(2012) 11 MP CK 0031

In the Madhya Pradesh High Court

Case No : M.A. No. 2258 of 2010

Sunita Patidar and Others — APPELLANT

Vs

Mohd. Ishaq Khan and Others — RESPONDENT

Date of Decision : 06-11-2012

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2013) ILR (MP) 176

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

Bench : Single Bench

Advocate : G.K. Neema, for the Appellant; Pradeep Gupta with Bhaskar Agrawal for 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 06/05/10 passed by I AMACT, Shajapur in claim case No. 27/10. By impugned award, the Claims Tribunal has awarded a total sum of Rs. 8,19,500/- with interest to the claimants for the death of one Rajkumar, 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 claimant has 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 12/10/08 Rajkumar aged 28 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. 8,19,500/-, breakup of which is as under:-

3. Learned counsel for the appellants submit that the learned tribunal assessed the income of the deceased @ Rs. 5,000/- per month and after deducting 1/4th towards personal expenses applied the multiplier of 18. It is submitted that the income of the deceased is assessed on lower side as the deceased was in trade, it is submitted that income tax return for the financial year 2007-08 is on record as Ex. P/14, according to which income of the deceased was Rs. 1,08,500/-. It is submitted that return was filed by the deceased in his life time on 30/03/08. It is submitted that return was proved by the appellants by examining the Officer from Income Tax Department. It is submitted that the learned Tribunal committed error in not assessing the income on the basis of return filed by the deceased. It is submitted that learned Tribunal committed error in not taking into consideration the future prospects of the deceased. For this contention reliance is placed on a decision in the matter of Santosh Devi Vs. National Insurance Company Ltd. and Others, . It is submitted that on other heads also amount awarded is on lower side. It is submitted that the appeal filed by the appellants he allowed and the amount of compensation be enhanced.

4. Learned counsel for Insurance Company submits 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. I have gone through the evidence adduced by the claimants. From perusal of the record it is evident that the return was flied on 30/09/08, which is for Rs. 1,08,500/-. Return is also bearing inward number and is duly proved by the concerned officer, who came alongwith record of the department, therefore, it can not be said that the income tax return was filed after the death to achieve higher amount of compensation. At the same time there is nothing on record to show that when Permanent Account Number was issued to the deceased. Similarly return of previous years has not been filed. Age of the deceased was 28 years. Keeping in view the facts and circumstances of the case this Court is of the view that income of the deceased ought to have been assessed @ Rs. 7,000/- per month. Similarly 1/3rd ought to have been deducted instead of 1/4th as dependents are two in number. It appears that application of multiplier of 18 is on higher side, which ought to have been 17 keeping in view the age of appellant No. 1. On other heads also amount awarded appears to be on lower side, which deserves to be enhanced. So far as future prospects are concerned, there is no evidence in that regard. No income tax return of previous years are on record, on the basis of which future prospects can be taken into

consideration. No future prospects were claimed before the learned Tribunal as the same does not reflect in the impugned order. In my opinion it will be proper to enhance the compensation. The appellants are entitle for the following amount:

6. Thus, the appellants are entitle for a total sum of Rs. 9,80,000/- instead of Rs. 8,19,500/-. The enhanced amount of Rs. 1,62,500/- 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 Nationalized 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. With the aforesaid modification the appeal stands disposed of with cost.

