered with the RTO in the name of respondent No. 2 while respondent No. 1 was driving the same under the employment of respondent No. 2. On receiving the report, a criminal case was registered at the concerning police station. After holding the investigation, respondent No. 1 was charge-sheeted for the offence of section 304-A of the Penal Code. In addition it is stated that deceased Tarun, at the time of accident, was prosecuting his studies of Engineering in Computer Science and was the student of III year at Pune and very soon after completing such degree, he would have got the job in some higher package in lakhs. In his education, huge amount was spent by his parents and due to his untimely death, they have not only suffered the mental agony but have also been deprived from the benefit of future income of the deceased so also the love and affection of the deceased. With these averments, under different heads, the impugned claim was filed by the appellants for the sum of Rs. 76,25,000/- along with interest @ 18% per annum.

2. Respondent No. 1 in spite service of the notice did not appear before the tribunal, hence the case was proceeded ex parte against him.

3. In reply of respondent No. 2, it is stated that the claim petition has been filed contrary to Rules 220 and 221 of the M.P. Motor Vehicle Rules, 1994. It is further stated that along with the claim petition no papers regarding qualification or the education of the deceased have been placed or sent to such respondents. It is also stated that the appellants No. 3 and 4, being brother and sister of the deceased, were not dependent on him. Besides this, the deceased was not earning member of the family so the appellants have not been deprived from any right of dependency. In further averments it is stated that the aforesaid motorcycle was driven by the deceased in a rash and negligent manner and that was the only cause for the accident and, in such premises, the deceased himself was responsible for the alleged accident and there was no negligence on the part of the bus of the respondents or its driver. In alternate, it is pleaded that, in any case, it was the case of contributory negligence because both the vehicles have been collided from front side. The claim is filed by assessing the sum on excessive side for which the appellants are not entitled and prayed for dismissal of the claim petition.

4. In view of the aforesaid pleadings of the parties, issues were framed, on which, the evidence was recorded. On appreciation of the same, by holding that the alleged incident was the cause and consequence of rash and negligent driving of the aforesaid bus by respondent No. 1, it was held that due to such negligent act of respondent No. 1, deceased Tarun Agarwal had died in the alleged incident. The appellant Nos. 3 and 4 were held to be the unnecessary party in the matter. The deceased was not found to be responsible to commit any contributory negligence in the alleged accident and, in such premises, the claim of appellant Nos. 1 and 2 was awarded by the tribunal for the sum of Rs.

2,43,500/- as stated above. Being dissatisfied with the awarded sum, appellants have come to this Court for further enhancement of the same.

5. Appellant's counsel after taking me through the record of the tribunal as well as the impugned award by referring the depositions of the witnesses examined on behalf of the claimant said that looking to the nature of the education of the deceased and his future prospects, whatsoever amount has been assessed taking into consideration the imaginary income of the deceased @ Rs. 3000/- per month, the sum awarded by the tribunal is not sufficient. The same is very meagre and lesser side. In any case, deceased Tarun, who was prosecuting his studies in III year of computer engineering, should have been treated by the tribunal to be the educated person of technical side and, in such premises, in view of the available unrebutted evidence on record, his expected future income ought to have been assessed @ of Rs. 15000/- per month. In continuation he also said that the claim of the respondent Nos. 3 and 4 was wrongly dismissed by the tribunal holding them to be the unnecessary party in the matter. He further said that the Court ought to have taken the judicial notice that on obtaining the degree of engineering after two years the deceased would have got the job with the package of 2 to 2.5 lakhs per year had he been alive and such expected imaginary income of the deceased has been proved by the witness Sandeep (A.W. 1) and such version has not been challenged by the respondent No. 2 in his cross examination. In view of such unrebutted evidence the income of the deceased ought to have been taken @ Rs. 2 to 2.5 lakhs per annum. He also said that multiplier of 13 was wrongly adopted by the tribunal. Taking into consideration the age of the deceased, the multiplier of 15 should have been adopted or in any case, keeping in view the age of 41 years of his mother the appellant No. 2 in the light of the principle laid down in the matter of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, the multiplier of 14 should have been applied and prayed for enhancement of the sum awarded by the tribunal up to the extent prayed in the claim petition by allowing this appeal.

