(2020) 03 MP CK 0145

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 517 Of 2017

Smt. Shiva Devi And Others — APPELLANT

Vs

Surendra Sharma And Others — RESPONDENT

Date of Decision : 16-03-2020

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 163A, 168, 173

Citation : (2020) 03 MP CK 0145

Hon'ble Judges : G. S. Ahluwalia, J

Bench : Single Bench

Advocate : R.P. Gupta, Shrinivas Gajendragadkar, B.K. Agrawal

Final Decision : Disposed Of

Judgement

1. This Miscellaneous Appeal under Section 173 of the Motor Vehicles Act has been filed against the award dated 23/1/2017 passed by Fourth Motor Accident Claims Tribunal, Gwalior in Claim Case No.274/2014 for enhancement of compensation amount.

2. It is not out of place to mention here that the New India Assurance Company Limited as well as the Oriental Insurance Company Limited had filed MA No.533/2017 and MA No.421/2017 against the same award, which were decided by order dated 7/1/2020. Since notices of this appeal were not issued, therefore, while deciding the liability of the Insurance Company, it was held as under:-

"3. These appeals have been filed by the New India Assurance Company Limited and the Oriental Insurance Company Limited. The claimants have also filed an appeal, which has been registered as MA No.504/2017. Since notices of the appeal filed by the claimants (MA No.504/2017) were not issued, therefore, today hearing of the said appeal has been deferred and the counsel for the respective Insurance Companies have accepted the notice on behalf of their Insurance Company. In these appeals filed by the Insurance Companies they have also challenged the quantum of compensation awarded to the claimants under the miscellaneous head. Since hearing of the appeal filed by the claimants has been deferred and the question of quantum is yet to be decided in that appeal, therefore, in order to avoid any conflicting judgments with regard to the amount of compensation, the grounds with regard to the quantum of compensation raised by the Insurance Company in these appeals is kept open and shall be decided while deciding the appeal filed by the claimants."

3. Therefore, arguments of the parties on the question of quantum shall be considered in the light of the liberty granted by this Court in MA No.533/2017 and MA No.421/2017.

4. Since, the factum of accident and liability of the parties is not in dispute, therefore, it is suffice to mention here that the deceased Bhagirath Singh lost his life in a vehicular accident which took place on 5-3-2013. It is submitted by the counsel for the appellants that the deceased Bhagirath Singh was aged about 45 years and he was a Milk Vendor and agriculturist and his monthly income was Rs.10,000/-, however, the Claims Tribunal has wrongly assessed the monthly income of the deceased as Rs.3,325/-, whereas according to the schedule, the monthly income of an unskilled labourer is Rs.4,945/- and, therefore, the monthly income of the deceased as assessed by the Claims Tribunal is liable to be enhanced to Rs.4,945/- per month. It is further submitted that the Claims Tribunal has not awarded future prospects and the Supreme Court in the case of Hem Raj Vs. Oriental Insurance Company Limited and Others reported in 2018 (1) ACJ 5 has held that even where the notional income of a deceased is calculated on the basis of guess work, still the future prospects are payable.

5. Per contra, it is submitted by the counsel for the insurance companies that the Claims Tribunal has awarded excessive amount under the miscellaneous heads which is liable to be reduced to Rs.40,000/- for loss of consortium, Rs.15,000/- for loss of estate and Rs.15,000/- for funeral expenses. By referring to paragraph 52 of the award passed by the Claims Tribunal, it is submitted by the counsel for the respondents that the Claims Tribunal itself had found that only the appellant no.1 is dependent upon the deceased and, therefore, should have calculated the monthly expenses of the deceased as 50%.

6. Heard learned counsel for the parties.

7. The Claims Tribunal has disbelieved the claim of the claimants that the deceased was in the business of selling milk and, therefore, has notionally assessed his income as an unskilled labourer. Secondly, the land belonging to the deceased Bhagirath is still with the claimants and they are earning income from the said land. Thus, the Claims Tribunal has held that it cannot be said that the claimants have suffered loss of income. Second schedule of Section 163-A of the Motor Vehicles Act was inserted in the year 1994 and the yearly notional income was assessed as Rs.15,000/-. In the present case the accident took place on 5/3/2013 and the Claims Tribunal has assessed the yearly income of the deceased as Rs.39,900 (Rs.3,325 X 12). Thus, this Court is of the considered

opinion that the monthly income assessed by the Claims Tribunal does not call for any interference. In paragraph 52 of the award the Claims Tribunal has held that since the appellants no.2 and 3 are major sons and are earning independently and are not dependent upon the deceased and only the wife of the deceased, i.e. appellant no.1, was dependent upon him, therefore, the Claims Tribunal should have assessed the personal expenses of the deceased as 50%. Accordingly, the findings given by the Claims Tribunal in paragraph 52 of the award by which the personal expenses of the deceased has been taken as 1/3rd is set aside and it is held that the personal expenses of the deceased were 1/2. However, the appellants no.2 and 3 who are the major and earning sons of the deceased can always file a claim petition. The Supreme Court in the case of Manjuri Bera Vs. Oriental Insurance Company Ltd. And another reported in 2007(2) TAC 431 (SC) has held as under :

15. Judged in that background where a legal representative who is not dependant files an application for compensation, the quantum cannot be less than the liability referable to Section 140 of the Act. Therefore, even if there is no loss of dependency the claimant if he or she is a legal representative will be entitled to compensation, the quantum of which shall be not less than the liability flowing from Section 140 of the Act.

