
(2003) 02 MP CK 0064

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 2240/99

Smt. Munni Bai and Others

APPELLANT

Vs

Sardar Man Mohan Singh Hora and Others

RESPONDENT

Date of Decision : 03-02-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 168, 171, 173

Citation : (2005) ACJ 780 : (2003) 3 MPHT 71 : (2003) 4 MPLJ 10

Hon'ble Judges : Bhawani Singh, C.J.; Sugandhi Lal Jain, J

Bench : Division Bench

Advocate : Sushil Agrawal, for the Appellant; Sanjay Agrawal and Sharad Gupta for Respondent No. 3 and None for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

Bhawani Singh, C.J.

Through this appeal, award of Claims Tribunal, Jabalpur in M.V.C. No. 103 of 1997, dated August 28, 1999 has been challenged.

Shortly stated, accident occurred on 6-4-1997 at Tripuri Chowk, Garha Road, Jabalpur. When Nanheveer Sahu, deceased, was going on his bicycle to attend his work, Truck No. M.K.M. 1935 driven rashly and negligently dashed with the bicycle of the deceased from behind. As a result, deceased suffered injuries in the head and other parts of the body. He died on the spot. Deceased Nanheveer Sahu was 35 years old. He was raj-mistri (Skilled Mason) earning Rs. 150/- per day. Claimants are dependents of the deceased, therefore, they claimed compensation of Rs. 13,10,000/-.

Driver of vehicle has been proceeded ex parte. Owner of vehicle states that the vehicle was being driven by Ramakant at the relevant time. Accident occurred due to negligence of the deceased. Insurance Company states that it was not informed about the taking place of accident by the truck-owner. There is collusion between the claimants and the driver and owner of the truck. Deceased was

himself responsible for the accident. The owner and the driver were using the vehicle in contravention of the terms and conditions of the Insurance Policy, therefore, it is not liable to pay compensation and the claim deserved to be dismissed. However, the Claims Tribunal holds as alleged by the claimants. There was no violation of conditions of Insurance Policy. The owner and driver of the offending truck were jointly and severally liable to pay compensation of Rs. 2,18,200/- with interest at the rate of 12% per annum from the date of application.

This appeal is at the instance of claimants seeking enhancement of compensation. Submission is that the deceased was earning Rs. 150/- per day as per evidence placed before the Tribunal. Assessment of compensation at the rate of Rs. 100/- per day by the Claims Tribunal is without justification and application of multiplier of 11 is absolutely erroneous, rather multiplier of 16 is applicable since the deceased was 36/40 years old at the time of accident.

Giving consideration to the matter, Smt. Munni Bai states that the deceased was raj-mistri earning Rs. 150/- per day. He used to work for 23-24 days in a month. She has produced certificate of Sai Builders (Exh. P-1, dated 2-6-1997). It mentions that the deceased was working with it as Raj Mistri and paid Rs. 150/- per day. This certificate has been proved by Rajesh Verma (P.W. 3) with whom the deceased was engaged. With this background, submission of learned Counsel for National Insurance Company Limited that record of attendance and payment should have been produced can not be accepted. Whatever possible could be done, has been done by the claimants. In case, respondent disputed this statement, it could seek production of the record but it failed to do so, therefore, evidence of Smt. Munnibai and Rajesh Verma has to be accepted and monthly income of deceased is fixed at Rs. 3600/-. After deducting one-third towards personal expenditure, monthly dependency comes to Rs. 2400/- (annual Rs. 28,800/-). Applying multiplier of 16, the figure comes to Rs. 4,60,800/-. In addition, claimants are also entitled to Rs. 7,000/- for loss of expectancy of life, Rs. 5,000/- towards consortium to the wife, Rs. 2,500/- for loss to the estate and Rs. 2,000/- for funeral expenses, taking the total amount of compensation to Rs. 4,77,300/-.

Consequently, appeal is allowed and award of Claims Tribunal is modified. The appellants are entitled to compensation of Rs. 4,77,300/- (Rupees four lacs seventy seven thousand three hundred only). Enhanced compensation will carry interest at the rate of 9% (nine percent) per annum from the date of application till payment, joint and several liability of owner and driver of Truck No. M.K.M. 1935, payable by National Insurance Company Ltd. within a period of two months. The compensation shall be payable to the claimants as under :--

- (1) Smt. Munni Bai Sahu (wife) 55%
- (2) Shri Manoj Sahu (son) 15%
- (3) Ku. Sushma Sahu (daughter) 15%

(4) Manish Sahu (son) 15%

The share of Manish Sahu (appellant No. 4) (minor) be deposited in his name through mother Smt. Munnibai Sahu in fixed deposit in a nationalised bank for the period he attains majority. Costs on parties.