(2006) 04 MP CK 0118

In the Madhya Pradesh High Court

Uma Rathore and Others APPELLANT

Vs

Om Prakash and Others RESPONDENT

Date of Decision : 10-04-2006

Acts Referred:
Motor Vehicles Act, 1988 — Section 163

Citation : (2007) 1 ACC 411 : (2008) ACJ 310

Hon'ble Judges : S. Samvatsar, J;A.P. Shrivastava, J

Bench : Division Bench

Judgement

S. Samvatsar, J.—This judgment shall govern disposal of this appeal as well as connected appeal Nos. M.A. Nos. 127, 126, 110, 122, 123, 124, 128, 267, 131, 257, 144, 155 and 132 of 2003 arising out of the same accident, which have been filed challenging the quantum of compensation awarded by the Third Additional Motor Accident Claims Tribunal, Gwalior in Claim Case No. 27/2002 and other connected cases.

2. All the claims petitions arise out of the Motor Accident occurred on 24.3.2001 between a truck bearing No. HR 55-4375 and a jeep No. UP 093-D-9168. The truck was coming from Shivpuri to Gwalior, while the jeep was travelling from Gwalior to Shivpuri. As many as 17 persons were travelling in the jeep. There was head on collision between the truck and the jeep, in which number of persons died and some were injured. The claimants have filed separate claim applications which were decided by the Claims Tribunal by separate judgments.

3. In all the claim petitions the Tribunal has held that the accident had taken place due to composite negligence of the driver of the trcuk and driver of the jeep. The driver, owner and Insurance Company of the jeep are not joined as parties to the claim petitions and the claim petitions are filed only against the driver, owner and Insurance Company of the truck. The Claims Tribunal held that the accident has taken place due to composite negligence of both the drivers. As per the findings of the Claims Tribunal, the driver of the jeep was liable upto 30%, while the driver of the truck was liable upto the extent of 70% and

awarded the compensation. Hence, all these appeals are filed.

4. These appeals are filed challenging the quantum awarded by the Claims Tribunal and its findings whereby it has been held that since the claimants have contributed to the accident to the extent of 30%, therefore, the amount to the extent of 30% is liable to be deducted from the compensation awarded by the Tribunal. In all these appeals common evidence was recorded.

5. As regards question of negligence is concerned, the claimants have examined themselves and some eye-witnesses. P.W. 2, Madhosingh is one of the eye-witness, who has stated that the accident has occurred on 24.3.2001 at about 2.30 p.m. This witness was standing in front of the hotel owned by one Nawab. He has seen the jeep coming from Satanwada. According to this witness, the jeep was on the right side and was in a slow speed. When this jeep reached near the bridge he saw a truck coming from shivpuri. According to this witness, the speed of the truck was very fast and the truck dashed the jeep from the driver side. This witness says that 18 persons were sitting in the jeep. He further says that the speed of the jeep was around 40 kms. per hour.

6. The defence has examined one Om Prakash, who is driver of the truck. He has admitted the accident. He says that the jeep which was coming from the opposite side was carrying 18 to 20 persons and the jeep was in high speed. The jeep driver lost the control of the jeep and dashed against the truck. Thus, there is statement of Om Prakash, driver of the truck and one of the eye-witness, who had seen the incident. From the statement of these witnesses, it appears that there was head on collision between the two vehicles and both the driver of the truck as well as the driver of the jeep was also responsible for the accident. The driver of the jeep was carrying nearly 18 to 20 persons in the jeep, whereas the sitting capacity of the-jeep is about 8 to 10 persons. This itself shows that the driver of the jeep was also responsible for the accident. Hence, it is held that the accident has occurred due to composite negligence of the driver of the truck as well as the driver of the jeep. The Tribunal has held that negligence of the truck was 70% while that of the jeep driver was 30%. We do not find any reason to interfere in the said finding. However, we set aside the finding of the Tribunal that the victim who were travelling as passengers were also liable to the extent of 30%.

7. Now, the question is about quantum and this question will have to be decided by this Court separately in respect of each of the claimants.

M.A. No. 25/2003

8. This appeal arises out of Claim Case No. 27/02. Deceased Ramgopal died in the said accident. He was the truck driver. He was aged 34 years at the time of accident. The Claims Tribunal assessed the compensation at Rs. 2,04,000 (Rupees two lac four thousand only) and deducted an amount of 30% holding the deceased liable for negligence. The deceased was aged 34 years. His yearly income is assessed by the Claims Tribunal at Rs. 18,000 per year. P.W. 1 Mrs.

