

(2013) 01 MP CK 0056

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 1462 of 2009

Smt. Zareena Begum and others

APPELLANT

Vs

Girraj Kareda and others

RESPONDENT

Date of Decision : 28-01-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2013) 2 MPHT 106

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Advocate : A. Quresh, for the Appellant; B.S. Bhadoriya, Advocate for the Respondent No. 2 and Mr. K. Singh, Advocate for the Insurance Company, for the Respondent

Judgement

N.K. Mody, J.—This is an appeal filed by the claimants u/s 173 of the Motor Vehicles Act against an award dated 31-7-2009 passed by MACT, Gwalior, in Claim Case No. 88/2008. By impugned award, the Claims Tribunal has awarded a total sum of Rs. 3,10,500/- with interest to the claimants for the death of one Shabbir, who died in vehicle accident. According to claimants, the compensation awarded is on lower side and hence, need to, be enhanced. It is for the enhancement in the compensation awarded by the Tribunal, the claimants have filed this appeal. So the question that arises for consideration is whether any case for enhancement in compensation awarded by the Tribunal on facts/evidence adduced is made out in the compensation awarded and if so to what extent ? It is not necessary to narrate the entire facts in detail, such as how the accident occurred, who was negligent in driving the offending vehicle, who is liable for paying compensation etc. It is for the reason that firstly all these findings are recorded in favour of claimants by the Tribunal. Secondly, none of these findings though recorded in claimants' favour are under challenge at the instance of any of the respondents such as owner/driver or Insurance Company either by way of cross appeal or cross objection. In this view of the matter, there is no justification to burden the judgment by detailing facts on all these issues.

2. As observed supra, it is a death case. On 19-5-2008, Shabbir, aged 22 years, met with a motor accident and died, giving rise to filing of claim petition by legal representatives (appellants herein) out of which this appeal arises seeking compensation for his death. The case was contested by the respondents. Parties adduced evidence. The Claims Tribunal by impugned award partly allowed the claim petition filed by claimants and as stated supra, awarded a sum of Rs. 3,10,500/- breakup of which is as under:-

3. Learned Counsel for the appellants submits that the learned Tribunal assessed the income of the deceased @ Rs. 1,500/- per month and after deducting 1/2 towards personal expenses applied the multiplier of 17. It is submitted that the income assessed is grossly inadequate as the deceased was in business and was having shop on the heart of the commercial area. It is submitted that the amount awarded is on lower side. It is submitted that the appeal be allowed and the amount be enhanced.

4. Learned Counsel for Insurance Company submits that since offending vehicle was not having valid permit and also respondent No. 1 was not possessing valid driving license, therefore, learned Tribunal was not justified for holding respondent No. 3 liable for the payment of compensation and the cross objection filed by the respondent No. 3 be allowed. It is submitted that the amount awarded by the learned Tribunal is just and proper and no case for enhancement is made out. It is submitted that the appeal be dismissed.

5. Keeping in view the documentary evidence, it appears that the deceased was in some sort of job, therefore, income assessed is on lower side which ought to have been Rs. 3,500/- per month, keeping in view the age of respondent Nos. 3 and 6 who are minor sisters and brothers of the deceased. Deduction of 1/2 is on lower side which ought to have been 1/3 and on other heads also amount awarded is on lower side. In my opinion, it will be proper to enhance the compensation. The appellants are entitled for the following amount:-

6. Thus, the appellants are entitled for a total sum of Rs. 5,75,500/- instead of Rs. 3,10,500/-. The enhanced amount of Rs. 2,65,000/- shall carry interest @ 8% p.a. from the date of application. The amount awarded shall be deposited by the Insurance Company with the learned Tribunal and the learned Tribunal is directed to invest 80% of the said amount on long term fixed deposit in the name of appellant No. 1 in the nearest Nationalised Bank, in the area where the appellant No. 1 is residing, with the condition that the Bank will not permit any loan or advance. Interest on the said amount shall be credited on monthly basis in S.B. Account of appellant No. 1, which shall be opened by the appellant No. 1 from where appellant No. 1 can withdraw the amount as per her needs. However, on an application by the appellant No. 1, this condition could be modified by the learned Tribunal in exceptional circumstances, if made out by the appellant No. 1. This order shall be executable upon payment of proportionate Court fees on the enhanced amount. The Court fees be paid within 3 months from the date of this order. Registry to prepare memo of costs. The appellants' Counsel shall

provide certified copy of memo of costs to the Counsel for Insurance Company. The Insurance Company, thereafter, shall deposit the enhanced amount with costs with the Tribunal within one month from the date of receipt of memo of cost. Failure to comply with the aforesaid direction no interest would be payable on the enhanced amount from the date of order till the Court fees is actually paid and memo of costs is supplied to Counsel for Insurance Company.

7. Since, no appeal has been filed by the respondent No. 3 and the award has been satisfied and the cross objection has been filed at the stage when the appellants filed the appeal for enhancement, this Court is of the view that at this stage, cross objection filed by the respondent No. 3 cannot be entertained and the same stands dismissed. With the aforesaid modification the appeal stands disposed of.