(2005) 10 MP CK 0051

In the Madhya Pradesh High Court

Sajjanbai and Others APPELLANT

Vs

Manish and Another RESPONDENT

Date of Decision : 28-10-2005

Acts Referred:

Citation : (2006) 4 ACC 727

Hon'ble Judges : Shahi Kant Kulshreshtha, J;Ashok Kumar Tiwari, J

Bench : Division Bench

Judgement

1. Since the dispute between the parties is only with regard to the just compensation, with the consent of the parties, after granting condonation of delay of one day in filing this appeal, the appeal itself was finally heard.

2. By this appeal the appellants seek enhancement of the compensation awarded by the 17th Motor Accident Claims Tribunal, Indore, vide award dated 26th October, 2004 in Claim Case No. 330/2002, the appellants as the legal representatives of deceased Harakchand applied u/s 166 of the Motor Vehicles Act for compensation of Rs. 15.00 lacs but on the basis of the material brought on record, the Tribunal has awarded a total compensation of Rs. 5,80,000. Finding that the compensation is inadequate, the appellants have appealed to this Court u/s 173 of the Motor Vehicles Act.

3. According to the case of the appellants, on 10.2.2002, the deceased Harakchand in pursuit of his official duties had gone to village Kasravad. While he was returning to Indore in the evening at about 5.30, when his motorcycle reached near the Petrol Pump at village Umrikheda, the respondent No. 1 approached from the opposite direction driving his motorcycle No. MP09 JF 0336 at an alarming speed unmindful of the consequences and collided with the motor cycle of deceased Harakchand, thus, causing to him severe injuries. Harakchand was taken to M. Y. Hospital, Indore for treatment and thereafter hospitalised in Choithram Hospital but he could not survive despite best medical aid. Report of the incident was lodged at P.S. Bhanwarkuan, Indore. On account of the said untimely death of Harakchand, the application for compensation was filed against

the respondent on the ground that respondent No. 1 being the owner of the motorcycle and No. 2 being its insurer, both were liable to pay compensation to the claimants.

4. The respondent Nos. 1 and 2 resisted the claim. According to them deceased Harakchand was intoxicated and driving his motorcycle recklessly in a zig zag way under the influence of drinks with the result he collided with the motorcycle of respondent No. 1 but since the deceased was a Head Constable in the Police Department, the Police, in order to screen him from his fellonious acts and to favour him, falsely proceeded against the respondent No. 1. It was pleaded that both motorcyclists did not possess valid licence for driving the vehicle. On these premises it was prayed that the applicant''s application be dismissed.

5. In view of the pleadings of the parties and the evidence led, the Claims Tribunal, found that death of Harakchand was on account of the rash and negligent driving of the vehicle by respondent No. 1 - Manish s/o Shaligram; that deceased Harakchand had income of Rs. 6,909 from salary and for the said act of the respondent No. 1, the owner-cum-driver of the motorcycle as also the insurer were jointly and severally liable. However, the compensation of Rs. 5,80,000 awarded by the Tribunal was not considered satisfactory by the appellants and hence they are in appeal before us.

6. Learned Counsel for the appellants has submitted that the computation of the income of the deceased by the Tribunal is erroneous, the multiplier applied is not proper and the compensation, therefore, deserves to be enhanced. Learned Counsel for the respondent No. 2 in all fairness, submits that on the basis of the facts brought on record, the compensation can be recomputed and the figure arrived at. There is no dispute that the Tribunal has taken the salary of the deceased as 6,909 and deducting there from the amount which the deceased may have been spending on himself, worked out the dependency at Rs. 4,500 per month. To this, on the basis of the Second Schedule u/s 63A for the age group of 50-55, multiplier of 11 has been picked up and applied. We have, therefore, to see whether the income of the deceased has correctly been worked out, the deduction for expenses on the deceased have been correctly calculated and the multiplier applied is proper.

7. The Counsel for the Insurance Company has invited attention to Ex. P/36 containing the figures of gross salary received by the deceased prior to his death from the Government in his capacity as Head Constable. The document reveals that he was in receipt of a sum of Rs. 6,958 as salary. Learned Counsel for the respondent No. 2, however, submits that out of this salary a sum of Rs. 887 was being deducted towards taxes. It appears that what the learned Counsel has assumed to be taxes, is in fact contribution to other funds and GIS i.e., Group Insurance Scheme. Thus, apart from the professional tax of Rs. 257 the other deductions are in the nature of contribution which can be withdrawn or they are received after the retirement. In the above amount, as rightly pointed out by the learned Counsel for the respondent No. 2, the Dress Allowance Cycle Allowance,

City Allowance, Fixed Allowance, Special Allowance and Special Diet Allowance have not been included. It is, therefore, the amount of Rs. 6,958 as reflected by Ex. P/36 that the dependency ofthe appellants has to be worked out.

8. Coming to the other important aspect namely, the multiplier, in Schedule for the age group of above 45 but not exceeding 50 years, multiplier is 13 while for above 50 years but not exceeding 55 years, multiplier is 11. The Tribunal has observed that on the ground that there was evidence that the deceased had still 10 years remaining in his service, it was clear that he was 50 years. It is difficult to elicit from the finding of the Tribunal as to whether he should be treated as a person below 50 years or above 50 years. Be that as it may, since finding is that he was 50 years and in the facts and circumstances of the case, his case falls within both the age groups, we are of the considered view that a multiplier of 12 should be selected in calculating the compensation. Thus, deducting 1/3rd for the personal expenses of the deceased from out of his salary of Rs. 6,958, the monthly dependency comes to Rs. 4,606 and annual dependency Rs. 4,606 x 12 = Rs. 55,272. As observed by us above, in his case multiplier of 12 would be attracted. Thus, Rs. 55,272 x 12 takes us to the figure of Rs. 6,63,264. In addition, the appellants are entitled to a sum of Rs. 2,000 towards funeral expenses, Rs. 5,000 towards loss of consortium and Rs. 10,000 towards medical expenses. Thus, in all they are entitled to a sum of Rs. 6,80,264.

9. In the result, this appeal is partly allowed. The compensation awarded by the Tribunal is enhanced to Rs. 6,80,264 (Rs. six lacs eighty thousand two hundred and sixty four only). The enhanced amount shall carry interest @ 6% p.a. from the date of the application. The disbursement of the amount shall be made in accordance with the direction of the Tribunal contained in Para 14, mutatis mutandis, the enhanced amount proportionately. In view of the fair stand of the respondent No. 2, the parties shall bear their own costs of this appeal.