6. On the other hand, responding the aforesaid arguments, Shri Mahesh Goyal, counsel of respondent No. 2 by justifying the findings of the impugned award said that the same being based on proper appreciation of the available evidence, is in conformity with law and in the available circumstances the sum awarded by the tribunal is just and proper. The same does not require further enhancement at this stage. In continuation he said that according to admission of the claimant himself, the deceased was not the earning member of the family and in that premises, the amount which has been awarded by the tribunal is more than the amount of notional income. So, in such premises also it does not require further enhancement. He further said that unless the earning of the deceased person is proved on record, mere on the basis of assumption and presumption or on the basis of imagination, no order for enhancing the awarded sum could be passed against the respondents. He further said that keeping in view the age of appellant No. 1, the father of the deceased, the multiplier of 13 was rightly

adopted. The same does not require any interference at this stage and prayed for dismissal of this appeal.

7. Having heard the counsel at length, keeping in view their arguments, I have carefully gone through the record as well as the impugned award. It is undisputed fact on record that at the time of alleged accident, deceased Tarun Agarwal was prosecuting the course of III year in Engineering in Computer Science at Pune. His age 22 years, is also not in dispute. It is also undisputed fact on record that on the date of aforesaid vehicular accident deceased Tarun was not earning member of the family although on the expenses of the Family and parents, he was prosecuting his studies at Pune.

8. It is settled proposition of the law that whenever the claim of compensation under the Motor Vehicles Act is decided then the tribunal as well as the appellate Court are bound to take into consideration not only the present scenario or the present income of the deceased on the date of the incident but his education status and future prospects should also be taken into consideration. In such premises Court may take notice in this regard that now a days for higher education parents sent their children to metro cities for higher education in which huge amount is also spent by them. It is necessary to mention here that now a days the fees of technical education like engineering per semester are in thousands of rupees. Besides this, to meet the expenses of hostel, mess, conveyance, stationary, clothes, cosmetics and other necessary things for human being in day to day life the huge sum is required. So, such amount is also spent by the parents or other family members under the expectation that some day, after getting the degree of such technical education, their children will serve the parents and family from his income. In the case at hand, it could be said safely that after obtaining the degree of graduation in computer science, deceased could have got the job and earned the money in some lakhs per year, had he been alive. But in spite spending huge amount by the parents the appellant Nos. 1 and 2 on their son Tarun in connection of his higher education due to his untimely death in the alleged vehicular accident their all dreams and expectations from their son in future have come to an end. Besides this they have also been deprived from the sum spent by them in making the career and the future of said son. In such premises they have also been deprived from their future right of dependency on the income of the son.

9. So, while dealing with the claim case, the Court is bound to take all these things into consideration to assess the just and proper compensation for the parents of the deceased. It is also settled proposition of the law that even the non-earning person of the family if suffers the injury or dies in the vehicular accident, then on the basis of notional income or the available interpretation of such provision of notional income the victim or the dependents as the case may be are entitled to get the compensation. Such compensation is awarded either taking into consideration the principle of notional income or on the basis of rate of minimum wages fixed by the State. Simultaneously Court is also bound to

assess the compensation keeping in view the educational status of the deceased along with his expected income after obtaining the degree of his education so also the future prospects of the professional course in which the deceased was studying.

10. So, keeping in view the aforesaid, on examining the case at hand then as per findings of the tribunal the deceased was studying in III year of computer science engineering. There cannot be two opinions on the question that after passing the Engineering course or getting the degree of B.E in computer science, the deceased would have got the job in some institution or company where in normal course, the annual package between 4 to 5 lakhs is initially given and thereafter within 9 to 10 years, such annual package comes upto Rs. 10 lakhs or more. So, such future prospects could not be ignored while deciding the claim of the students of technical side.

