(2003) 03 MP CK 0030

In the Madhya Pradesh High Court

Case No : M.A. No. 206 of 1998

Rajesh alias Rajeswari and Others APPELLANT

Vs

Lakhan Singh and Others RESPONDENT

Date of Decision : 27-03-2003

Acts Referred:

Citation : (2005) ACJ 1769

Hon'ble Judges : Uma Nath Singh, J;Rajendra Menon, J

Bench : Division Bench

Advocate : B.D. Verma, for the Appellant; S.S. Bansal, for the Respondent

Final Decision : Allowed

Judgement

Rajendra Menon, J.—This appeal by the claimant is for the enhancement of the compensation awarded to them by the Second Motor Accidents Claims Tribunal, Gwalior in Claim Case No. 44 of 1994 decided on 28.1.1998.

2. It is the case of the claimant that they are the wife and children of late Raghunath Singh Gurjar who met with an accident on 16.3.1992 in the evening at 6 p.m., when he was going on his motor cycle No. CPH 3809 with claimant No. 1 sitting behind him. When they reached the railway crossing near Vikky Factory, the railway gate was closed, therefore, the motor cycle was stopped, a truck bearing No. MKH 7754 came from behind dashed against the motor cycle because of which many persons were injured. Raghunath Singh sustained serious injuries and died on the spot itself.

3. It is averred that Raghunath Singh was aged 38 years and was working as a Junior Scientist in the Agricultural Department Institute. He was earning Rs. 5,950 per month. Certificate Exh. P-3 is the salary certificate issued by the department which shows that income of the deceased Raghunath Singh was Rs. 5,950 per month. That apart, the age of Raghunath Singh is 38 years as is evident from post-mortem report and other documents.

4. Mr. B.D. Verma, the learned Counsel appearing for the petitioner contended that learned Tribunal after having accepted the salary of the deceased to be Rs. 5,900, deducted a further sum of Rs. 2,500 from the aforesaid amount on the ground that claimant No. 1, wife of deceased has been granted compassionate appointment in the department and she is getting Rs. 2,500 per month. That apart, it is submitted that the age of the deceased being 38 years, multiplier has not been properly applied. Challenge is also made to the action of the learned Tribunal in deducting a sum of Rs. 5,000 on the ground that certain ex gratia payment has been made. Apart from the above, placing reliance on a judgment of this Court in the case of Asha Devi v. Jitendra Kumar Sharma, M.A. No. 362 of 1998; decided on 11.2.2003, prayer made is for deducting only 1/4th towards self-expenses.

5. Mr. S.S. Bansal, the learned Counsel appearing for the insurance company supported the award and contended that the compensation has been correctly assessed and there is no reason for granting any further enhancement. It is also argued by learned Counsel for the insurance company that age of the deceased has not been properly proved. Accordingly, prayer made is for dismissing the appeal.

6. The question of deducting Rs. 2,500 from the dependency only on the ground that claimant No. 1, wife of the deceased is given compassionate appointment and, therefore, amount has to be deducted is clearly unsustainable and cannot be upheld in view of the law laid down in the following judgments relied upon by the learned Counsel for the appellant:

Laxmi Grover v. State of Madhya Pradesh 1982 MPWN (SN) 90;

Geethakumari and Others Vs. Rubber Board and Others,

Chandrika Bai Sahu and Others Vs. Mohd. Ashique and Others,

7. Considering the law laid down in the aforesaid cases, it is clear that no deductions can be made from the compensation to be paid to the claimants on the ground of employment of one of the legal heirs or dependent on compassionate ground. In that view of the matter, deduction of Rs. 2,500 from the compensation amount is clearly unsustainable. Accordingly, it is held that annual income of the deceased was Rs. 5,950 and after deducting 1/3rd for self-expenses, the dependency comes to Rs. 4,300. Even though learned Counsel for the appellant had submitted that 1/4th should be deducted towards self-expenses but in the peculiar facts and circumstances of this case and taking note of the fact that claimant No. 1 has been granted compassionate appointment, we are not inclined to deviate from the statutory principle of deducting 1/3rd for self-expenses in this particular case. Accordingly, the prayer for deducting ''/4th for self-expenses cannot be sustained.

8. In this case, it is seen that the multiplier of 12 has been applied. From the evidence that has come on record, the age of the deceased is found to be 38

years. Accordingly, multiplier of 16 has to be applied. Accordingly, the compensation works out to Rs. 8,25,600. To this a further sum of Rs. 9,500 for consortium, funeral expenses and loss to estate has to be added.

9. As far as deduction of ex gratia already paid is concerned, a Division Bench of this Court in the case of Reeta Mical and Others Vs. Madhya Pradesh State Road Trans. Corpn. and Another, (MP), has held that interim relief cannot be deducted. Accordingly, a further sum of Rs. 5,000 has to be added to the aforesaid amount. Accordingly, the compensation is enhanced to Rs. 8,40,100.

10. The enhanced amount of compensation shall carry an interest at the rate of 9 per cent per annum from the date of the award.

11. Appeal is accordingly allowed and disposed of in the aforesaid terms.