

(2012) 04 MP CK 0039
In the Madhya Pradesh High Court
Case No : M.A. No. 734 of 2008

Sheela Devi and Others

APPELLANT

Vs

Devraj Patel and Others

RESPONDENT

Date of Decision : 25-04-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2012) 4 TAC 329

Hon'ble Judges : J.K. Maheshwari, J

Bench : Single Bench

Advocate : Shankar Dhingra, for the Appellant; Tajuddin Khan, Advocate for the Respondent No. 2 and Shri S.N. Gajendragadkar, Advocate for the Respondent No. 3, for the Respondent

Judgement

J.K. Maheshwari, J.—Assailing the award dated 6th February, 2008 passed by the 1st Motor Accident Claims Tribunal, Gwalior in Claim Case No. 86/2007 on the point of inadequacy of the compensation, the appellants have preferred this appeal u/s 173 of the Motor Vehicles Act, 1983. The appellants had filed the claim petition u/s 166 of the Motor Vehicles Act, 1988 seeking enhanced compensation to the tune of Rs. 2,00,000/- on account of death of deceased Vinod Valmiki in an accident took place on 23rd November, 2006. It was pleaded by the claimants that the earning member of the family has died in the accident having his earning of Rs. 6,000/- per month, however the compensation as prayed in the claim petition may be awarded.

2. The reply to the claim petition was filed and after recording the evidence, the Tribunal has awarded the total sum of Rs. 4,73,928/- accepting the earning of the deceased Rs. 5,442/- per month, applying the multiplier of 15 and after deducting 1/3rd towards personal expenses and also deducted 30 percent of the amount towards contributory negligence. The Tribunal has also awarded some amount in conventional heads i.e., funeral Rs. 4,000/-, in consortium Rs. 24,000/- by the impugned award.

3. As the incident occurred, negligence of driver of driving the offending vehicle, the issue of liability jointly and severally to pay compensation have been decided recording the findings in favour of the appellants by the Tribunal and none of those findings have been assailed at the instance of the respondents i.e., owner, driver or Insurance Company by filing the cross-appeal or the cross-objection, however it is not necessary to narrate the entire facts in detail to burden the judgment on the said issues. It is only the inadequacy of the compensation which has been assailed, however the arguments in detail have been considered in succeeding paragraphs.

4. Shri Shankar Dhingra, learned Counsel representing the appellants contends that Tribunal has committed error and recorded the findings of contributory negligence because the deceased was driving and two other persons sitting on the motorcycle. No evidence is available to prove the fact that this is a case of head on collision having negligence of the driver. The learned Tribunal has committed error relying on the spot map which is neither exhibited nor proved and also not available in the record. In such a circumstances the findings of the Tribunal is set aside. It is also contended that the compensation was awarded by the Tribunal in case of a employee who is a secured employee without granting his future prospects, therefore, the compensation may be reasonably enhanced. In other heads, the compensation has also not been awarded, therefore, by allowing this appeal, the order granting enhanced compensation may be directed.

5. Shri Tajuddin Khan, learned Counsel representing Respondent No. 2 contends in support of the findings of the Claims Tribunal and submitted that the compensation as awarded by the impugned award appears to be just and reasonable, however, interference by this Court for enhancement of the compensation is not warranted.

6. On the other hand Shri S.N. Gajendragadkar, learned Counsel representing the respondent/Insurance Company contends that the findings of the Tribunal of negligence has rightly been recorded, in view of the fact that because the deceased was driving the motorcycle and collided with the offending vehicle, however, even this Court ignore the fact that the three persons were sitting on the motorcycle may not be liable for the contributory negligence but because the accident has taken place collided at with the offending vehicle, therefore, the Tribunal has rightly recorded the findings. It is further submitted that the findings recorded by the Tribunal is just and proper and does not warrant any interference by this Court.

7. After hearing learned Counsel for the parties, first of all the issue of contributory negligence is to be dealt with. In the present case, as per the fact, it is apparent that the deceased who was an employee of Public Health and Engineering Department going on the motorcycle alongwith two other persons. The said motorcycle met with an accident on 26th November, 2006 by a truck bearing registration No. HR 55B 4522. It is not clear from the evidence that how the accident has taken place. No cogent evidence has brought on record by

either of the parties to establish the fact regarding contributory negligence. On persual of the record, the undisputed fact is that the deceased died on the spot and two persons sitting on the motorcycle were injured due to accident with the truck. In such circumstances, applying the principle of *res ipsa loquitur*, it can be observed that due to the negligence of the offending vehicle, the accident has occurred wherein one person was died and two others were injured. Merely three persons who were sitting on the motorcycle would not be sufficient to hold that driver of the motorcycle i.e., deceased was negligent in view of the full Bench judgment of the Court in the case of *Devi Singh v. Vikram Singh & Ors.* 2008 (1) T.A.C. 696, the findings of the Tribunal with regard to contributory negligence is hereby set aside.

8. In the present case, the deceased was an employee of the public Health and Engineering Department and was getting salary of Rs. 5,781/-. Even assuming the future prospects of Rs. 1,290/- then his round up earning comes to Rs. 7,000/- per month and the annual earning comes to Rs. 84,000/-. Looking to the number of dependents i.e., four if 1/4 amount is deducted then the loss of dependency comes to Rs. 63,000/-. Looking to the age of the deceased which has not been considered by the Tribunal i.e., 42 to 45 years then the multiplier of 14 will be applicable. In the light of *Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another*, the loss on dependency comes to Rs. 8,82,000/- and further Rs. 25,000/- is added then the compensation comes to Rs. 9,07,000/-. On the deduction of the amount so awarded and paid by the Tribunal i.e., Rs. 4,73,928/- then the enhanced compensation amount payable to the claimant comes to Rs. 4,33,072/-. In view of the forgoing discussions, the appeal succeeds and is hereby allowed in part. The appellants are held entitled to receive the; enhanced amount of Rs. 4,33,072/- in addition to the amount of compensation already awarded by the Claims Tribunal. The enhanced amount shall carry interest @ 7.5% per annum from the date of filing of claim petition till its realization. In the facts of the case, parties are directed to bear their own costs.