
(2005) 08 MP CK 0061

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 2370 of 2002

Smt. Suman Kali Jaiswal and Others

APPELLANT

Vs

Smt. Dharmwati and Others

RESPONDENT

Date of Decision : 03-08-2005

Acts Referred:

Citation : (2005) 4 MPHT 326

Hon'ble Judges : U.C Maheshwari, J;A.K. Mishra, J

Bench : Division Bench

Advocate : Umesh Shrivastava, for the Appellant; Pulak Rai, for the Respondent No. 3, for the Respondent

Judgement

U.C. Maheshwari, J.—Appellants/claimants have preferred this appeal against the award dated 14-9-2002 passed by 4th Motor Accident Claims Tribunal, Rewa for enhancement of awarded amount.

2. On 8-10-2000 at about 3.00 a.m. Rajbhan Jaiswal husband of appellant No. 1 while father of appellant Nos. 2 to 4 and son of appellant Nos. 5 and 6 was going to Allahabad by tractor trolley bearing registration No. M.P. 17-D-1976 and M.P. 17-D-1977 driven by Vijay Shukla, respondent No. 2 in rash and negligent manner and suddenly applied the brake. Resultantly, Rajbhan fell down sustained injuries, but on the way to hospital he succumbed to injuries. The tractor was owned by respondent No. 2 while insured with respondent No. 3. The deceased was a mason and earning Rs. 3,000/- p.m. In addition to it he was also involved in agriculture and selling the vegetables and earning Rs. 6,000/- p.m. Thus, he was earning total Rs. 9,000/- p.m. Due to untimely death of the deceased appellants were lost their bread winner and deprived from love and affection. The claim was filed for compensation of Rs. 16,00,000/-.

3. In reply, respondent Nos. 1 and 2 contended that respondent No. 1 has sent the deceased Rajbhan and other labours for bringing cattle feed in a tractor driven by respondent No. 2. On the way the deceased Rajbhan fell down from

the tractor and died, no negligence was committed by the respondent No. 2. Respondent No. 2 had a duly issued and effective licence, tractor was insured with respondent No. 3 and prayed for dismissal of claim application.

4. In reply, respondent No. 3, insurer denied the insurance of tractor subject to verification and contended that if the tractor is insured with company and premium has been paid then they would be liable to indemnify the claim in accordance with law. It was further contended that respondent No. 2 had no legal and effective driving licence and tractor was driven in violation of terms and conditions of the insurance policy. Thus, respondent No. 3 is not liable to indemnify the claim of appellants and prayed for dismissal of the claim.

5. The Tribunal framed issues, recorded evidence and on appreciation held that accident took place due to rash and negligent driving of respondent No. 2, saddled the liability against all respondents and awarded Rs. 1,99,000/-. Hence, appellants have preferred this appeal for enhancement of compensation.

6. Shri Umesh Shrivastava, learned Counsel for appellants has submitted that the deceased was mason and earning Rs. 3,000/- p.m. and in addition to it he also earning Rs. 6,000/- p.m. from selling of vegetables and operation of agriculture. Thus, his total earning was Rs. 9,000/- p.m. and the same was proved by admissible evidence and the same has not been controverted by respondents by examining any independent witness or by effective cross-examination of the witnesses of appellants. Even then the Tribunal has assessed and awarded only Rs. 1,99,000/- and prayed for enhancement of compensation.

7. Shri Pulak Rai, learned Counsel for respondent No. 3 submitted that the award passed by the Tribunal is based on proper appreciation of evidence on record and does not require any interference and prayed for dismissal of appeal.

8. Having heard the learned Counsel for the parties only question of quantum of compensation remains for consideration in this appeal. We have perused the record, Smt. Sumanlata (C.W. 1) stated in her deposition that the deceased was mason and doing the business of selling of vegetables and agriculture operation, out of all these work he was earning Rs. 9,000/- p.m. Her statement is further supported by Rajesh Jaiswal (C.W. 2) and by one of the employer Ramujagar Jaiswal (C.W. 3) and contrary to this nothing has come on the record either in cross-examination or by examining the other witnesses on behalf of respondents. But in the facts and circumstances of the case the earning of deceased Rs. 9,000/- p.m. as stated by the appellants appears to be on higher side. Thus, we assess the income of deceased Rs. 80/- per day, Rs. 2,400/- p.m. and on 1/3 deduction for expenses of the deceased which he would have spent on himself had he been alive then loss of dependency comes to Rs. 1,600/- p.m. and Rs. $(1,600 \times 12) = 19,200/-$ per annum. The age of the deceased was 23 years as per the post-mortem report. As per second schedule of Motor Vehicles Act the multiplier of 17 is applicable. On applying multiplier of 17 total loss of dependency comes to Rs. $(19,200 \times 17) = 3,26,400/-$.

9. Thus, we award Rs. 3,26,400 for loss of dependency. In addition to it we also award Rs. 2,000/- for funeral expenses, Rs. 2,500/- for loss of estate, Rs. 5,000/- for loss of expectancy of life and Rs. 5,000/- for loss of consortium to widow of the deceased Suman Lata. Thus, total compensation of Rs. 3,40,900/- (Rs. Three lacs forty thousand nine hundred) is awarded. The enhanced amount shall carry interest at the rate of 6% p.m. and shall be payable by respondent Nos. 1, 2 and 3 jointly and severally.

10. Appeal allowed in part. There shall be no order as to costs.