

(2003) 01 MP CK 0157
In the Madhya Pradesh High Court

Premchand Khatwani and Others

APPELLANT

Vs

Gopal Thakre and Others

RESPONDENT

Date of Decision : 16-01-2003

Acts Referred:

Citation : (2005) 3 ACC 634

Hon'ble Judges : Bhawani Singh, C.J.; Sugandhi Lal Jain, J

Bench : Division Bench

Judgement

Bhawani Singh, C.J.—This appeal is directed against the award dated 5.10.2001, passed by the Motor Accident Claims Tribunal in Claim Case No. 46 of 2000.

2. Shortly stated, the accident took place on 18.10.1999 when Tempo-Trax bearing No. MH 35-C 9670, driven rashly and negligently, hit the motor cycle bearing No. MP 22-D 2663, of the deceased resulting in his death on the spot and pillion rider Ashok Chawla received injuries. The allegation is that the accident took place due to rash and negligent driving of the Tempo-Trax. The Claims Tribunal has accepted this allegation, therefore, recorded finding against the owner and driver of the offending vehicle, which was insured with Oriental Insurance Co. Ltd., rejecting thereby the defence taken by respondents in this case. Evidence perused. It is clearly a case of accident committed on account of rash and negligent driving of Tempo-Trax by its driver, therefore, finding of the Tribunal on this aspect is confirmed.

3. Serious dispute arises between the parties with regard to assessment of compensation. Mr. Aditya Sanghi, the learned Counsel appearing for claimants, submits that the Claims Tribunal has not assessed the compensation properly. From the business records of Apsara Sales Corporation, it can be said that the deceased had 50 percent share in this concern, therefore, entitled to 50 percent profit on the sale. That apart, the deceased has been taken to be son of salesman, which is not so. That apart, deceased was earning Rs. 6,000/- per month from the shop of his uncle carried separately in the same market. Therefore, the claim preferred by the claimants has to be allowed.

4. Mr. Sanjay Agrawal, learned Counsel for Oriental Insurance Co. Ltd., submits that deceased cannot be held to be partner in the shop with 50 percent share, therefore, entitled to 50 percent profit on sales from documents. The claimants may say anything in their oral deposition, but the clinching evidence in the case is the income tax return filed by the deceased for previous year 1999-2000 indicating income of Rs. 79,390/-. This includes Rs. 31,363/- as income from interest, which cannot be included in the income of the deceased for the assessment of compensation, since the claimants will continue to earn this income out of the deposits of the deceased. For other previous years, namely, 1997-98 and 1998-99, the income shown is Rs. 43,950/- and Rs. 67,520/- respectively. We find great substance in the submission of Mr. Sanjay Agrawal. Therefore, we have no option but to proceed on the basis that the deceased was earning Rs. 48,000/- per annum. After making deduction of 1/3rd for the personal expenses, the annual dependency comes to Rs. 32,000/- multiplied by 14, considering the age of the claimants and the deceased. Thus, the compensation amount will work out to (Rs. 32,000 ? 14) Rs. 4,48,000/- plus Rs. 9,000/- (Rs. 7,000/- for loss, of expectancy of life and Rs. 2,000/- for the funeral expenses). Besides, Rs. 10,000/- for loss to the estate, since there is the evidence that the deceased was saving reasonably, as a result of which he was earning interest of Rs. 31,363/- annually, taking the total compensation to Rs. 4,67,000/- (Rupees four lakhs sixty-seven thousand) payable in two months by Oriental Insurance Co. Ltd. The enhanced compensation will carry interest at the rate of 9 percent per annum from the date of application till payment.

5. Consequently, the appeal is allowed, award is modified in terms aforesaid.

Costs on parties.