(2024) 05 MP CK 0155

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 4908 Of 2022

Savita Mishra And Others APPELLANT

Vs

Vashim Khan And Others RESPONDENT

Date of Decision : 22-05-2024

Acts Referred:
Motor Vehicles Act, 1988 — Section 173(1)

Citation : (2024) 05 MP CK 0155

Hon'ble Judges : Amar Nath (Kesharwani), J

Bench : Single Bench

Advocate : Alok Tiwari, T. S. Lamba

Final Decision : Disposed Of

Judgement

Amar Nath (Kesharwani), J

1. This Miscellaneous Appeal has been filed by the appellants/claimants under Section 173(1) of the Motor Vehicles Act for enhancement of compensation amount being aggrieved with the award dated 13.12.2021 passed by Motor Accident Claims Tribunal, Rewa in MACC No. 59/2019, by which the Claims Tribunal has awarded a total sum of Rs. 64,51,709/- (Sixty Four Lakhs Fifty One Thousand Seven Hundred Nine) with interest @ 6% per annum to the claimants for the death of Ramashankar Mishra, who died in motor vehicle accident.

2. According to claimants, the compensation awarded by the learned Tribunal is on lower side, hence needs to be enhanced. So the question that arises for consideration is whether any case for enhancement of compensation, awarded by the Tribunal on facts/ evidence adduced is made out and if so to what extent?

3. It is not necessary to narrate the entire facts in detail, such as how the accident occurred, who was negligent in driving the offending vehicle, who is liable for paying compensation etc. It is for the reason that all these findings are recorded in favour of claimants by the Tribunal. Secondly, the findings though recorded in favour of claimants are not under challenge at the instance of any of

the respondents such as owner/driver or insurance company either by way of cross-appeal or cross-objection. In this view of the matter, there is no justification to burden the judgment by detailing facts on all these issues.

4. As observed supra, it is a death case. On 09.05.2019, Ramashankar Mishra aged between 46-50 years, met with a motor vehicle accident and died, giving rise to filing claim petition by legal representatives (appellants herein), out of which this appeal arises seeking enhancement of compensation for his death. The case was contested by the respondents. Parties adduced evidence. The Claims Tribunal by impugned award partly allowed the claim petition filed by claimants and, as stated supra, awarded a sum of 64,51,709/- (Sixty Four Lakhs Fifty One Thousand Seven Hundred Nine) as compensation, breakup of which is as under :-

Rs.63,77,709/- Towards loss of dependency.

Rs.15,000/- Towards funeral expenses

Rs.15,000/- Towards loss of estate

Rs.44,000/- Towards loss of consortium

5. Learned counsel for the appellants submitted that the learned Tribunal has assessed the income of the deceased as Rs.41,931/- (Forty One Thousand Nine Hundred Thirty One) per month and added 30% towards future prospects keeping in view the law laid down by Hon'ble Apex Court in the case of National Insurance Company Limited Vs. Pranay Sethi & others, (2017) 16 SCC 680. Learned tribunal after deducting 1/4th towards personal expenses, applied multiplier of 13 keeping in view the age of deceased and assessed the amount of loss of dependency as Rs.63,77,709/- (Sixty Three Lakhs Seventy Seven Thousand Seven Hundred Nine). It is further submitted that learned tribunal has awarded Rs.15,000/- towards funeral expenses, Rs.15,000/-towards loss of estate, Rs.44,000/- towards loss of consortium and in all awarded Rs.64,51,709/- (Sixty Four Lakhs Fifty One Thousand Seven Hundred Nine) as compensation to appellants/claimants.

6. It is contended by the counsel for the appellants that the tribunal has committed error in assessing the income of the deceased. It is submitted that the deceased was working as Operator Grade-B in Asian Paints, Kasna Branch, Uttar Pradesh and was getting salary of Rs.65,616/- (Sixty Five Thousand Six Hundred Sixteen) per month (Ex.P-13) but the learned tribunal has wrongly assessed the monthly income of the deceased to Rs.41,931/- after making several deductions, however, the Hon’ble Supreme Court in the case of Sh.Fakir Chand Taneja vs. The Oriental Insurance Co.Ltd. Reported in (2023) ACJ 338 has held that only payable income tax should be deduced from the salary of the deceased. It is submitted that salary for the period of overtime may be deduced from the monthly salary of the deceased. Hence, it is submitted that the income of the deceased should be assessed only after deducting amount payable