Since, the personal expenses of the deceased have been calculated as 50% after holding that the appellants no. 2 and 3 were not dependent upon the deceased, as a result of which, the compensation amount under the head of income would get reduced, therefore, it is held that the appellants no. 2 and 3 are entitled for a sum of Rs. 50,000/- by way of compensation.

8. So far as the future prospects is concerned, this Court in the case of Kiran Devi Vs. Anil Kumar Dubey passed in MA No.976/2015 decided on 4/5/2019 has held as under:-

"10. A "Self-employed" is a person who is working for himself and is earning money from his own business. There is a difference between an employer and employee. Self-employment is a state of working for oneself rather than working for an employer. A self-employed person is a person, who earns income by contracting with a trade or business directly. A professional is a self employed person. A person who, apart from earning himself, is also providing employment to others, can also be said to be a self-employed person. However, where the deceased is working as a labourer cannot be said to be a self employed person, because he is working for an employer. Employment is an agreement between an employer and an employee that the employee will provide certain services on the job to accomplish the employer organization's goal and mission and in exchange for work performed, the employee receives salary. The Supreme Court in the case of Sarla Verma (Supra) has held that where the deceased had a stable job, the court can take note of the prospects of the future and it will be unreasonable to estimate the loss of dependency on the actual income of the deceased at the time of death. Thus, in the case of employment, stability of job is the only criteria and where a person is working as a labourer and is not in a stable employment, then it cannot be said that he is also entitled for future prospects. A labourer, can never be treated as a self employed person or a person with stable job. The Supreme Court in the case of Sarla Verma or Pranay Sethi (Supra) has not held that even a person, who is not in a stable job would also be entitled for future prospects. While granting future prospects, the Claims Tribunal are required to see that whether the deceased was a "self employed person" or was "in stable job". This Court in the light of judgment passed in the case of Pranay Sethi (Supra) cannot grant "future prospects" to an "unemployed" or a "labourer/ employee who is not having a stable job". This Court cannot create third category of persons, which are not covered by the category of "employee" or "self-employed person". This Court while calculating the compensation has to assess the "just compensation" as provided under Section 168 of Motor Vehicles Act, and the dependants are not entitled for a windfall."

9. It is submitted by the counsel for the appellants that in the judgment passed in the case of Kiran Devi (supra) this Court has not taken into consideration the judgment passed by the Supreme Court in the case of Hem Raj (supra).

10. Considered the submissions made by the counsel for the appellants.

11. In the case of Hem Raj (supra) the Supreme Court has held that in a case were the income of the deceased is assessed on the basis of guess work, then his dependents would be entitled for future prospects also, but in the said case it has not been held that even if a person is not a self employed, still his dependents would be entitled for future prospects. In the case of Kiran Devi (supra) this Court after considering the meaning of "self employed" has held that in the light of the judgment passed in the case of National Insurance Co. Ltd. Vs. Pranay Sethi and others reported in (2017) 16 SCC 680 this Court cannot grant future prospects to an "unemployed" or a "labourer/employee who is not having the stable job". It has also been held that this Court cannot create third category of persons which are not covered in the category of "employed" or "self employed person" and the dependents are not entitled for a windfall. Since the claimants have failed to prove that the deceased Bhagirath Singh was a self employed person, it is held that the claimants are not entitled for future prospects. Further, the Claims Tribunal has awarded Rs.1,00,000/- towards the loss of consortium, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss of estate, however, in the light of the judgment passed by the Supreme Court in the case of Pranay Sethi (supra) it is held that the claimants are entitled for Rs.40,000/- for loss of consortium, Rs.15,000/- towards funeral expenses and Rs.15,000/- for loss of estate. Accordingly, the claimants are entitled for the following compensation amount:-

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1. Monthly income : Rs.3,325/-

2. Yearly income : Rs.39,900/-

3. Personal expenses (50%) : Rs.19,950/-

4. Multiplier x(14) : Rs.2,79,300/-

5. Loss of Estate : Rs.15,000/-

6. Loss of Consortium : Rs.40,000/-

7. Funeral Expenses : Rs.15,000/-

8. Compensation to appellants no.2 & 3 : Rs.50,000/-

Total : Rs.3,49,300/- + Rs.50,000= Rs.3,99,300/-

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12. The Claims Tribunal has awarded Rs.5,07,400/-, whereas the appellant no.1 is entitled for Rs.3,49,300/-. The appellants no.2 & 3 are entitled for Rs.50,000/-. The liability of the Insurance Companies has already been upheld by this Court in MA No.533/2017 and MA No.421/2017.

13. Accordingly, the award dated 23/1/2017 passed by Fourth Motor Accident Claims Tribunal, Gwalior in Claim Case No.274/2014 is hereby modified to the extent mentioned above.

14. The appeal is, accordingly, disposed of.