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(2017) 03 MP CK 0140

In the Madhya Pradesh High Court

Case No : 2121-2015

P.N. Mishra. APPELLANT

Vs

Narendra Singh Bisen RESPONDENT

Date of Decision : 31-03-2017

Acts Referred:
Motor Vehicles Act, 1988, Section 166, Section 166, Section 173(1), Section 173(1) - Application for compensation - Appeals

Citation : (2017) 03 MP CK 0140

Hon'ble Judges : Ashok Kumar Joshi

Bench : Single Bench

Advocate : Jayant Nikhra, Kapil Patwardhan, S.M. Guru

Judgement

1. This miscellaneous appeal has been filed by the Insurance Company under Section 173(1) of the Motor Vehicles Act 1988 against the award passed by the Member M.A.C.T., Bhopal on 01.09.2015 in M.C.C Case No.934/2014, whereby in total an award for compensation of Rs.10,10,000/- has been passed in favour of present respondent Nos.1 to 3/original claimants nos.1 to 3 jointly and severally against the present appellant and present respondent Nos.5 & 6.

2. Respondent Nos.1 to 4 filed an application under Section 166 of the Motor Vehicles Act against the respondent Nos.5 & 6 and present appellant on pleadings that late Ram Avtar Sharma was husband of respondent No.1 and father of other claimants. They were totally dependent on income of deceased. On the date of incident 14.04.2014, at about 11:10 AM, Ram Avtar Sharma was going to Bhopal from Mandideep, driving his Motorcycle with limited speed, in the way on Hoshangabad Road, Bhopal, a Bus bearing registration No.MP04-PA-0648, which was driven rashly and negligently, forcefully dashed to the motorcycle of Ram Avtar and thus he fell down from the bike and got serious injury on his head. He was taken to Hamidiya Hospital in serious condition, where doctors declared him dead. Thereafter, postmortem was conducted. At the

time of accident, respondent No.5 Sharifuddin was driving the above-mentioned bus rashly and negligently, respondent No.6 is its Owner and present appellant was its Insurer. FIR was lodged at police station, Misrod, district Bhopal, on the basis of which relating charge-sheet of the criminal case has been filed against respondent No.5. The deceased was a totally healthy man and by doing transport service, he was monthly earning Rs.40,000/- and there was possibility of increase in his income in the future. Faulty driver, Owner and Insurer of bus are liable to pay compensation to the claimants jointly and severally. On different heads mentioned in the claim petition, in total a compensation of Rs.80,50,000/- was claimed.

3. Before the Claims Tribunal, written statement was filed only by the present appellant as non-claimant No.3. In this written statement, all adverse pleadings were denied, including the income of the deceased. It was specifically pleaded that the accident was result of joint negligence of both of the drivers of vehicles, thus the owner of the motorcycle and its Insurer were also necessary parties. The bus driver Sharifuddin was not having valid driving licence at the time of accident, thus the terms of the insurance policy were breached and due to this there is no any liability of Insurance Company to pay the compensation. The bus Owner Mukesh has also breached the terms of the insurance policy, as at the time of accident bus Owner was not having legal and effective permit, thus it was prayed that the claim petition be dismissed against the Insurance Company.

4. The learned tribunal, after framing issues and recording the evidence of the parties and hearing recorded its finding in the impugned award that it was proved that the death of Ram Avtar Sharma was caused due to rashly and negligently driving of the relating bus by non-claimant no.1 Sharifuddin, claimant No.4 Prakash Sharma was father of the deceased and was not dependent on the income of the deceased, thus the claimant No.4 Prakash Sharma was not legal representative of deceased and was not entitled to receive any compensation, but wife of the deceased and two children are entitled to receive the compensation; it was not proved that the bus driver Sharifuddin was driving the bus at the time of accident without any valid licence; it was also not proved that at the time of accident, the bus was driven in contravention of the terms of the insurance policy; it was also not proved that the accident was result of contributory negligence of the deceased Ram Avtar and thus the Owner of the motorcycle and its Insurer were not necessary parties. Thus, an award for abovementioned compensation amount was passed in favour of present respondent Nos.1 to 3. As stated herein above, it would be significant to mention here that no any witness was examined before the tribunal by the present appellant.

5. Learned counsel for the appellant/Insurance Company had vehementely contended that the learned tribunal erred in applying the multiplier of 16, as the age of the deceased at the time of his death was only 32 years, the tribunal had also erred in presuming 50% future prospects of increase in income of the

deceased, as regarding the income of the deceased, the evidence of his widow Monika (PW-1) and relating certificate (P-19) an the deposition of Jaipal (PW-3) in relation to it, were not believed by the Tribunal itself. Thus, it is argued that the passed award is on much higher side, which should be reduced.

6. On the other hand, the appearing counsel for respondent nos.1 to 3 contended that the award passed by the learned Tribunal is not on higher side and it has been further argued by him that though original claimants have not filed any cross-appeal for enhancement of compensation amount or cross-objection in this appeal, the compensation should be increased.

7. As stated eralier, the tribunal has not believed the income certificate (Ex.P.-19) of the deceased and relating evidence of claimant no.1 Monika (P.W-1) and Jaipal (P.W-3). The tribunal has assessed the monthly income of deceased Ramavtar Sharma as Rs.4500/- per month i.e. Rs.54000/- per annum. As the father of deceased, original claimant/respondent no.4 Prakash was not dependent on the income of his deceased son and looking to the age of deceased and in the light of citation referred, the Tribunal has applied the multiplier of 16 and 1/3rd of the income of the deceased was estimated as self expenses of the deceased. The learned Tribunal held that as deceased was 32 years old, thus there must be addition of 50 per cent to the actual income of the deceased while computing future prospects. On this point the learned tribunal has followed the case of Rajesh and others vs. Rajbir Singh and others [2013 (9) SCC 54]. The above mentioned case has also followed in a subsequent case of Munnalal Jain and another vs. Vipin Kumar Sharma and others [2015(2) M.P.W.N. 67- where decision of the Apex Court is reproduced in toto]. In the light of the above mentioned cases decided by the Apex Court, it is clear that the learned Tribunal has not committed any error in estimating 50 per cent increase in the income of deceased for future prospects. Adding this future prospects, the Tribunal estimated deceased''s annual income as Rs.81,000/- and after deducting its 1/3rd as self expenses of deceased, the annual dependency of present respondent nos.1 to 3 was calculated to Rs.54,000/-. After applying the multiplier of 16, the total loss of dependency of above mentioned three claimants was calculated to Rs.8,60,000/-. Thereafter, under the head of loss of consortium Rs.1,00,000/- were added in reference to young widow, under the head of funeral expenses Rs.25,000/- and under the head of loss of estate Rs.25,000/- were added. Thus, it appears that the total calculated compensation amount Rs.10,10,000/- does not appear to be on higher side in the light of the above-referred citations. Thus, the appeal of the insurance company appears to be meritless.

8. Consequently, the appeal filed by the appellant/Insurance Co. is dismissed. No order as to costs.