towards income tax and overtime only. In support of his arguments learned counsel for the appellants also placed reliance on the judgments passed by Hon'ble Apex Court in the case of National Insurance Co. Ltd. Vs. Indira Srivastava & Others, (2008) 2 SCC 763 and Sunil Sharma & Others Vs. Bachitar Singh & Others, (2011) 11 SCC 425. Learned counsel for appellants further submitted that the learned Tribunal has erred in not awarding the loss of consortium to children and parents of the deceased and learned Tribunal has also not complied properly with the directions enumerated by Hon'ble Apex Court in Para 59.8 in the case of Pranay Sethi (supra) and submitted that in the head of loss of estate and funeral expenses amount should be Rs.16,500/- (Sixteen thousand five hundred) in each head, whereas Tribunal has awarded only Rs.15,000/- (Fifteen thousand) in each head. No other findings of the tribunal has been challenged by the learned counsel during his arguments. Learned counsel for the appellants prayed that the appeal be allowed and amount of compensation be enhanced accordingly.

7. Learned counsel for the respondent No.2-Insurance Company submits that the amount awarded by the learned Tribunal is just and proper and no case for enhancement is made out. In support of his contentions he has relied upon judgment of Apex Court in the case of Shyamwati Sharma & Others Vs. Karam Singh (Civil Appeal No.5316/2010-arising out of SLP (C) No.668/2008) and Asha Vs. United India Insurance Co.Ltd. 2004 ACJ 448 (S.C.).

8. I have heard learned counsel for the parties, perused the record and gone through the citations relied upon by learned counsel for the parties.

9. It reveals from Para-15 of the impugned award that after deductions learned Tribunal has assessed the monthly income of the deceased as Rs.41,931/- (Forty one thousand nine hundred thirty one), but the learned Tribunal has not specifically mentioned the amount of allowances which were taken into consideration for the purpose of deductions and learned Tribunal has also not mentioned that how he arrived at the monthly salary of deceased as Rs.41,931/- (Forty one thousand nine hundred thirty one). The date of incident is 09/05/2019.

Latest pay slip (Ex.P-13) for the month of April-2019 is on record, according to which gross salary of deceased was Rs.65,616.73/- (Sixty five thousand six hundred sixteen and paise seventy three) and deductions of Rs.12,109.84 (Twelve thousand one hundred nine and paise eighty four) were made on various heads.

10. In the case of Indira Srivastava (Supra) Hon'ble Apex Court has held that "the income not confined to pay-packet only, but also other perks which are beneficial to the members of the entire family". Para-9 & 19 of the Indira Srivastava (Supra) are reproduced as below :-

9. The term "income" has different connotations for different purposes. A court of law, having regard to the change in societal conditions must consider the question not only having regard to pay-packet the employee carries home at the

end of the month but also other perks which are beneficial to the members of the entire family.

Loss caused to the family on a death of a near and dear one can hardly be compensated on monetary terms.

19. The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon must be deducted.

[Emphasis Supplied]

11. It reveals from pay slips (Ex.P-10, Ex.P-11, Ex.P-12 & Ex.P-13) that transport allowances and medical allowances are variable and not fixed, which shows that transport allowance and medical allowance are reimbursable in nature. Similarly, attendance bonus and overtime is dependent on the performance of concerned employee, hence in the considered opinion of this Court the amount paid in the head of medical allowance, transport allowance, attendance bonus and overtime should be deducted from gross monthly salary of the deceased. Hence, considering the latest pay slip preceding the month of alleged incident, the monthly income of the deceased will come to (Rs.65,616.73 - Rs.18,869) Rs.46,747.73, which is rounded off as Rs.46,748/- (Forty six thousand seven hundred forty eighty). Hence, yearly income will come to Rs.5,60,976/- (Five lakhs sixty thousand nine hundred seventy six).

12. In the cases of Indra Shrviastava (supra) and Sunil Sharma & Others Vs. Bachitar Singh (supra) Hon'ble Apex Court held that tax payable should be deducted for the purpose of assessing monthly income. Similarly in the case of Pranay Sethi (supra) Hon'ble Apex Court in Para-59.4 has held that the established income means the income minus the tax component.

13. So, as discussed above, the yearly income of deceased is assessed as Rs.5,60,976/- (Five lakhs sixty thousand nine hundred seventy six) and after deducting income tax, 4% cess and Rs.2,500/- (Two thousand five hundred) professional tax (24,695 + 988 + 2500 = 28183) the yearly net assessed income of the deceased comes to Rs.5,32,793/- (Five lakhs thirty two thousand seven hundred ninety three).

