(2000) 11 MP CK 0044

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 395/96

Smt. Kusumkali and Others APPELLANT

Vs

Shankh Mani and Others RESPONDENT

Date of Decision : 21-11-2000

Acts Referred:

Citation : (2001) 5 MPHT 264

Hon'ble Judges : Bhawani Singh, C.J;A.K. Mishra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Bhawani Singh, C.J.—This appeal is directed against award dated 1-2-1996 of Motor Accident Claims Tribunal, Sidhi in Claim Case No. 14 of 1990.

2. Shankh Mani is the owner of vehicle C.A.A. 4044. It met with accident on 13-8-1989. All the passengers including the driver died in the accident. Claimants are wife and children of deceased Kamleshwar Prasad Tiwari. They have filed the claim stating that on the said day, Kamleshwar Prasad Tiwari was travelling from Bahri to Mhowganj with Preetu (4). Deceased Kamleshwar Prasad Tiwari was 28 year old at the time of accident working as Electrician Helper getting Rs. 2500.00 per month from Dudhichua Colliery, N.C.L., Singrauli, District Sidhi (M.P.). The family has history of longevity of about 80 year. The deceased used to spend Rs. 500.00 on himself leaving the rest to the family when the Tribunal has wrongly held that the monthly dependency was Rs. 1250.00 and applied multiplier of 10 when evidence on the record justify award of higher amount of compensation by application of proper multiplier. Hence, claim for enhancement of compensation is made.

3. The respondent No. 1 admits ownership of the vehicle but pleads vis-major for the taking place of accident. Due to heavy rains and lightening, the driver could not see the curve which resulted in the accident. Therefore, he is not responsible for the accident and payment of compensation. In alternative, it is stated that

the vehicle was insured with the Insurance Company, therefore, he is not responsible for payment of compensation. Respondent No. 2 has denied the allegation and the insurance of the vehicle, but later stated that in case it is found responsible, in that event the liablility does not exceed Rs. 15,000.00. It is also stated that the vehicle was being driven without permit and without valid driving licence, therefore, in violation of the conditions of insurance policy. All the defences have been rejected by the Tribunal and a compensation of Rs. 1,45,000.00 for the death of Kamleshwar Prasad Tiwari and Rs. 25,000.00 for the death of Preetu has been awarded. Claimants seek enhancement of the award to Rs. 8,00,000.00 by this appeal on the grounds referred in the preceding part of the judgment.

4. After giving our consideration to the matter, we are of the opinion that the Tribunal has not awarded just compensation in this case, therefore, enhancement is necessary. Accepting the daily income of deceased at Rs. 61.00, monthly income would come to Rs. 1830.00. Out of it, the deceased was spending 1/3rd on himself, leaving Rs, 1220.00 per month (Rs. 14,640.00 per annum, rounding up the same to Rs. 15,000.00) to the family. At the time of accident, deceased was 28 year old, therefore, proper multiplier in this case should be 18 and not 9 applied by the Tribunal. Thus calculated, the amount comes to Rs. 2,70,000.00 (Rs. 15,000.00 x 18). The claimants are also entitled to Rs. 10,000.00 for loss of expectancy of life, Rs. 2500.00 towards loss of estate, Rs. 5000.00 towards loss of consortium and Rs. 2000.00 towards funeral expenses.- taking the total amount of compensation to Rs. 2,89,500.00 (rupees two lac eighty nine thousand five hundred only).

6. Deceased Preetu was 4 year old at the time of accident. Since her father was employed, there was every possibility of the girl studying to reasonable extent and taking up some employment at a later stage and married after some time. However, the reasonable amount payable in such case should be Rs. 50,000.00. That apart, claimants shall also be entitled to Rs. 10,000.00 for loss of expectancy of life, Rs. 2500.00 for loss of estate and Rs. 2000.00 towards funeral expenses.- taking the total compensation to Rs. 64,500.00 (Rupees sixty four thousand five hundred only) (See M.A. No. 1495 of 1996 Pramila Bai and Anr. v. Mustafa Khan and Anr. decided on 10-10-2000 : 2001 (2) MPHT 158 (DB)).

7. The Insurance Company has not appeared to substantiate the claim made by it as to the limited liability. Under the new Act, the liability to pay the compensation is on the Insurance Company. Motor Vehicles Act, 1988 is a beneficial legislation. Taking into consideration the provisions of the Act, the liability to pay compensation shall be of the Insurance Company. The compensation as aforesaid is payable with interest at the rate allowed by the Tribunal and divided to the claimants in the ratio settled by the Tribunal. Appeal is accordingly allowed. Costs on parties.

