(2006) 07 MP CK 0096

In the Madhya Pradesh High Court

Vandna Shukla and Others APPELLANT

Vs

Sitaram Jajodia and Others RESPONDENT

Date of Decision : 31-07-2006

Acts Referred:

Citation : (2008) ACJ 236

Hon'ble Judges : Ravi Shankar Jha, J;A.K. Mishra, J

Bench : Division Bench

Judgement

Arun Mishra, J.—This appeal has been preferred by the claimant aggrieved by the award dated 28.10.2004 passed by the M.A.C.T., Shahdol in Claim Case No. 54 of 2003.

2. In an accident dated 30.5.2003 when the deceased was going back to his house from bank after performing his duty, he was dashed by truck No. MP 18-6777 at Banganga Road. The truck was driven by Dharmendra Soni in a rash and negligent manner as per the claimant. The truck was owned by Sitaram Jajodia and insured with New India Assurance Co. Ltd. Satya Narayan Shukla sustained injuries. He was admitted in District Hospital, Shahdol from where he was referred to Jabalpur. He died while he was under treatment. Report was lodged at concerned police station. The deceased was earning a sum of Rs. 15,000 by way of salary from the bank. Claimants are widow and children of the deceased. They were dependent on earnings of the deceased. Compensation of Rs. 31,20,640 was claimed. The age of the deceased was 3972 years.

3. The owner and driver in the written statement contended that the driver of the truck was not negligent. Deceased himself was negligent. He could not balance the scooter. Excessive compensation has been claimed. The driver was having valid and effective driving licence. Vehicle was insured and liability, if any, is that of insurer.

3.1. The insurer in the written statement contended that excessive compensation has been claimed. Age of the deceased was 45 years. The insurer of scooter has not been arrayed as party. Driver was not having valid and effective driving licence.

4. The Claims Tribunal has found that accident was caused due to rash and negligent driving of Dharmendra Soni. Owing to the injury sustained in the accident Satya Narayan died. Income of the deceased has been assessed as per salary drawn by him from the bank which is Rs. 1,45,911.84 per annum. After deducting ''/3rd amount for self expenditure the amount of Rs. 96,552 was found to be the loss of dependency per annum. However, family pension which was received by the claimants from the bank on account of death of the deceased has been deducted. A sum of Rs. 60,000 towards pension has been deducted and further amount of the insurance premium of Rs. 105.35 and amount of contribution to society Rs. 30 have also been deducted. Total amount of Rs. 1,083.50 has been deducted. This annual loss of dependency has been worked out at Rs. 35,469. Multiplier of 16 has been applied as the age of the deceased was less than 40 years, i.e., 3972 years. The compensation which has been worked out by Tribunal is Rs. 5,67,404. In addition Rs. 10,000 for loss of consortium and Rs. 2,000 for funeral expenses have been awarded. Thus total compensation which has been arrived at by Claims Tribunal was Rs. 5,79,404 along with interest at the rate of 9 per cent from the date of filing of claim application, i.e. 17.11.2003. Consequently, this appeal has been preferred for enhancement of compensation.

5. Mr. D.N. Shukla, the learned Counsel appearing for the appellant has submitted that amount of family pension, amount of life insurance premium and the amount deposited towards society could not have been deducted as that was income of the deceased. Thus annual dependency which has been worked out after deducting the amount of family pension, the insurance premium and amount of contribution to society is incorrect. Thus compensation be suitably enhanced by working out annual dependency.

6. Mr. Rakesh Jain, learned Counsel for insurer has submitted that certain amount has been included by the Tribunal which could not have been included in salary. He has submitted that HRA and conveyance allowance could not have been included in income of the deceased. The gross salary of the appellant was Rs. 12,159.32 out of which amount of HRA Rs. 515.25 and conveyance allowance of Rs. 54.51, deserves to be deducted.

7. After hearing learned Counsel for the parties we find that gross salary inclusive of dearness allowance, special allowance, etc. was Rs. 12,159.32. We round it off to Rs. 12,160. Out of this a sum of Rs. 570 for conveyance allowance and HRA has to be deducted. Thus monthly income of the appellant comes to Rs. 12,160 - Rs. 570 = Rs. 11,590. We round it off to Rs. 11,600 per month. The annual income comes to Rs. 11,600 x 12 = Rs. 1,39,200. After deducting 1/3rd amount for self expenditure which the deceased would have spent on himself had he been alive, loss of dependency comes to Rs. 92,800. The age of the deceased was 39 1/2 years, multiplier of 16 is applicable, which we apply. Thus total loss

of dependency comes to Rs. 92,800 x 16 = Rs. 14,84,800. We award further sum of Rs. 5,000 for loss of consortium to the widow, Rs. 3,000 for the funeral expenses, Rs. 2,500 for loss to estate and Rs. 5,000 for loss of expectancy of life. Thus total compensation comes to Rs. 15,00,300. In our opinion it would be proper to award interest at the rate of 6 per cent per annum from the date of filing of the claim petition on the entire compensation including the amount which has been awarded by the Claims Tribunal as the rate of interest has substantially gone down. Thus, the entire compensation to carry interest at the rate of 6 per cent per annum from the date of filing of the claim petition.

8. Resultantly, the appeal is allowed in part. Compensation of Rs. 15,00,300 is awarded at the rate of 6 per cent per annum from the date of filing of the claim petition till realisation. Parties to bear their own costs as incurred.

