

(2002) 04 MP CK 0018

In the Madhya Pradesh High Court

Case No : M.A. No's. 244, 253 and 254 of 1994

Urmila Deora and Others

APPELLANT

Vs

Madhya Pradesh State Road Trans. Corpn. and Others

RESPONDENT

Date of Decision : 01-04-2002

Acts Referred:

Fatal Accidents Act, 1855 — Section 1A, 2

Citation : (2003) ACJ 1803 : (2003) ILR (MP) 432 : (2002) 3 MPLJ 347

Hon'ble Judges : Bhawani Singh, C.J.;Rajendra Menon, J

Bench : Division Bench

Advocate : Ajay Kumar Mishra, V.P. Verma and Anil Khare, for the Appellant;
N.S. Ruprah and Abhishek Gupta, for the Respondent

Judgement

Rajendra Menon, J.

All these appeals arise out of a common award passed by Motor Accidents Claims Tribunal, Sehore. As similar issues are involved, the appeals are being disposed of by common judgment.

On 10.5.1985, Prakash Chandra Deora, Sudhakar Dave and Kishore along with Kokila Dave and Nishchal Dave were travelling in taxi MBC 1306 driven by Gulam Rasool. They were travelling as paid passengers and were going from Bhopal to Indore. At 12.20 in the afternoon when the taxi reached a place about 105 km. away from Bhopal, bus MPW 8158 belonging to respondent No. 1 and driven by the respondent No. 2 coming from the opposite direction dashed against the taxi. As a result, driver of the taxi Gulam Rasool, Kishore, Prakash Chandra Deora and Sudhakar Dave died and Kokila and Nishchal Dave sustained injuries.

The present appeals have been filed by the legal heirs of Prakash Deora and Sudhakar Dave and the claimant Kokila Dave.

The Claims Tribunal, after considering the evidence and material on record came to the conclusion that the accident arose because of the negligence of the driver of taxi, accordingly, liability for payment of compensation was imposed on

respondent Nos. 3 and 4, owner and insurer of the taxi.

The appellants have challenged the award contending that the Tribunal ought to have held the driver and owner of the bus equally responsible for the accident and exonerating them was not proper. That apart, the claimants have claimed enhancement of compensation on the ground that the assessment of compensation by the Claims Tribunal has been done on the lower side.

On the basis of the evidence produced before it issue Nos. 2(a) and 2(b) as to negligence of driver, have been decided that accident arose due to negligence of the driver of taxi. It has also been held that it is not a case of contributory negligence. We have perused the evidence in this regard, the finding arrived at by the Tribunal is based on evidence, the same being legal and proper no interference in this regard is called for.

The only question requiring consideration is with regard to assessment of compensation. The Tribunal has awarded different amounts of compensation to the dependants and injured persons, correctness of the same is challenged by the appellants.

The Tribunal, after holding inquiry, has to make an award determining the amount of compensation which appears to be "just". No rigid mechanical formula can be adopted for the same. The courts are therefore required to adopt a feasible method for assessing compensation. The decision of High Court of Himachal Pradesh in Himachal Pradesh Road Trans. Corporation v. Jai Ram 1980 ACJ 1 (HP), provides various guiding factors, para 8 of which can be profitably quoted:

While considering the question of choosing a suitable method for assessing compensation under both the sections, one important fact which the court should bear in mind is that u/s 110-B of the Motor Vehicles Act it is the "just" compensation which is required to be awarded. Therefore, no method of calculation of compensation would be justified if it does not result in awarding the amount which is "just" looking to the peculiar facts of each case. In other words, every method of calculation must be treated as subordinate to the necessity of giving a "just" compensation. Therefore, though while adopting various methods of determining compensation for loss of dependency and loss to the estate the court may take into consideration the principles propounded by judicial pronouncements with regard to the implementation of the provisions contained in Section 1A and Section 2 of the Fatal Accidents Act; insofar as the ultimate figure of compensation is concerned, the court is not bound by any rigid mathematical formula if it finds that the justness of the case requires either increase or decrease in that figure.

In the instant case, we proceed to consider what just compensation can be awarded to the claimants in each case.

M.A. No. 244 of 1994: Urmila Deora v. M.P.S.R.T.C.

The appellants are wife and children of late Prakash Deora. He was 52 years old at the time of accident. According to the claimants he was earning about Rs. 95,000 per annum. The claim is for Rs. 25,00,000. The Tribunal has awarded a sum of Rs. 4,60,000 plus interest at the rate of 12 per cent from the date of filing of application.

The learned Counsel appearing for the appellants has contended that assessment of compensation has not been properly done. It is stated that income has been calculated at the lower side ignoring the income tax returns which have been filed by the claimants.

