

(1994) 03 MP CK 0013

In the Madhya Pradesh High Court

Case No : M.A. No's. 404 of 1992 and 75 of 1993

Vasundhara and Others

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 22-03-1994

Acts Referred:

Citation : (1995) ACJ 919

Hon'ble Judges : V.D. Gyani, J; R.D. Shukla, J

Bench : Division Bench

Advocate : R.N. Dave, for the Appellant; Government Pleader, for the Respondent

Judgement

R.D. Shukla, J.—This order shall dispose of M.A. No. 404 of 1992 filed by the claimants and M.A. No. 75 of 1993 filed by the State of M.P. through Chief Secretary, Registrar, Sahakari Samitiyan and Dy. Registrar, Sahakari Samitiyan.

2. Brief history of the case is that on 12.10.1986 at 5.30 p.m., one Prakash Pathak, who was an employee in the State Bank was going from Shankar Bag to Ahilya Ashram on a scooter No. MPI 7656, owned by him. Meanwhile the jeep No. MPZ 4158 came from the opposite direction at an excessive speed and dashed against the scooter. Prakash was thrown off and sustained injuries in the head and leg. He died nearly two hours after the incident. Vasundhara Pathak, who is the widow of Prakash Pathak, Kalpana d/o Prakash Pathak and Kiran s/o Prakash Pathak, filed a claim petition claiming compensation to the tune of Rs. 10,42,000 under the following headings:

General damages Rs. 6,71,000/-

Expected amount of gratuity Rs. 66,000/-

Loss of love and affection Rs. 1,00,000/-

Loss of consortium Rs. 2,00,000/-

Damages towards scooter Rs. 5,000/-

It appears the father and mother of Prakash Pathak, Raja Bhoj and Prabhavati Pathak, were also claimants in the case, but they died during the pendency of petition and as such their names were struck off. The respondent State contested the claim and pleaded that Prakash Pathak himself was negligent in driving the scooter, as his scooter was at excessive speed, he could not maintain the balance and dashed against the jeep.

3. After trial the learned Tribunal has come to a conclusion that the accident happened due to the rash and negligent driving of the jeep and hence passed an award of Rs. 2,40,000/- as general damages, Rs. 5,000/- for loss of consortium and Rs. 5,000/- for mental agony. Thus, Rs. 2,50,000/- has been awarded as compensation in all.

4. The claimants-appellants have filed appeal No. 404 of 1992 for enhancement of the compensation amount on the ground that the dependency of claimants has been estimated on the lower side and the future chance of promotion and increase in pay has not been taken into consideration.

The State Government has filed an appeal bearing M.A. No. 75 of 1993 on 5.1.1993 against the said award on the ground that rash and negligent driving has not been proved and the compensation awarded is excessive. The appeal was filed late with an application for condonation of delay. The same was accepted vide order dated 24.6.1993.

5. The first point for determination that arises in this case is as to whether the driver of jeep was negligent and whether the accident occurred due to rash and negligent driving of the vehicle by driver of jeep or whether there was contributory negligence of Prakash Pathak?

Claimants have examined PW 3, Ajay Datta and PW 4, Arvind Gaud, in support of their contentions. Both of them have stated that they were going on a scooter and jeep involved in the accident came from behind at a high speed and went ahead by overtaking them and in this act of overtaking it dashed against the scooter driven by Prakash Pathak. The driver of the vehicle has not been examined by the State. There is nothing to rebut the evidence of PW 3 and PW 4. Even otherwise in the absence of the statement of driver of the vehicle *res ipsa loquitur* would be attracted. In our opinion, therefore, it has rightly been held that accident occurred due to rash and negligent driving of the jeep by the driver which was owned by the State of M.P.

6. From the evidence it has come to light that the deceased was a bank employee (there is no dispute about it). He was drawing Rs. 3,727.40 p.m. in all as is evident from salary certificate, Exh. P-8, which has been proved by PW 1, claimant Vasundhara Pathak. From the evidence it has also been proved that Vasundhara Pathak has been given appointment in the bank on compassionate grounds and she is drawing nearly Rs. 1,500/- per month. The learned Tribunal

while deciding the dependency of claimant has deducted this Rs. 1,500/- from the amount of dependency. In our opinion, that is an appointment on compassionate grounds, therefore, like gratuity and G.P.F. that amount is not to be deducted while calculating the amount of compensation. However, the same can be taken into consideration while applying the multiplier because the same would at least show that the claimants or one of the claimants is earning for sustaining himself or herself. While deciding the dependency an amount of 50 per cent or slightly more than that ought to be accepted. In this case on the date of incident parents of Prakash Pathak and the three claimants were dependent on him. Vasundhara Pathak was not under employment on that day and, therefore, on the date of accident the dependency ought to have been calculated at the rate of Rs. 2,000/- p.m., keeping in mind the deductions and various expenses of Prakash Pathak who was the head of the family and who must have been spending slightly more on himself.

In our opinion, therefore, dependency as calculated by the learned Tribunal is not correct and that ought to have been taken as Rs. 2,000/- p.m. Deceased Prakash Pathak was about 40 years at the time of accident. He could serve for further 18 years. After that looking to the increase in longevity he could survive for further period of 17 to 18 years. However, he would not have been able to earn substantially after retirement and it is expected that he would have lived on the pension or such other benefits payable by the employer, i.e., bank. Learned Tribunal has applied multiplier of 20, but, in our opinion, the multiplier could not be more than 12, i.e., 2/3rd of the remaining service period. Learned Tribunal has erred in applying multiplier of 20.

7. Learned counsel for the claimants vehemently argued, on the basis of a case in Hardeo Kaur and others Vs. Rajasthan State Transport Corporation and another, and submitted that multiplier of 24 ought to have been applied.

That was a special case of a young military officer. There was no evidence of the re-employment of the widow. The age of the officer was around 30. In such a situation that multiplier was used. In this case the deceased was aged about 40 years. Claimant has also obtained appointment on compassionate grounds of death of her husband during employment and, therefore, a maximum multiplier of 12 ought to have been applied. This will take care of all the contingencies including the loss of consortium and love and affection as well. Thus, the compensation comes to Rs. 2,000/- x 12 x 12 = Rs. 2,88,000/- in all.

In our opinion, therefore, the compensation awarded deserves to be enhanced up to Rs. 2,88,000/-. Of course on different counts than calculated by the Tribunal.

8. As a result, the appeal filed by the claimants, i.e., M.A. No. 404 of 1992 partly succeeds and the compensation awarded is enhanced to Rs. 2,88,000/-. The claimants shall further be entitled to interest at the rate of 12 per cent per annum from the date of application till the date of payment of compensation

amount.

Out of this amount 50 per cent should be kept in a nationalised bank with annual interest payable thereon in the name of claimant Nos. 2 and 3 separately by dividing it half and half. The rest amount may be paid to claimant No. 1 with a further direction that 50 per cent of that half amount shall also be kept in a fixed deposit in a nationalised bank with monthly or annual interest payable thereon. The rest of the amount may be paid to claimant No. 1 in cash. The interest accruing on the amount as referred above may be withdrawn by the claimant for the expenses. The amount so deposited shall continue to remain in the bank for 15 years so that the claimants do not become dependent on the society by squandering money with the assistance of relations and intermeddlers.

The appeal filed by the State (M.A. No. 75 of 1993) has no substance. It is, accordingly, dismissed with costs. Counsel's fee Rs. 500/- in each of the appeals.