

(1985) 11 MP CK 0001

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 27 of 1981

State of Madhya Pradesh

APPELLANT

Vs

Shantibai Kushwah

RESPONDENT

Date of Decision : 30-11-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34

Citation : (1987) MPLJ 98

Hon'ble Judges : T.N. Singh, J

Bench : Single Bench

Advocate : P.D. Agrawal, for the Appellant; R.K. Shinde, for the Respondent

Final Decision : Dismissed

Judgement

Dr. T.N. Singh, J.

This meritless appeal merits instant dismissal. Forceful argument of Panel Lawyer Shri Agarwal has failed to move me to hold that interference in favour of the appellant is warranted in this appeal. Indeed, lamentably, the claim allowed being on the low side, it is the respondent who is rightly aggrieved, but it is not within my competence in this appeal to assist him liberally as there is no cross-appeal by her.

A healthy lad of 14 years, a bright student with a promising career, lost his life seven years ago. His mother preferred a claim u/s 110A of the Motor Vehicles Act and she was awarded a petty sum of Rs. 25000/- only as compensation. State has appealed against the award, which must be labelled as a very unholy endeavour to deny her the poor pittance frugally granted against the claim of Rs. 1,80,000/-. The deceased's father was earning at the relevant time, a monthly income of Rs. 1,000/- and he was well-disposed and equipped to educate his only child on whom, eventually, he and his wife had to depend in their old age. The claim awarded being on the low side, I see no reason for any interference in the appeal. The faint endeavour of Shri Agarwal to impugn the award on the

ground that contributory negligence of the deceased has not been taken into consideration is also meritless. Because, a plain reading of the impugned judgment shows that the point did receive Tribunal's consideration and the findings recorded against the State are unassailable inasmuch as the findings of fact are based on valid and cogent reasons.

In the result, the appeal fails and is dismissed, but the State must be saddled with exemplary costs" for bringing the poor lady to this Court and causing her unnecessary harassment. It is also to be noted that the amount awarded was not paid to the claimant till about a year back and unfortunately only half the amount, albeit belatedly deposited, has actually been disbursed to the claimant. In this view of the matter, I award costs of Rs. 1,000/- against the State.

However, a jurisdictional error can still be corrected in this appeal even in the absence of cross-appeal on the question of rate of interest awarded. It is submitted that the Tribunal ought to have awarded not 6% but 12% interest in the instant case and in awarding interest, the Tribunal has acted mechanically without having regard to the relevant provisions of law and the facts and circumstances of the case. In the D. B. Judgment of the Gauhati High Court in the case of United India Firm and General Insurance Company vs. Malati Bala Dutt, 19851 GLR 443, I have taken the view that in determining the question of interest awardable u/s 110-CC, the Tribunal, acting u/s 110-A, could derive guidance from the provisions of section 34 of the Code of Civil Procedure. I have further taken the view in the United Insurance Company's case (supra) that reasons have to be given by the Tribunal while determining the rate of interest and if no reason is given, the order shall be treated arbitrary and award of interest at 6% without supporting reasons therefor shall be treated as a jurisdictional error. Indeed, section 110-CC in terms requires that "interest shall also be paid" in addition to the compensation already determined. A duty is thereby laid on the Tribunal to consider the question of interest separately with due regards to the facts and circumstances of the case inasmuch as the section does not specify, or even limit the rate of interest.

According to section 34, CPC a Court is not bound to decree interest only at the rate of 6% per annum inasmuch as the Proviso enables the Court to decree a higher rate of interest in cases of liability arising out of a commercial transaction though such interest shall not exceed the contractual rate of interest or the rate fixed by a commercial bank in relation to commercial transaction. It is submitted that a minimum of 12% of interest is charged by commercial banks on any loan advanced, commercial or non-commercial. Indeed, in the absence of any statutory mandate inscribed in section 110-CC, I am inclined to take the view that a minimum of 12% interest per annum ought to be a reasonable award made in terms of section 110-CC in those cases where an interim relief in terms of section 92-A of the Act is not granted instantly. Because, until destitution is relieved, widows and orphans would be obliged normally to live on usurious loans, and not gratuitous bounties, for which they are to be duly compensated.

In the facts and circumstances of the case, accordingly, award of interest at the rate of 12% should have been a proper award to comply with the statutory mandate of section 110-CC. Accordingly, it is directed that the sum of Rs.25,000/- awarded as compensation to the claimant shall carry an interest of Rs. 12% per annum from the date of application till the date of payment to the claimant of the awarded amount along with the interest in full.

In the result, this appeal fails and is dismissed, but with the above direction for modification of the award as respects interest to conform to statutory requirement.