

(2011) 05 MP CK 0007

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 3145 of 2010

Ramesh Kalu Bhilala and Another

APPELLANT

Vs

National Insurance Company Ltd., Indore and Others

RESPONDENT

Date of Decision : 05-05-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2012) ACJ 808 : AIR 2011 MP 203

Hon'ble Judges : P.K Jaiswal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

P.K. Jaiswal, J.—Shri Manish Jain, counsel for the appellants.

Shri C. P. Singh, counsel for the respondent No. 3.

During the course of arguments learned counsel for the appellants submits that he wants to reduce the valuation of the appeal and prays that the same be confined to Rs. 1,00,000/- only. Prayer is allowed. Necessary amendment in the memo of appeal be carried out within a week from today.

In view of the amendment made by the State Government on 2-4-2008 the appellants are directed to pay necessary Court-fees on the enhanced amount within a period of six weeks from today.

Other findings pertaining to rash and negligence driving of the vehicle and liability of the Insurance Company are not in dispute; however, by the consent of the parties the case is heard finally.

This appeal is filed by the appellants u/s 173 of the Motor Vehicles Act against an award dated 28-7-2010 passed by learned Additional MACT, Kukshi, district Dhar in Claim Case No. 56/2010, whereby the learned Claims Tribunal has awarded a total sum of Rs. 1,57,000/- with interest @ 6% per annum for the death of their son Vishal, arising out of the accident occurred on 24-8-2009.

2. Appellants had filed the claim petition u/s 166 of the Motor Vehicles Act, seeking compensation. It is pleaded that the child 6 years of age was having a brilliant career has died arising out of the accident leaving all the family members including appellants; however a reasonable sum of compensation as prayed may be allowed.

3. It is not necessary to narrate the entire facts in detail, such as how the accident occurred, who was negligence in driving the offending vehicle or the liability to pay the compensation etc., because the Tribunal has already recorded the findings in favor of the appellants, none of those findings have been challenged at the instance of the respondents, i.e. owner/driver/insurance Company by filing cross-objection or cross appeal. In that view of the matter it is not necessary to burden the judgment by detailing the facts on all these issues.

4. Shri Manish Jain, learned counsel for the appellants submits that on account of the death of deceased the claimants have lost their child; the compensation awarded by the Tribunal is inadequate without due assessment of the earning and dependency; proper multiplier has not been applied. The Tribunal has also not assessed the future loss of earning; in number of the heads amount has not been awarded or awarded on lower side, which is liable to be enhanced. In view of the said submissions the inadequacy of the compensation awarded by the Tribunal has been assailed, because it is meagre and deserves enhancement.

5. Learned counsel for the appellants also drew my attention to the decision of the Apex Court in the case of R.K. Malik and Another Vs. Kiran Pal and Others, wherein the amount of Rs. 3,22,000/- has been awarded to the dependents of children between age group of 15 to 18 years.

6. In the case of Lata Wadhwa and Others Vs. State of Bihar and Others, wherein the accident took place on 3-3-1989, the multiplier method was referred to and adopted with approval. In cases of children between 5 to 10 years of age, compensation of Rs. 1.50 Lakhs was awarded towards pecuniary compensation and in addition a sum of Rs. 50,000/- was awarded towards "conventional compensation. In the case of children between 10 to 18 years compensation of Rs. 4.10 lakhs was awarded including "conventional compensation". While doing so the Supreme Court held that contribution of each child towards family should be taken as Rs. 24,000/- per annum instead of Rs. 12,000/- per annum as recommended by Justice Y. V. Chandrachud Committee. This was in view of the fact that the company in question had an un-written rule that every employee can get one-of his children employed in the said, company.

7. In the case of M.S. Grewal and Another Vs. Deep Chand Sood and Others, wherein 14 students of a public school got drowned in a river due to negligence of the teachers. On the question of quantum of compensation, Hon"ble Court accepted that the multiplier method was normally to be adopted as a method for assigning value of future annual dependency. It was emphasized that the Court must ensure that a just compensation was awarded.

8. In the case of M.S. Grewal (supra), compensation to Rs. 5 lakhs was awarded to the claimants and the same was held to be justified. Learned counsel for the respondent insurance company, however, pointed out that in the said case the Supreme Court had noticed that the students belonged to an affluent school as was apparent from the fee structure and therefore the compensation of Rs. 5 lakhs as awarded by the High Court was not found to be excessive. It is no doubt true that the Supreme Court in the said case noticed that the students belonged to an upper middle class background but the basis and the principle on which the compensation was awarded in that case would equally apply to the present case.

9. On the other hand. Shri C. P. Singh, learned counsel appearing for the respondent/ Insurance Company has contended in support of the findings of the claims tribunal and argued that the compensation as awarded by the impugned award is just and proper, which do not warrant any interference by this Court.

10. After having heard learned counsel appearing for the parties and on going through the pleadings and evidence adduced, the age of deceased child and the age of claimants i.e. mother and father the amount awarded in the head of loss of dependency is inadequate in view of the aforesaid judgment of the Apex Court, which is liable to be enhanced to the extent of Rs. 1,00,000/-, which is being directed.

11. In view of the aforesaid, this appeal is allowed in part with costs and the appellants are held entitled to receive total sum of Rs. 1,00,000/- in addition to the amount of compensation already awarded by the Tribunal. The enhanced amount shall carry interest @ 7.5% per annum from the date of application till its realization. Memo be prepared accordingly.