(2005) 11 MP CK 0074

In the Madhya Pradesh High Court

Case No : M.A. No''s. 481, 482 and 512 of 2000

Rameshwar Dayal Namdeo and Others APPELLANT

Vs

Jagdish Thareja and Others RESPONDENT

Date of Decision : 08-11-2005

Acts Referred:

Citation : (2007) 2 ACC 331 : (2006) ACJ 1694

Hon'ble Judges : Shravan Shanker Jha, J;P.K Jaiswal, J

Bench : Division Bench

Advocate : Meena Singhal, for the Appellant; M.P. Agrawal, Mahesh Goyal and S. Gajendragadkar, for the Respondent

Judgement

P.K. Jaiswal, J.—This order shall govern the orders in all the three appeals as they arise out of the same accident dated 13.9.1998.

2. Appellant Rameshwar Dayal Namdeo and others have filed Misc. Appeal No. 481 of 2000 and appellants Komesh Kaurav and others have filed Misc. Appeal No. 482 of 2000. Appellants Shashi and others have filed Misc. Appeal No. 512 of 2000 for enhancement of award dated 28.4.2000 in Claim Case Nos. 36, 35 of 1998 and 1 of 1999 respectively, wherein compensation of Rs. 1,20,000 is provided in Claim Case No. 36 of 1998, compensation of Rs. 2,58,000 is provided in Claim Case No. 35 of 1998 and compensation of Rs. 1,96,000 is provided in Claim Case No. 1 of 1999. All the appeals are filed for enhancement of compensation.

3. Brief facts of the case are that on 13.9.1998 Vishambhar Singh hired a truck No. MP 07-8722, for the transportation of grain from Gwalior to Indore, owned by Jagdish Thareja, respondent No. 1. The truck was driven by respondent No. 1 and deceased Vishambhar Singh was sitting in the truck. Respondent No. 1 was driving the truck at a high speed and at about 4.30 in the evening near village Maharajpura the truck was hit by another truck No. MP 08-D 0925 which was coming from Shiv-puri. Truck No. MP 08-D 0925 was driven by respondent No. 3

and he was driving the truck very rashly and negligently. Due to said accident Vishambhar Singh died on the spot. Mahesh Yadav was also sitting in the truck No. MP 07-8722, he was also badly injured and died on the spot. Ram-kishore who was cleaner in truck No. MP 08-D 0925 was also badly injured and died on the spot. Truck No. MP 08-D 0925 was driven in a rash and negligent manner by the driver of the said truck, respondent No. 3 and it collided with truck No. MP 07-8722. In all, three persons died including cleaner of truck No. MP 08-D 0925. The Tribunal has referred to the pleadings of the parties, wherein it is clearly mentioned that both the trucks were driven in a rash and negligent manner and on account of negligence of drivers there was head-on collision. Claims Tribunal has recorded a finding that since both the drivers could not control their vehicles, therefore, accident occurred on account of negligence of drivers of both the vehicles and, therefore, driver, owner and insurance company of both the vehicles are jointly and severally liable to pay compensation. It could not be proved that there was no negligence on the part of the driver of any truck. As such owners of both the vehicles and insurance company are jointly and severally liable to pay compensation. Therefore, we hold that it is a case of composite negligence and the Claims Tribunal has not committed any error in holding that this is a case of composite negligence.

4. Now we proceed to consider the enhancement of compensation.

5. In Misc. Appeal No. 481 of 2000, the claim was filed by the father, mother and brother of the deceased Ramkishore Namdeo. During pendency of the appeal Rameshwar Dayal, appellant No. 1, died on 4.8.2003. Appellant Nos. 2 and 3 have moved an application for deleting the name of appellant No. 1. The legal representatives of the appellant No. 1 are already on record and as such application is allowed. Name of appellant No. 1 is deleted. Claimants have determined the dependency of the claimants at Rs. 12,000 per annum. As regards the age of the deceased Ramkishore Namdeo is concerned, his age is shown to be 22 years in the claim petition, whereas in the post-mortem report his age was shown as 24 years. On the basis of post-mortem report the Claims Tribunal has held that the age of the deceased must be 24 years. The deceased was unmarried. As regards income of the deceased is concerned, the appellants submitted that the deceased was cleaner of truck No. MP 08-D 0925 owned by Santosh Kumar Pandey, respondent No. 3 and he was getting Rs. 2,000 per month as salary and Rs. 30 per day as daily allowance and the total income of deceased was Rs. 2,900 per month. Prema Bai, AW 1, mother of the deceased, has deposed that her son was working as a cleaner of the vehicle of respondent No. 3 and he was getting Rs. 2,000 per month as salary and Rs. 30 per day as daily allowance. The owner of the vehicle issued salary certificate showing his income to be Rs. 2,900 per month. However, considering the fact that the deceased Ramkishore was employed with respondent No. 3 his income can safely be assessed at Rs. 2,500 per month, i.e., Rs. 30,000 per annum. At the time of accident the deceased was unmarried and in future he may get married and after marriage he will spend his income on his family and mother may not get

