(2003) 03 MP CK 0080

In the Madhya Pradesh High Court

Rajesh @ Rajeshwari and Others — APPELLANT

Vs

Lakhan Singh and Others — RESPONDENT

Date of Decision : 27-03-2003

Acts Referred:

Citation : (2005) 1 ACC 467

Hon'ble Judges : U.N. Singh, J;Rajendra Menon, J

Bench : Division Bench

Judgement

Rajendra Menon, J.—This appeal by the claimant is for enhancement of the compensation awarded to them by the Second Motor Accident Claims Tribunal, Gwalior in Claims Case No. 44/94 decided on 28th January, 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 16th March, 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 (Ex. P-1) is the salary certificate issued by the Department which shows that the income of the late Raghunath Singh was Rs. 5,950/- per month. That apart, the age of Raghunath Singh is 38 years as is evident from the post-mortem report and other documents.

4. Mr. B.D. Verma, 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 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 Mahila Asha Devi and Ors. v. Jitendra Kumar Sharma and Ors. M.A. 362/98 decided on 11th February, 2003, prayer made is for deducting only 5th towards serf-expenses.

5. Mr. S.S. Bansal, 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 learned Counsel for the appellant:

Laxmi Graver v. State of M.P. 1982 M.P.W.N. S.N. 90; Geethakumari and Ors. v. Rubber Board and Ors. 1994 A.C.J. 796; Chandrika Bai Sahu and Ors. v. Mohd. Ashique and Ors. 1998 A.C.J. 780.

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 the annual income of the deceased was Rs. 5,950/- and after deducting 1/3rd towards self-expenses, the dependency comes to Rs. 4,300/-. Even though learned Counsel for the appellant had submitted that ?th 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 ?th 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/- towards 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 Rita Mical (Smt.) v. M.P. State Road Transport

Corporation 2001 (2) M.P.W.N. S.N. 158, has held that interim relief cannot be deducted. Accordingly, 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 @ 9% p.a. from the date of the award.

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