Uma has deposed that her husband was getting Rs. 3,000 per month towards salary and Rs. 50 per day towards allowances and his income was Rs. 4,000 per month. P.W. 3, Laxman says that he was owner of the truck in which the deceased was a driver and he was paying him salary at the rate of Rs. 3,000 per month and he was getting allowance of Rs. 50 per day. P.W. 4, Om Prakash has stated that the deceased was getting salary of Rs. 3,000 per month and Rs. 50 towards travelling allowances. There is no evidence in rebuttal. It is a thing of common knowledge that the drivers of the truck are normally earning Rs. 3,000 per month. Hence, the Claims Tribunal has erred in assessing his income at Rs. 18,000 per year. The yearly income of the deceased, who was driver can be safely assessed at Rs. 36,000 per year and his yearly dependency comes to Rs. 24,000. As he was aged 34 years, the multiplier of 17 is applicable. Thus, the compensation comes to Rs. 4,08,000. The claimants are further entitled for a sum of Rs. 17,000 over and above this amount and thus, the claimants are entitled to compensation of Rs. 4,25,000 (Rupees four lac twenty five thousand only).

M.A. No. 127/2003

9. Appeal No. 127/2003 arises out of Claim Case No. 42/2002. The claim petition is filed by the brothers of deceased Pooja, who was nine years of age. Her parents also died in the same accident. The claimants are elder brothers of the deceased. She was not an earning member and, therefore, her income is taken on the basis of notional income at Rs. 15,000 per year and her dependency comes to Rs. 10,000 per year. Considering this fact the claimants are her elder brothers, hence multiplier of 10 can safely adopted in her case and her compensation is enhanced from Rs. 70,000 as awarded by the Claims Tribunal to Rs. 1,00,000 + Rs. 15,000 towards funeral expenses and other heads. Thus, the total compensation comes to Rs. 1,15,000 (Rupees one lac fifteen thousand only).

M.A. No. 126/2003

10. This appeal arises out of Claim case No. 43/2002. The claims Tribunal awarded Rs. 3,85,000 for the death of Purushottam Sharma, who was 42 years of age. The Claims Tribunal assessed his yearly income at Rs. 54,000. Ex. P12 is the salary certificate which shows that his monthly income was Rs. 5,241, out of which an amount of Rs. 450 was deducted towards G.P.F. and Rs. 100 towards G.I.S. Thus there was deduction of Rs. 550 from his salary. The Claims Tribunal also found that the salary of the deceased was 5,241 per month and assessed the yearly income at Rs. 54,000 on the ground that he must be paying income tax. This approach of the Tribunal does not appear to be correct because in 2001 as per slab of income tax, the amount upto Rs. 60,000 was not taxable. Considering this fact, the income of the deceased should be taken at Rs. 62,890 per year and his yearly dependency can be assessed at Rs. 41,000. As the deceased was 42 years of age, a multiplier of 14 will be applicable and the total compensation comes to Rs. 5,74,000. It has also come on record that he has received an amount of Rs. 23,000 as ex gratia amount. Hence, as per the

judgment of Apex Court in the case of Mrs. Helen C. Rebello and Others Vs. Maharashtra State Road Transport Corpn. and Another, , this amount will have to be deducted from the amount of compensation. Thus, the total amount of compensation comes to Rs. 5,51,000. Claimants are also entitled to further sum of Rs. 19,000 towards funeral expenses, loss of estate, loss of love and affection etc., etc. Thus, the claimants are entitled to a sum of Rs. 5,70,000. (Rupees five lac seventy thousand only).

M.A. No. 110/2003

11. This appeal arises out of Claim Case No. 41/2002. This Claim Petition was filed for the death of Smt. Susheela Sharma, who was 35 years of age. The Tribunal awarded Rs. 1,10,000 as compensation for her death. She was not an earning member. However, her income can be assessed on notional basis at Rs. 15,000 per year. Her dependency comes to Rs. 10,000 per year. As she was 35 years of age, multiplier of 16 is applicable and it is held that her heirs are entitled to compensation to the tune of Rs. 1,60,000 + 20,000 towards other heads like funeral expenses, loss of love and affection etc., etc. and thus, her compensation is enhanced from 1,10,000 to 1,80,000. (Rupees one lac eighty thousand only).