anything and as such dependency of the claimants will be 1/3rd of the income of the deceased, i.e., Rs. 10,000 per annum. At the time of death the mother of the deceased was 48 years old and as such multiplier of 13 will be applicable and on applying multiplier of 13, compensation is determined at Rs. 1,30,000. Further sum of Rs. 25,000 is added towards damages under various heads such as loss of consortium, funeral expenses, etc. and total compensation is determined at Rs. 1,55,000 (rupees one lakh fifty-five thousand). Claimants will also be entitled for interest at the rate of six per cent per annum on the enhanced amount of compensation from the date of filing the appeal. Respondents are jointly and severally liable to pay the amount of compensation.

6. In Misc. Appeal No. 482 of 2000 claim is filed by the widow, children, mother and brother of the deceased Vis-hambhar Singh Kaurav. It is pleaded that Vishambhar Singh was the driver of truck No. MP 07-8722 owned by respondent No. 1 and was getting salary of Rs. 3,000 per month plus Rs. 50 daily allowance and thus his total income was Rs. 4,500 per month. Claims Tribunal has considered the evidence of Komesh, AW 1 and Jardan Singh, AW 3 and determined the income of the deceased as Rs. 2,000 per month, i.e., Rs. 24,000 per annum. Claims Tribunal has determined the dependency at Rs. 16,000 per annum. Claims Tribunal held that at the time of death deceased was aged 30 years and applying the multiplier of 15 compensation is determined at Rs. 2,40,000. Further sum of Rs. 18,000 is awarded towards damages under various heads. Komesh, AW 1, has deposed that the deceased was the driver of the truck No. MP 07-8722 which was owned by respondent No. 1 and he was getting Rs. 3,500 per month. Jardan Singh, AW 3, has deposed that income of the deceased was Rs. 3,000 per month. Considering the evidence of Komesh, AW 1 and Jardan Singh, AW 3, we hold that the income of the deceased was Rs. 3,000 per month, i.e., Rs. 36,000 per annum. Dependency on the deceased is determined at Rs. 24,000 per annum. Claims Tribunal has determined that the age of the deceased was 30 years and as such multiplier of 17 will be applicable and on applying multiplier of 17, compensation is determined as Rs. 4,08,000. The claimants will be entitled further sum of Rs. 13,000 towards damages under various heads such as loss of consortium, funeral expenses, etc. and total compensation is determined at Rs. 4,21,000 (rupees four lakh twenty-one thousand). Claimants will also be entitled for interest at the rate of six per cent per annum on the enhanced amount of compensation from the date of filing of the appeal.

7. In Misc. Appeal No. 512 of 1999, claim is filed by the widow, children, mother and father of the deceased. It is pleaded that deceased Mahesh Arya was doing the work of supplier for supplying building materials and his income from purchasing and selling of stones was about Rs. 5,000 per month. Shashi, AW 1, in her deposition has deposed that income of her husband was Rs. 4,000 per month. But she has not filed any documents or accounts, etc., to prove that the income of her husband was Rs. 4,000 per month. Exh. P1 is, income certificate issued by Sarpanch Devilal Arya, AW 3. Devilal Arya in his statement has deposed that the certificate of income has not been issued on the basis of any

documents and as such said certificate has no evidentiary value as he is not competent to issue such certificate. Claims Tribunal has determined the income of the deceased as Rs. 1,500 per month, i.e., Rs. 18,000 per annum. Claims Tribunal determined the dependency at Rs. 12,000 per annum. Considering the facts that the deceased was supplier and was doing the work of purchasing and selling of stones the income of the deceased can be safely held at Rs. 2,000 per month, i.e., Rs. 24,000 per annum and dependency of the deceased comes to Rs. 16,000 per annum. In the claim petition the age of the deceased is shown as 25 years. Claims Tribunal on the basis of post-mortem report came to the conclusion and rightly held that at the time of death he was 28 years old. Therefore, multiplier of 18 will be applicable and on applying the multiplier of 18, compensation is determined at Rs. 2,88,000. The claimants will also be entitled for further sum of Rs. 12,000 towards damages under various heads such as funeral expenses, loss of consortium, etc. Thus, total compensation is determined at Rs. 3,00,000 (rupees three lakh). Claimants will also be entitled for interest at the rate of six per cent per annum on the enhanced amount of compensation from the date of filing of the appeal.

8. In the result, Misc. Appeal Nos. 481, 482 and 512 of 2000 succeed in part and are allowed.