11. It is not in dispute that the tribunal has also considered this aspect and held that the deceased was prosecuting the study of III year in engineering but keeping in view that he was not the earning member, his imaginary future income was assessed and taken only Rs. 3000/- per month and on that basis, keeping in view the principle laid down by the Apex Court in the case of Sarla Verma (supra) the sum of compensation was assessed. According to which fifty percent sum was deducted on account of expenses of the deceased which he would have spent on himself, had he been alive and assessed the dependency of the appellants No. 1 and 2 on the deceased to be fifty percent and taking into consideration the age of father 46 years and not the age of mother 42 years, the multiplier of 13 was adopted and compensation was assessed and awarded accordingly.

12. But in view of the aforesaid discussion, I do not agree with the approach of the tribunal whereby the income of the deceased was taken only @ Rs. 3000/- per month which is normally taken into consideration as income of the unskilled labourer and not for the person of the technical side. So, the impugned award requires the modification on the assessment of imaginary monthly income of the deceased so also in respect of adopting the multiplier. Because the tribunal has committed error in adopting the multiplier in view of the age of the father of the deceased while the same ought to have been adopted in view of the age of mother which is at lower side.

13. In view of the aforesaid discussion, keeping in view the future prospects and the scope of Engineering jobs in our country, according to which, the junior engineer at his initial stage of the career is getting the package of between Rs. 3 to 5 lakhs per annum and as per evidence of the colleague of the deceased, namely, Sandeep (A.W. 2), now a days, Engineers are getting the job with the package of 2 to 2.5 lakhs per annum and it is apparent fact on record that such part of the deposition of in-chief has not been cross-examined on behalf of respondent No. 2. So such part of the deposition being unrebutted on record in the available facts and circumstances of the case and in existing legal position

could not be ignored and on that basis, the Court has to decide the quantum of compensation.

14. I would like to mention here that after death of grown-up son of 22 years who was student of III year Engineering in computer science, his parents the appellant Nos. 1 and 2 who were expecting support from the deceased in future have been deprived from such expectation and support so also from their future dependency on the deceased. The parents have also been deprived from the huge sum spend by them on the deceased for making the educational career in engineering course. The provisions of the claim under the Motor Vehicles Act, being the provision of social welfare, the appellants/claimants could not be deprived from the just and proper compensation regarding death of their son Tarun Agarwal.

15. In view of the aforesaid discussion, taking into consideration the future prospect of the engineers in our country and availability of jobs in such branch so also the expected imaginary salary of the Engineering branch, in the available scenario, especially in view of the deposition of Sandeep (A.W. 2) who categorically stated about initial package of the job between Rs. 2 to 2.5 lakhs per annum, I take the expected imaginary income of the deceased Rs. 15000/- per month which he could have earned just after two years on obtaining the degree, had he been alive, the same comes to Rs. $15 \times 12 = 1,80,000/-$ per annum and in the available scenario, the claimants being his parents, father and mother then in view of the aforesaid decision of the Apex Court in the matter of Sarla Verma (supra), the Court has to deduct first the fifty percent sum on account of expenses of the deceased which he would have spent on himself, had he been alive then the annual expected dependency of appellants No. 1 and 2 comes to Rs. 90,000/- per annum. Keeping in view the age of mother 42 years, which is less than the father, in view of the aforesaid case of Sarla Verma (supra), the multiplier of 14 is applicable. On applying the same, the total dependency comes to Rs. 12,60,000/-. Besides this, appellants No. 1 and 2 are also entitled to get Rs. 15,000/- towards traditional heads like funeral expenses, loss of estate and love and affection.

16. I would like to mention here that any of the findings of the tribunal holding responsibility of the impugned claim against the respondents jointly and severally, has not been challenged by either of the respondents before this Court by way of appeal or by filing any cross-objection in the present appeal. So, such approach and findings of the tribunal have attained finality between the parties, hence the same does not require any interference.

17. In view of the aforesaid discussion, by allowing this appeal in part, the impugned award is modified and the sum awarded by the tribunal is further enhanced from Rs. 2,43,500/- to Rs. 12,75,000/- as discussed above. The enhanced sum shall carry the interest @ 6% per annum from the date of filing the claim petition, if the same is paid within three months from today otherwise the same shall carry interest @ 9% per annum. Till this extent, the impugned

award of the tribunal is modified while the other findings of the same are hereby affirmed. In the facts and circumstances of the case, there shall be no order as to the cost.