(1998) 02 MP CK 0036

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 82 of 1989

Smt. Fulmati Bai and Others — APPELLANT

Vs

Pancham Singh and Others — RESPONDENT

Date of Decision : 17-02-1998

Acts Referred:
Motor Vehicles Act, 1939 — Section 110B

Citation : (1998) 2 ACC 651 : (1999) ACJ 1283 : AIR 1998 MP 173 : (1998) 1 MPLJ 339

Hon'ble Judges : A.K. Mathur, C.J;Shacheendra Dwivedi, J

Bench : Division Bench

Advocate : R.P. Gupta, for the Appellant; V.K. Bharadwaj, for the Respondent

Final Decision : Allowed

Judgement

A.K. Mathur, C.J.

This is a Misc. Appeal filed by the claimants against the order passed by the Motor Accidents Claims Tribunal in Claim Case No. 4/83, dated 25-5-89, whereby the Tribunal has awarded a sum of Rs. 15,000.00 as compensation to the claimants.

Brief facts giving rise to this appeal are that on 9-11-82, an Ambassador Car bearing Registration No. M.P.K. 105, met with an accident by dashing against truck bearing Registration No. U.T.P. 6239, a little away from Goraghat near Dabra crossing. In that accident, deceased Aasharam died. Therefore, a claim petition was filed by his widow and dependent children. It is alleged that Aasharam, on 9-11-82, was driving the Ambassador car while going from Kami to Delhi. He was employed with Ishwar Mining Industries Pvt. Ltd. and one Kamtaprasad, an Officer of the Company, was also sitting in the car. In the afternoon, at 2.34 p.m., a little away from Goraghat, near Dabra crossing when the truck U.T.P. 6239 was coming from Gwalior and driven rashly and negligently, dashing against the Ambassador car as a result of which Kamtaprasad, the occupant of the Ambassador car, and driver Aasharam were injured and ultimately Aasharam succumbed to his injuries. Therefore, the widow of Aasharam and his dependents filed the claim petition.

It is alleged that Aasharam was getting Rs. 700.00 p.m. and that he would have lived up to 70 years, therefore, compensation of Rs. 3,80,000.00 was claimed. It was also claimed that on account of the death of Aasharam, his dependents have to pay rent of Rs. 200.00 p.m. which would come to Rs. 30,000,00 in 25 years and forthe marriages of their three daughters, a sum of Rs. 18,000.00 at the rate of Rs. 6,000.00 per daughter, was claimed. Thus the total compensation claimed was for Rs. 4.32,000.00.

The claim petition was opposed by the defendants, They took the plea that the vehicle was driven by Aasharam in a rash and negligent manner and dashed against the stationary truck. They also denied that Aasharam was getting Rs. 700,00 p.m. They also denied that Aasharam was capable of spending Rs. 30,000.00 on the marriages of his daughters. The Insurance Company also denied the allegations.

On the pleadings of the parties, the Tribunal framed as many as 12 issues and it found that Aasharam was drawing Rs. 700.00 p.m. It also found that the truck driver was driving the truck rashly and negligently. It also found that out of Rs. 700.00, Aasharam would be spending Rs. 600.00p.m. on the family members, The Tribunal also found that the widow of Aasharam was drawing Rs. 400.00 as pension from the Company. Therefore, il counted the dependency of the family to the extent of Rs. 200 p.m. (deducting Rs. 400 from Rs. 600) and by applying the multiplier of 15, it worked out the compensation at Rs. 15,000.00 only. The Tribunal also awarded interest at 12% per annum from the date of filing of the petition, i.e, 24-3-83. No amount towards loss of consortium or loss of estate was awarded. Aggrieved against this order, the claimants of the deceased have filed the present appeal.

Learned counsel for the appellants has submitted that the amount of Rs. 400.00 p.m. which the widow of the deceased was getting towards pension, has been erroneously deducted. Learned counsel submits that this pension is awarded to the members of the deceased''s family as per service conditions and in view of the services rendered by the deceased, this amount should not have been deducted while working out the dependency of the deceased''s family members. In support thereof, learned counsel has invited our attention to a Full Bench decision of this Coun in case of Smt. Kashmiran Mathur and Others Vs. Sardar Rajendra Singh and Another, ; Anndibai v. Geeta Devi 1992 Acc CJ 1l20 (Madh Pra) and State of U.P. v. Bhagwati Pawar 1991 Acc CJ 73 (All). Learned counsel also submitted that no amount towards loss of consortium, or loss of estate or loss for love and affection of father to (he children of the deceased has been awarded.

