(2007) 03 MP CK 0074

In the Madhya Pradesh High Court

Premabai and Others APPELLANT

Vs

Kilol Singh and Others RESPONDENT

Date of Decision : 29-03-2007

Acts Referred:

Citation : (2007) ACJ 1464

Hon'ble Judges : S.K. Gangele, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.K. Gangele, J.—The appeal has been filed by the claimants against the award dated 11.5.2000, passed by the Motor Accidents Claims Tribunal in Claim Case No. 41 of 1999.

2. Husband of the appellant No. 1 and father of appellant Nos. 3 and 4 was going on LML Vespa on 5.5.1999 in the evening, at that time one bus bearing No. MPH 8492 driven rashly and negligently dashed against the scooter. He received serious injuries and died in the accident. The bus was insured with respondent No. 3 and it was driven by respondent No. 1.

3. The appellants filed claim petition before the Claims Tribunal claiming total compensation of Rs. 10,70,000. Claims Tribunal after appreciation of evidence has held that the appellants are entitled to total compensation of Rs. 2,57,672. The Tribunal further held that the accident occurred due to rash and negligent driving of the driver of the offending vehicle, hence all the respondents are held responsible for payment of compensation jointly.

4. Learned Counsel for the appellants has submitted that the Claims Tribunal has assessed the compensation on lower side and proper multiplier has not been applied, looking to the age of the deceased. In support of his argument he has placed reliance on a judgment in Jyoti Kaul and Others Vs. State of M.P. and Another, . However, learned Counsel for respondent No. 3 has submitted that a proper multiplier has been applied by the Tribunal.

5. From the facts of the case, undisputed facts of the case are that the deceased died at the age of 56 years and at that time he was working as assistant teacher in the government service and he was drawing Rs. 7,646 per month as salary and after deducting 1/3rd therefrom, Claims Tribunal arrived at loss of income of Rs. 61,168 annually and applied multiplier of ''4'' on the ground that the deceased might have worked up to the age of 60 years if he was continuous in service. Tribunal has also noted a fact that the family of the deceased was getting family pension Rs. 3,100 per month and after the death of the deceased the appellant No. 3 was appointed on compassionate basis in service and he was getting salary of Rs. 3,564 per month.

6. Ramesh Singh Chauhan, appellant No. 3, who is son of the deceased in para 9 of his cross-examination has admitted the fact that he was appointed on compassionate basis after the death of his father and he was getting Rs. 3,564 per month salary. The Tribunal has considered the aforesaid factor in determining the quantum of compensation and applicability of proper multiplier. As per Second Schedule of the Motor Vehicles Act for the age group of 55-60 the multiplier 8 is applicable.

7. The Hon''ble Supreme Court in the case of The Managing Director, TNSTC Ltd. Vs. K.I. Bindu and Others, , has held that in calculating damages the court has to take into consideration what loss has been suffered by the claimant and also what pecuniary advantage has been gained by him.

In a fatal accident action, the accepted measure of damages awarded to the dependants is the pecuniary loss suffered and is likely to be suffered by each dependent. Thus, except where there is express statutory direction to the contrary, the damages to be awarded to a dependant of a deceased person under the Fatal Accidents Act, 1855 must take into account any pecuniary benefit accruing to that dependant in consequence of the death of the deceased. It is the net loss on balance which constitutes the measure of damages... The general principle is that the actual pecuniary loss can be ascertained only by balancing, on the one hand, the loss to the claimant of the future pecuniary benefit and, on the other, any pecuniary advantage which from whatever source comes to them by reason of the death, that is, the balance of loss and gain to a dependant by the death, must be ascertained.

8. In the present case, it is clear from the admission of the appellant No. 3 that he was appointed on compassionate basis after the death of his father and he was getting salary Rs. 3,564 per month. In the facts and circumstances of the case, in my opinion, the proper multiplier would be ''6'' and after applying the aforesaid multiplier total compensation comes to Rs. 3,67,008.

9. Consequently, the appellants are entitled to get the enhanced compensation of Rs. 1,21,336. The appeal is allowed to the above extent. Looking to the facts of the case in my opinion, the widow, appellant No. 1 and daughter, appellant No. 4, will be entitled to enhanced compensation. The enhanced compensation shall

carry interest at the rate of 7.5 per cent per annum from the date of filing of claim petition. The award of the Claims Tribunal is modified to the above extent. Liability shall be as per the award. No order as to costs.