Tribunal after holding that in the income tax returns, Exh. P-18, income of late Prakash Chandra Deora was shown as Rs. 95,000 per annum, but on the basis of the income earned by his son, has assessed the income at Rs. 4,000 per month. The Tribunal has held that as the factories are still running, assessment of income at Rs. 95,000 per annum is not acceptable. In our considered view, the Tribunal has committed material irregularity in assessment of the annual income of late Prakash Deora. The income being received by his son after his death is not a relevant factor for assessing the income of late Prakash Deora. The income tax returns which are on record indicate that the annual income of late Prakash Deora was Rs. 95,000 per annum. After deducting 1/3rd from the said amount towards personal expenses, dependency is assessed at Rs. 63,332 per annum. The age of the deceased being 52 the multiplier of 11 is applicable. Giving consideration to the matter, it would be just and proper to enhance compensation to Rs. 6,96,652 (rupees six lakh ninety-six thousand six hundred and fifty-two) plus Rs. 10,000 (rupees ten thousand) towards loss of life expectancy, plus Rs. 5,000 (rupees five thousand) towards loss of consortium to wife, plus Rs. 2,500 (rupees two thousand five hundred) towards loss to estate, plus Rs. 2,000 (rupees two thousand) towards funeral expenses, taking the total compensation to Rs. 7,16,152 (rupees seven lakh sixteen thousand one hundred and fifty-two). The enhanced compensation will carry interest at the rate of 9 per cent per annum. The award of the Tribunal passed in M.C.C. No. 64 of 1986 stands modified to extent aforesaid.

M.A. No. 254 of 1994: Kokila Dave v. M.P.S.R.T.C.

The appellants are the legal heirs of the deceased Sudhakar Dave. They have contended that late Sudhakar Dave was 32 years of age at the time of his death; his monthly income was Rs. 2,600 (rupees two thousand and six hundred) and that they are entitled to compensation in the sum of Rs. 17,72,750 (rupees seventeen lakh seventy-two thousand seven hundred and fifty). The Tribunal in this case has awarded compensation of Rs. 2,00,000 only. It is stated that late Sudhakar Dave was working as Assistant Manager with Syndicate Bank.

We have considered the submissions made and are of the opinion that assessment of the compensation made in this case is on the lower side. If the income of deceased Sudhakar Dave was Rs. 2,600 (rupees two thousand and six

hundred) per month then after deducting 1/3rd towards his personal expenses, the dependency comes to Rs. 1,690 (rupees one thousand six hundred and ninety) per month and annual to Rs. 20,280 (rupees twenty thousand two hundred and eighty). Age of the deceased was 32 accordingly the multiplier of 17 is applicable. Accordingly the compensation would come to Rs. 3,44,760 (rupees three lakh forty-four thousand seven hundred and sixty) to this has to be added Rs. 10,000 (rupees ten thousand) towards loss of expectancy of life, plus Rs. 5,000 (rupees five thousand) towards loss of consortium, plus Rs. 2,500 (rupees two thousand five hundred) towards loss to the estate, plus Rs. 2,000 (rupees two thousand) towards funeral expenses. The total compensation therefore comes to Rs. 3,64,260 (rupees three lakh sixty-four thousand two hundred and sixty only). It is therefore held that the appellants are entitled to compensation of Rs. 3,64,260 (rupees three lakh sixty-four thousand two hundred and sixty). The enhanced compensation shall carry interest at the rate of 9 per cent per annum. The award of Claims Tribunal is modified to this extent.

M.A. No. 253 of 1994: Kokila Dave v. M.P.S.R.T.C.

The claimant Kokila Dave contends that because of the accident she had suffered personal injuries. Her disability has been assessed at 40 per cent and accordingly she is entitled to compensation of Rs. 3,77,513.61 whereas she has been awarded only Rs. 31,000. We have considered the submissions of the counsel for the appellant and also perused the record. The Tribunal has assessed disability at 40 per cent but the medical report Exh. P-2 indicates that permanent partial disability is only 30 per cent. The calculation made by the Tribunal is also erroneous. The Tribunal has held that the claimant is entitled for medical expenses of Rs. 10,000 plus Rs. 2,000 towards medical attendant and Rs. 10,000 for pain and suffering. Total amount coming to Rs. 22,000 but the award is for Rs. 31,000.

Having considered the totality of the facts and circumstances of the present case and the material on record we are of the opinion that the claimant is entitled to Rs. 15,000 towards pain and suffering instead of Rs. 10,000 and further sum of Rs. 15,000 towards expenses incurred by her for treatment and operations in hospital at Bombay where she remained for two months and had to get steel rods inserted in her thigh. Thus, the compensation would be Rs. 22,000 + Rs. 5,000 + Rs. 15,000 = Rs. 42,000. Accordingly, the award dated 30.11.93 passed in M.A. No. 73 of 1986 is modified and the compensation awarded, is enhanced to Rs. 42,000. The enhanced compensation shall carry interest at the rate of 9 per cent per annum.

The appeals are, accordingly, disposed of.