We have heard learned counsel for the parties and perused the record. The main issue to be decided in the present case, is whether the amount of Rs. 400.00 p.m. which was drawn by the widow of the deceased towards family pension can be deducted while working out the dependency of the deceased''s family for calculation of compensation. The family pension is paid in lieu of the services rendered by the incumbent and that is a secured amount notwithstanding the death of the incumbent. The compensation is normally paid to the dependents on account of the fact that because of the death of the deceased, the family members were deprived of the amount which he would have spent on the family members. Therefore, the dependency of the family members qua death of the deceased has to be worked out. Simply because the deceased might get some gratuity or pension in lieu of the services rendered by him, has nothing to do with the working out of the dependency of the family members of the deceased. What one has to work oul is the actual dependency of the family members on the deceased and if the deceased had lived, then how much he would have contributed towards the family members. Therefore, simply because the deceased''s widow is getting some family pension, that should not be taken into consideration for working out the dependency of the family members of the deceased.

Similar question came up before a Full Bench of this Court in the case of Smt. Kashmiran Mathur and Others Vs. Sardar Rajendra Singh and Another, . In this connection, their Lordships examined the matter in detail and observed that it depends upon so many factors, whether the pension may be contributory or non-contributory, whether the family pension is payable on the basis of contributions made by an employee in some form or the other or it may be entirely paid by the employer. Their Lordships further observed that assuming that such pension is non-contributory paid by the employer of his own, deduction can only be made if the Tribunal had included all the probable benefits available to the deceased in his full span of life while determining the amount of compensation. However, their Lordships, after examining the matter, found that there was no such material placed before them and, therefore, they observed that deduction on account of family pension paid to the widow and other dependents of the deceased cannot be made.

Similar question came up before the learned single Judge of this Court in case of Anndibai (1992 Acc CJ 1120) (supra). The learned single Judge also, relying on the aforesaid Full Bench decision, observed that family pension payable to the surviving claimants is not liable to be deducted from the amount of compensation. Similar matter also came up before the Allahabad High Court in case of State of U.P. v. Bhagwati Pawar (1991 Acc CJ 73) (supra), wherein it was also observed that family pension, gratuity, provident fund and group insurance paid to the widow cannot be deducted as the widow of the deceased, even otherwise, is entitled to family pension on account of the death of her husband.

We have also examined the matter. Simply because the widow of the deceased is entitled to family pension or other perquisites on account of the death of her husband, has no co-relation with the dependency which has to be worked out under the Motor Vehicles Act. As per the service conditions, even otherwise also, in normal course, if a husband dies a natural death, then also family pension is paid to the deceased''s dependents. Today also the perquisites which are being paid to the dependents of the deceased even while serving in the Institutions, are social measures and they have nothing to do with the death of the deceased while doing a natural death or by accident. Therefore, on account of the death of the deceased in an accident, such amount cannot be taken into consideration, because even otherwise also in normal course, in the event of natural death, the family members of the deceased are entitled to that benefit. Therefore, that cannot be taken into consideration for working out the dependency of the family members.

Thus the amount of Rs. 400.00 which the widow of the deceased was getting as family pension, should not have been deducted from the total dependency of Rs. 600.00. As the deceased was getting Rs. 700.00 p.m. out of which he would be spending Rs. 100.00 p.m. on himself, Rs. 600.00 has been worked out as dependency of family members of the deceased. Thus the appellants are entitled to Rs. 1,08,000.00 (600 x 12 x 15) as compensation.

No amount towards loss of consortium has been awarded to the widow. That amount is worked out to Rs. 25,000.00. So far as loss of estate is concerned, the incumbent was drawing Rs. 700.00 p.m. Therefore, it is difficult to think that he would have built up any estate out of this meagre amount. Hence we are not inclined to grant ''any compensation for toss of estate. Thus the appellants are entitled to compensation of Rs. 1,08,000.00 + 25,000.00 = 1,33,000.00 with interest @ 9% per annum from the date of the claim petition till realisation. If the amount of Rs. 15,000.00 under the award with interest has been paid to the appellants, then that amount may be deducted from the total amount of compensation. The amount of compensation may be paid to the widow of the deceased, as other members of the family, at the time of the death of the deceased, were only minors. Therefore, the entire compensation may be paid to the widow of the deceased. Out of the amount of compensation, 50% of the amount shall be deposited in fixed deposit for a period of 5 years in her name and rest of the amount shall be paid to the widow of the deceased in cash so as to discharge her family responsibilities of getting her daughters and sons married.

The appeal is allowed as indicated above. No order as to costs.

