(2002) 12 MP CK 0038

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No''s. 489 and 490 of 2000

Sameer and Others — APPELLANT

Vs

Madhya Pradesh State Road Transport Corporation and Others — RESPONDENT

Date of Decision : 03-12-2002

Acts Referred:
Penal Code, 1860 (IPC) — Section 304A, 337

Citation : (2005) ACJ 283

Hon'ble Judges : Bhawani Singh, C.J;S.L. Kochar, J

Bench : Division Bench

Advocate : Meena Chafekar, for the Appellant; Kemkar and P. Gupta, for the Respondent

Final Decision : Allowed

Judgement

Bhawani Singh, C.J.—Both these appeals (Misc. Appeal No. 489 of 2000 and Misc. Appeal No. 490 of 2000) (Sameer v. Madhya Pradesh State Road Trans. Corporation) are proposed to be decided by this judgment since they arise out of the same accident and common award dated 30.8.1999 passed by the Claims Tribunal, Barwaha in Claim Case Nos, 23 and 24 of 1994.

2. Accident took place on 20.12.1993 at 9.30 a.m. on Indore-Khandwa Road near village Padali when bus No. MBH 6912 owned by Madhya Pradesh State Road Transport Corporation, Ratlam Depot, driven by Nabi Noor, hit jeep No. MP 09-S 0191 in which Kundabai (mother) and Ramesh Buzruk (father) of claimants (children) were travelling. The jeep was owned by Chhotelal and insured with Oriental Insurance Co. Ltd. Allegation is that bus was being driven rashly and negligently which resulted in the accident and death of mother and father of claimants on the spot. Accident was reported at Police Station, Balvada and case under Sections 337/304A, Indian Penal Code was registered against the bus driver, under consideration before the Judicial Magistrate 1st Class, Badwaha being Criminal Case No. 777 of 1993. At the time of accident Kundabai was 49

years old while Ramesh Buzruk was 54 years and both were just in good health. Ramesh was earning Rs. 1,00,000 per annum from the business of pest control while Kundabai Rs. 2,000 per month through beauty parlour. On account of the death of deceased, the claimants have been left without income, love and affection. Therefore, compensation of Rs. 3,00,000 (mother) and Rs. 6,00,000 (father) has been claimed. Owner and driver did not contest the claim, therefore, proceeded ex pane, M.P.S.R.T.C. denied the allegation that the bus was being driven rashly and negligently, thereby hitting the jeep in occupation of the deceased. The accident took place due to negligence of the jeep and occupations of both mother and father have been disputed. Therefore, it is stated that claim be dismissed.

3. Oriental Insurance Co. Ltd. alleges that accident took place due to rash and negligent driving of bus by the driver and jeep was not responsible for it. The occupations of parents stated by the claimants are imaginary. Jeep driver did not possess valid driving licence and as such violated conditions of insurance policy, therefore, compensation is not payable by it.

4. The Claims Tribunal framed issues. Parties led evidence. Thereafter finding recorded by the Claims Tribunal is that the accident took place as alleged, which means bus owned by M.P.S.R.T.C. and driven by Nabi Noor has been held responsible as against the owner of the jeep. Consequently, liability to pay compensation of Rs. 2,16,857 (for father) and Rs. 77,200 (for mother) has been made payable by M.P.S.R.T.C.

5. M.P.S.R.T.C. filed appeal against the award qua the death of Ramesh Buzruk but it stands dismissed, while appeal filed against the award qua Kundabai has been dismissed for default, restoration pending. But since the whole matter is being examined in these appeals, the appeal filed by M.P.S.R.T.C. would be rendered infructuous even if it is restored. The counsel for the parties to draw attention of the court to this judgment as and when the appeal of M.P.S.R.T.C. qua Kundabai comes for consideration.

The claimants are not satisfied with the awards in both the cases. Therefore, they have been challenged through these appeals. Since there is no dispute with the findings of Claims Tribunal with regard to taking place of accident due to negligence of bus driver owned by M.P.S.R.T.C. on the basis of available evidence, therefore, next question for consideration is whether compensation awarded by Claims Tribunal is just or unreasonable.

Misc. Appeal No. 489 of 2000:

6. Kundabai was 49 years old at the time of the accident. She was a graduate pursuing legal studies. She was running beauty parlour at Nasik. Income of the deceased at the time of accident out of beauty parlour is stated to be Rs. 2,000 per month. The claimants have not furnished exact evidence about the monthly income of the deceased. However, in the absence of rebuttal from other side and looking to the facts that Kundabai was graduate and pursuing her legal studies,

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/sameer-and-others-appellant-hash-…

she could be running beauty parlour at Nasik and earning at least Rs. 1,500 per month and Rs. 18,000 per annum. At the time of accident she was 49 years old, therefore, appropriate multiplier in this case should be 13. Besides, she was a housewife, therefore, her contribution to the family is also to be assessed. Tribunal has assessed the same at Rs. 450 per month which we do not disturb. Therefore, monthly income of the deceased was Rs. 1,950 and annual Rs. 23,400. After making deduction of 73rd towards personal expenditure, annual dependency comes to Rs. 15,600 multiplied by 13 equal to Rs. 2,02,800, plus Rs. 10,000 for loss of expectancy of life, Rs. 3,500 for transportation of body plus Rs. 2,500 for loss to estate being the minimum in the absence of evidence and Rs. 2,000 for the funeral expenses taking the total amount of compensation of Rs. 2,20,800 (rupees two lakh twenty thousand eight hundred only).

7. The appeal is allowed. The award is modified. Compensation of Rs. 2,20,800 (rupees two lakh twenty thousand eight hundred only) is awarded to the claimants in equal shares for the death of Kundabai. Enhanced compensation will carry interest at the rate of 9 per cent per annum from the date of application till payment by M.P.S.R.T.C.

Misc. Appeal No. 490 of 2000:

8. Ramesh Buzruk was 54 years old at the time of accident. He was B.Sc. Agriculture carrying on business of pest control, earning Rs. 1,00,000 per year. Tribunal has assessed his income at Rs. 27,700 and awarded the compensation accordingly after applying multiplier of 11.

9. The submission is that income of deceased has not been correctly assessed. There is no dispute that the deceased was carrying on the business of pest control for past 8/10 years. Although there is sufficient evidence to show that Ramesh Buzruk was doing business of pest control but it is not stated by the witnesses except PW 1 Sameer that he was earning Rs. 1,00,000. Income tax statement shows the amount of net income on which the tax is assessed. Therefore, gross income for the purpose of determination of compensation has to be worked out in the context of family members, education, the standard of living, etc. A family of five persons cannot survive without at least Rs. 40,000 annual income from head of the family. After making deduction of 73rd for personal expenditure, annual dependency comes to Rs. 27,000 which on being multiplied by 11, comes to Rs. 2,97,000. Apart from this, claimants are also entitled to Rs. 10,000 for loss of expectancy of life, Rs. 3,500 for transportation of body, Rs. 2,500 for loss to the estate and Rs. 2,000 for funeral expenses. Thus counted, total compensation works out to Rs. 3,15,000 (rupees three lakh fifteen thousand only).

10. Accordingly, the appeal is allowed. Award is modified and compensation of Rs. 3,15,000 (rupees three lakh fifteen thousand) is awarded to the claimants in equal share, with interest at the rate of 9 per cent per annum on the enhanced compensation, from the date of application till payment, payable by M.P.S.R.T.C.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/sameer-and-others-appellant-hash-…

In both the cases parties shall bear their respective costs.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/sameer-and-others-appellant-hash-...