14. Pay slips (Ex.P-11 & Ex.P-12) reveals that the deceased was in the employment since 21/05/1991, hence it is clear that the deceased was in permanent job. Hence, as per law laid down by Hon'ble Apex Court in the case of Pranay Sethi (supra) in Para 59.3 and since on the date of incident the age of deceased is found proved as 49 years, hence 30% addition should be made towards loss of future prospects.

15. Thus, after adding 30% in the yearly net assessed income of the deceased

i.e. Rs.5,32,793/- (Five lakhs thirty two thousand seven hundred ninety three) the amount comes to Rs.6,92,631/- (Six lakhs ninety two thousand six hundred thirty one). Looking to the number of dependents on the deceased, 1/4th should be deducted towards personal expenses of the deceased, so after deducting 1/4th from Rs.6,92,631/-(Six lakhs ninety two thousand six hundred thirty one) the amount comes to Rs.5,19,473/- (Five lakhs nineteen thousand four hundred seventy three). Similarly, looking to the age of deceased, multiplier of 13 will be applied. Hence, applying the multiplier of 13 in the amount of Rs.5,19,473/- (Five lakhs nineteen thousand four hundred seventy three), the amount comes to Rs.67,53,149/- (Sixty seven lakhs fifty three thousand one hundred forty nine). Thus, the amount towards loss of dependency comes to Rs.67,53,149/- (Sixty seven lakhs fifty three thousand one hundred forty nine).

16. It also appears from the impugned award that the learned Tribunal has awarded a sum of Rs.44,000/- (Forty four thousand) towards loss of consortium to wife only, whereas appellant Nos.2 & 3 are children and appellant Nos. 4 & 5 are father and mother of the deceased, so keeping in view the judgments passed by Hon'ble Apex Court in the cases of Janabai wd/o Dinkarrao Ghorpade vs. ICICI Lombord Insurance Company Ltd. (2022) 10 SCC 512 and Magma General Insurance Company Ltd. vs. Nanu Ram @ Chuhru Ram & ors. (2018) 18 SCC 130 amount towards loss of parental consortium and filial consortium should also be awarded. Hence, a sum of Rs.44,000/- (Forty four thousand) each is awarded towards loss of parental consortium to appellant Nos.2 & 3 and a sum of Rs.44,000/- (Forty four thousand) each is awarded towards loss of filial consortium to the appellant Nos.4 & 5.

17. It also appears from the impugned award that learned Tribunal has awarded a sum of Rs.15,000/- (Fifteen thousand) each towards funeral expenses and loss of estate, which should be Rs.16,500/- (Sixteen thousand) each keeping in view the law laid down by Hon'ble Apex Court in Para-59.8 in the case of Pranay Sethi (supra) wherein Hon'ble Apex Court has held that the aforesaid amount should be enhanced at the rate of 10% in every three years.

18. In view of above discussion, appellants/claimants shall be entitled for the following amount of compensation :-

Rs.67,53149/- Towards loss of dependency

Rs.16,500/- Towards funeral expenses

Rs.16,500/- Towards loss of estate

Rs.44,000/- Towards loss of spousal consortium

Rs.88,000/- Towards loss of filial consortium (44,000 X 2)

Rs.88,000/- Towards loss of parental consortium (44,000 X 2)

Rs.70,06,149/- Total

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19. Thus, the appellants/claimants will be entitled for a total sum of Rs.70,06,149/- (Seventy lakhs six thousand one hundred forty nine) instead of Rs.64,51,709/- (Sixty four lakhs fifty one thousand seven hundred nine). Thus, there shall be enhancement to the tune of Rs.5,54,440/- (Five lakhs fifty four thousand four hundred forty), which shall fetch interest @ 6% per annum from the date of filing of claim petition till the date of actual payment. The enhanced amount be paid within 60 days from the date of receipt of certified copy of this order. Other terms and condition of the award shall remain intact.

20. It is pertinent to mention here that the appellants have valued the appeal at Rs.2,00,000/- (Two lakhs) and paid the Court fee as per valuation, therefore, appellants are directed to pay the Court fees on additional amount of Rs.3,54,440/- (Three lakhs fifty four thousand four hundred forty) also within a period of 30 days from the date of receipt of certified copy of this order. If the Court fee is not paid within the stipulated period, then this order will be restricted only up to the amount of Rs.2,00,000/- (Two lakhs).

21. With the aforesaid, appeal stands disposed of.

22. Records of the learned Tribunal be sent back alongwith the copy of this order for information and necessary compliance.

No order as to costs.