M.A. No. 122/2003

12. This appeal is filed against the judgment passed in Claim Case No. 31/2002 for the death of Mrs. Kalabai. The Claims Tribunal awarded compensation of Rs. 50,000 for her death. As per the claimant Kalabai was his mother and aged about 50 to 55 years. The Claims Tribunal found that the age of the deceased was 85 years. This finding is arrived at on the basis of the post-mortem report in which her age is described as 85 years. While as per the statement of the claimant, her age was about 55 years. The Naksha Panchanama also mentions her age as 55 years. The claimant is son of the deceased, who is aged about 30 years. Considering this fact, the finding of the Tribunal appears to be not probable that his mother was aged 85 years at the time of accident. If this age is accepted, then at the time of birth of the claimamt, be age comes to 55 years. It, therefore, appears that there must be some error in recording the age of the deceased in the post-mortem report. The probability in this appeal is that her age must be between 55 to 60 years. Therefore, multiplier of 8 will be applicable. The deceased is not an earning member. Hence, considering the notional income of Rs. 15,000 per year her dependency is assessed at Rs. 10,000 per year and on applying multiplier of 8, the compensation comes to Rs. 80,000. The claimant is entitled to further sum of Rs. 20,000 over and above this amount towards funeral expenses, loss of estate, loss of love and affection etc., etc. Thus, the total compensation comes to Rs. 1,00,000. (Rupees one lac only).

M.A. 123/2003

13. This appeal arises out of Claim Case No. 34/2002. This appeal is filed claiming compensation for the death of Mrs. Usha Sharma. She was aged 40

years. The Claims Tribunal awarded a sum of Rs. 1,20,000 for her death. As per the claimants she was earning Rs. 6,000 from running a hotel. This fact is disbelieved by the Claims Tribunal ort the ground that there is no definite evidence about her income. Claimants have not produced any document to support the evidence adduced by them. Therefore, in the absence of any evidence the Court has rightly assessed her income on notional basis at Rs. 15,000 per year and dependency at Rs. 10,000 per year. Considering the fact that she was aged 40 years, multipler of 15 is applicable and the total compensation comes Rs. 1,50,000+Rs. 25,000 towards loss of consortium, funeral expenses, loss of love and affection etc., etc. Thus, the total compensation comes to Rs. 1,75,000 (Rupees one lac seventy five thousand only).

M.A. 124/2003

14. This appeal arises out of the Claim Case No. 35/2002. The claim petition is filed for the death of deceased Mrs. Yesodhabai, who died on the spot. The Claims Tribunal awarded a sum of Rs. 90,000 for her death. The deceased was 40 years of age. As per the Naksha Panchanama, her age is 45 years and as per the postmortem report, her age is 50 years. Considering this fact, this Court can safely infer that her age must be between 45 to 50 years. The Court has assessed her income at Rs. 700 to 800 per month. In view of Schedule u/s 163(a), her income can be assessed on notional basis at Rs. 15,000 per year and yearly dependency can be assessed at Rs. 10,000 per year. As she was between 45 to 50 years, multiplier of 13 will be applicable and compensation comes to Rs. 1,30,000 + Rs. 20,000 towards funeral expenses, loss of estate, loss of love and affection etc. etc. Thus, the total compensation comes to Rs. 1,50,000 (Rupees one lac fifty thousand only).

M.A. 128/2003

15. This appeal arises out of Claim Case No. 32/2003. This appeal is filed for the death of deceased Rajabetti. The Claims Tribunal awarded compensation for her death at Rs. 1,20,000. It is alleged that she was a labourer as well as a house wife. The Claims Tribunal has assessed her income on notional basis at Rs. 15,000 per year and applied multiplier of 15 and assessed the yearly dependency at Rs. 10,000. Thus, the compensation in her case comes to Rs. 1,50,000 + Rs. 20,000 towards other heads like funeral expenses, loss of estate, loss of love and affection etc., etc. Thus, the total compensation comes to Rs. 1,70,000 (Rupees one lac seventy thousand only).

M.A. No. 267/2003

16. This appeal arises out of Claim Case No. 44/2002. This appeal is filed for the death of Riyaz Khan, who was driver of the jeep. The Claims Tribunal awarded Rs. 1,31,000 for his death. As per the findings arrived at by the Claims Tribunal, he was earning Rs. 18,000 per year. He was aged 23 years. As he was a driver of jeep and the claimants have deposed that he was earning Rs. 3,000 per month,

in the absence of any evidence in rebuttal, we do not find any reason to disbelieve their statement. Hence, compensation is decided on the basis of his income at Rs. 3,000 per month. The total income comes to Rs. 36,000 per year and yearly dependency comes to Rs. 24,000 per year. As he was 23 years of age, on applying multiplier of 15 the compensation comes to Rs. 3,60,000, but since the claimants are parents, therefore, multiplier will be applicable on the age of mother, who is 45 years. Hence, the multiplier of 13 will be applicable and compensation will come to Rs. 3,12,000. Apart from this amount, the claimants are entitled to Rs. 20,000 towards funeral expenses, loss of estate, loss of love and affection etc., etc. Thus, the compensation comes to Rs. 3,32,000. As regards deduction of 30% is concerned, the deceased in this case was driver of the jeep. He was carrying 18 to 20 persons in the jeep, which shows that he was also negligent in driving to the extent of 30% as held by the Claims Tribunal and, therefore 30% of the said amount deserves to the deducted, which comes to Rs. 99,600. After deducting this amount the parents of the deceased are entitled to get compensation at Rs. 2,32,400. (Rupees two lac thirty two thousand four hundred only).

