

(1997) 09 MP CK 0086
In the Madhya Pradesh High Court
Case No : M.A. No. 126 of 1995

Shanti Devi Chouhan

APPELLANT

Vs

Ramjivan Agrawal and Others

RESPONDENT

Date of Decision : 02-09-1997

Acts Referred:

Motor Vehicles Act, 1988 — Section 110CC

Citation : (1999) ACJ 1375

Hon'ble Judges : S.K. Dubey, J;Rajeev Gupta, J

Bench : Division Bench

Advocate : Prafull Bharat, for the Appellant; N.S. Ruprah, for the Respondent

Final Decision : Allowed

Judgement

S.K. Dubey, J.—This is an appeal against the award dated 22.11.1994, passed in Misc. Case No. 43 of 1989 by Motor Accidents Claims Tribunal, Bastar, Jagdalpur.

2. The appellant is the mother who lost her only surviving son Pratapverdhan, aged 18 years on 1.1.1989, when he was going on a motor cycle No. MBY 5759 with a pillion rider Raj Kumar Awasthy, which was dashed by the truck bearing No. MBR 9274, driven by respondent No. 2, owned by respondent No. 1 and insured with respondent No. 3. Due to the dash, motor-cyclist and the pillion rider fell down and died at the spot.

3. Appellant claimed compensation of Rs. 6,00,000 from the respondents on the averment that the deceased was the only male member in the family which consists of the appellant, the widow of the elder brother of the deceased and their minor daughter. The deceased was earning Rs. 36,000 yearly, i.e., Rs. 20,000 from agriculture and Rs. 16,000 from hauler mill. He was spending Rs. 6,000 on himself and used to give Rs. 30,000 for family expenses. After the death of the son, the appellant had to engage labour to look after the agriculture and to run the hauler mill.

4. The Tribunal after appreciating the evidence held that the accident was caused

due to the sole negligence of the truck driver. However, while determining the compensation, it observed that as the agriculture is being carried out and hauler mill is also being run through labourers, the appellant did not suffer pecuniary loss to the extent of Rs. 36,000. The loss suffered was only of Rs. 5,000 per year, wherein a multiplier of 10 was applied. The compensation was determined at Rs. 50,000 which was awarded with interest at the rate of 12 per cent per annum from the date of the award till realisation.

5. Mr. Bharat, the learned Counsel for the appellant, submitted that the earnings from the agriculture and the hauler mill, after the death of the deceased, cannot be taken into account or adjusted while determining the dependency. Moreover, the appellant is a widow and there is no male adult member to look after the agriculture and hauler mill, therefore, the appellant had to give the agriculture land on adh-batai and the hauler mill to a labourer. Therefore, loss is evident and any income so derived was not liable to be deducted. Counsel cited a decision of the Supreme Court in *Rukmani Devi v. Om Prakash* 1991 ACJ 3 (SC).

6. Mr. N.S. Ruprah, the learned Counsel for the respondent No. 3, submitted that the Tribunal was right in holding that there was no pecuniary loss except the loss of Rs. 5,000 per year. He further submitted that the appellant has admitted in her statement that she is getting Rs. 6,000 from hauler mill and from the agriculture on adhbatai around Rs. 24,000. Thus, the pecuniary loss was only to the extent of Rs. 6,000, from which learned Tribunal deducted Rs. 1,000 as the expenses of the deceased, the financial contribution to the family was rightly estimated at Rs. 5,000.

7. Having heard the learned Counsel for the parties, we are of the opinion that the Tribunal committed an error in not determining the just and fair compensation by taking into account the earnings from the agriculture and the hauler mill. It is well settled that in the accident case of death caused by the use of motor vehicle, the compensation is to be determined in accordance with the principles laid down for determining the compensation by applying the multiplier method. The loss suffered is to be determined on account of death caused in the motor accident and not because of the assets left by the deceased. Such assets cannot be said to confer any undue or untimely benefit on the legal representatives because of the death of the person on whom they were dependent. [See a Division Bench decision of this Court in *Vimla Devi Khemka and Others Vs. General Manager, Madhya Pradesh State Road Trans. Corporation and Another*, .

8. Recently, this Court in *United India Insurance Co. Ltd. Vs. Mohd. Ashique and Others*, , following the decision in *Vimla Devi Khemka and Others Vs. General Manager, Madhya Pradesh State Road Trans. Corporation and Another*, , has observed that in estimating the dependency, income from the agriculture received by the claimants from the agricultural land given on adhbatai, after the death of the deceased could not be deducted as the income derived from the assets left by the deceased cannot be said to confer any undue or untimely

benefit on the legal representatives because of the death of the deceased on whom they were dependent. In any case, a tortfeasor cannot claim any advantage of it in mitigation of damages for his tortious act.

9. In Rukmani Devi's case 1991 ACJ 3 (SC), while considering a case of a deceased who was a partner in the partnership business, after his death in motor accident, the partnership business was continued by the family members, the Apex Court observed that no deduction of the benefit being derived from the partnership business can be given in the compensation determined by the Tribunal.

10. In this case, from the evidence it is evident that the deceased was earning Rs. 36,000 per annum. In that he must be spending an amount on maintenance and running of the hauler mill and also on the agricultural operation. Therefore, if 50 per cent of the amount is deducted from Rs. 36,000 as expenses, then net earning of the deceased would come to Rs. 18,000 yearly. In that 1/3rd is deducted towards personal living expenses of the deceased, the dependency would come to Rs. 12,000 yearly. Applying the appropriate multiplier of 10 in the multiplicand of Rs. 12,000, the amount would work out to Rs. 1,20,000. In that Rs. 5,000 is added towards funeral expenses and damage to motor cycle, the total would come to Rs. 1,25,000 which the appellant would be entitled to with interest at the rate of 12 per cent per annum from the date of application and not from the date of the award as mandated by Section 110-CC of the Act. [See a Full Bench decision of this Court in Prakramchand Vs. Chuttan and Others, 11. Accordingly, we direct the respondent No. 3 to deposit the amount, less the amount already deposited, within a period of 2 months from the date of receiving the certified copy, failing which the interest shall be payable at the rate of 15 per cent per annum. On deposit, the amount shall be disbursed keeping in mind the well settled guidelines laid down by the Supreme Court.

12. In the result, the appeal is allowed with costs. Award of the Tribunal shall stand substituted. Counsel's fee Rs. 1,000, if pre-certified.