M.A. No. 131/2003

17. This appeal arises out of Claim Case No. 40/2002 which was filed for the death of Sunil, who was aged 4 years of age. The Claims Tribunal awarded the compensation at Rs. 60,000. He was not an earning member, hence, his income is assessed on notional basis at Rs. 15,000 per year. The dependency comes to Rs. 10,000 per year. After applying the multiplier of 15 to the age of parents, the total compensation comes to Rs. 1,50,000. Apart from this amount the claimants are entitled to Rs. 20,000 towards other heads such as funeral expenses, loss of estate, loss of love and affection etc., etc. Thus the total compensation comes to Rs. 1,70,000 (Rupees one lac seventy thousand only).

M.A. No. 257/2003

18. This appeal is filed against the award in Claim Case No. 30/2002 for the death of Hariram, who was 42 years of age. He was an Agriculturists. The Claims Tribunal award Rs. 1,20,000 for his death. There is no definite evidence about his income hence, the same is assessed on notional basis i.e., Rs. 15,000 per annum. The dependency comes to Rs. 10,000 per annum and applying multiplier of 15, the compensation comes to Rs. 1,50,000 + Rs. 20,000 towards loss of consortium, funeral expenses, loss of love and affection etc., etc. Thus, the award is enhanced from Rs. 1,20,000 to Rs. 1,70,000. (Ruppees one lac seventy thousand only).

M.A. No. 144/2003

19. This appeal is filed by the claimants for enhancement of compensation for the injuries caused to the appellant in the said accident. She has suffered fracture on femur bone. There is no permanent disability. She was hospitalised for ten days and undergone a prolonged treatment. Considering this fact the

compensation awarded is enhanced from Rs. 15,000 to Rs. 50,000 in the present case.

M.A. No. 155/2003

20. This appeal arises out of Claim Case No. 28/2002. This appeal is filed for compensation for the death of Ramcharan. The Claims Tribunal awarded an amount of Rs. 1,40,000. Ramcharan was aged between 40 to 45 years. He was a labourer. There is no definite evidence about his income, hence, compensation is assessed taking his income on notional basis at Rs. 15,000 per year and yearly dependency comes to Rs. 10,000 per year. After applying multiplier of 15, the compensation comes to Rs. 1,50,000. The claimants are further entitled to Rs. 20,000 over and above this amount towards loss of consortium, funeral expenses, loss of love and affection etc., etc. The compensation is thus enhanced from Rs. 1,40,000 to Rs. 1,70,000 (Rupees one lac seventy thousand only).

M.A. No. 132/2003

21. This appeal is filed by the claimants for the death of deceased Guddi, who was aged five years. The Claims Tribunal awarded a sum of Rs. 52,000 as compensation. She was not an earning member. Her dependency is calculated at Rs. 10,000 per year on the basis of notional income at Rs. 15,000 per year. Her parents are aged 30 years hence, multiplier of 15 is applicable and the compensation comes to Rs. 1,50,000 + Rs. 20,000 towards funeral expense, loss of estate, loss of love and affection etc., etc. Thus, the total compensation comes to Rs. 1,70,000 and the claimants are entitled to an amount of Rs. 1,70,000 (Rupees one lac seventy thousand only).

22. As regards deduction of 30% except M. A. No. 267/03 arising out of Claim Case No. 44/2002 is concerned, we find that the finding of the Tribunal cannot be sustained. In the present claim cases, the deceased were passengers in the jeep and they cannot be held responsible for the overloading or the negligence of the driver of the jeep. They are, therefore, entitled to get entire compensation without any deduction. The Full Bench of this Court in a case of Smt. Sushila Bhadoriya and Others Vs. M.P. State Road Transport Corporation and Another, has laid down that the claimants in case of composite negligence can recover the amount of compensation from any of the vehicle. In such circumstances, merely because owner, driver and Insurance Company of the jeep is not joined as party, they can recover the said amount from the Insurance Company of the truck driver. Of course the Insurance Company of the truck will be free to recover part of the amount from the Insurance Company of the jeep, as the jeep was also equally liable for payment of compensation, if legally permissible.

23. In the result, all these appeals are partly allowed and the amount of compensation is enhanced as indicated above. As regards interest is concerned, in all the cases different rates of interest are awarded by the Court below. Hence, we hold that looking to the bank rate, all the claimants are entitled to interest on the enhanced amount at the rate of 6% per annum from the date of filing of the

appeal till realisation of the amount.

