(2006) 02 MP CK 0063

In the Madhya Pradesh High Court

Vimla Dubey and Others APPELLANT

Vs

Bhagwan Singh and Others RESPONDENT

Date of Decision : 28-02-2006

Acts Referred:

Citation : (2006) 2 ACC 727 : (2007) ACJ 1375

Hon'ble Judges : Syed Ali Naqvi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.A. Naqvi, J.—This appeal is preferred by appellants-claimants against the award dated 2.1.2001 passed by Eighth Motor Accidents Claims Tribunal, Gwalior in Claim Case No. 62 of 1996 for enhancement of compensation amount.

2. The admitted facts are that Bhagwan Singh, respondent No. 1, was driver of the truck No. CIW 9039; Dara Singh, respondent No. 2, was the owner and National Insurance Co. Ltd., respondent No. 3, was insurer of above said truck on the date of incident. Respondent No. 4 was the driver of Tatamobile No. MP 07-B 6843, Usha Pawaiya, respondent No. 5, was owner and United India Insurance Co. Ltd., respondent No. 6, was insurer of above said Tata-mobile on the date of incident. Accident occurred on 20.6.95. Deceased Bhagwanlal Dubey was travelling in a Tatamobile No. MP 07-B 6843, and truck No. CIW 9039 dashed against the said Tatamobile and Bhagwanlal Dubey got injuries in the incident and succumbed to the injuries. It has been held by learned Tribunal that accident occurred due to rash and negligent driving of truck driver Bhagwan Singh and respondent Nos. 1 to 3 are liable to pay compensation to appellants-claimants to the tune of Rs. 2,27,000 with 12 per cent interest.

3. As pleaded by appellants-claimants that they were dependants of the deceased Bhagwanlal Dubey and deceased Bhagwanlal Dubey was 43 years of age. He was working in JC Mills, Birla Nagar, Gwalior as Fitter and was earning Rs. 2,300 per month and by deploying security, he was earning Rs. 3,000 per

month. His total income was Rs. 5,300 per month. Out of earnings, the deceased Bhagwanlal Dubey used to spend amount on the maintenance of appellants-claimants and in future, he could have earned Rs. 6,000 per month.

Accident occurred due to rash and negligent driving of the respondent No. 1. The respondent No. 2 was the owner and respondent No. 3 was insurer of the offending vehicle. Respondent Nos. 1 to 3 are jointly and severally liable to pay compensation amount of Rs. 11,92,000 to the appellants-claimants.

4. Respondent No. 3 denied allegations of the claim petition. He denied factum of earnings of Bhagwanlal Dubey. Both the drivers were not having valid licence. The respondent No. 3 supported the impugned award and prayed for dismissal of claim petition.

5. After completion of trial and hearing both the parties, learned Tribunal awarded Rs. 2,27,000 as compensation to the appellants-claimants against respondent Nos. 1 to 3. Aggrieved by the impugned award, the appellants-claimants filed this appeal for enhancement of compensation amount.

6. It has not been disputed that Bhagwanlal Dubey died in motor accident and it has been held by learned Tribunal that truck No. CIW 9039 was offending vehicle and respondent No. 1 was driving the said vehicle rashly and negligently at the time of incident and respondent Nos. 1 to 3 are jointly and severally responsible to pay compensation to the appellants-claimants. Only question for consideration is that, whether compensation amount awarded by learned Tribunal to the appellants to the tune of Rs. 2,27,000 is adequate or not and they are entitled for enhancement of compensation amount or not?

7. Learned Tribunal in para 71 of the award held that annual income of deceased Bhagwanlal Dubey was Rs. 21,000. Deducting one-third amount towards personal expenses of deceased came to the conclusion that dependency of the appellants on the deceased was Rs. 14,000 per annum and using multiplier of 15, the appellants-claimants are entitled to get Rs. 2,10,000 on account of loss of dependency. Vimla, PW 8, deposed that her husband Bhagwanlal Dubey was in JC Mills and was earning Rs. 2,300 per month. He was also employed in security service and he was earning Rs. 3,000 per month, his total income was Rs. 5,300 per month. She admitted in para 7 of her cross-examination that JC Mills has been wound up in the year 1991-92, while this accident occurred on 20.6.1995. It is proved by admission of Vimla that on the date of accident, deceased Bhagwanlal Dubey was not working in JC Mills. In Exh. P45 monthly salary of Bhagwanlal Dubey is shown as Rs. 1,971, so Exh. P45 belies the statement of Vimla that Bhagwanlal Dubey was getting Rs. 2,300 per month as pay from JC Mills. No other witness has been examined regarding income of Bhagwanlal Dubey. In which firm or in which institution Bhagwanlal was serving as security officer or guard no evidence has been given in this report. Looking to the totality of the evidence of Vimla that Bhagwanlal Dubey was earning Rs. 5,300 per month is not reliable. Looking to the facts and circumstances of the case,

statement of Vimla and documents filed by appellants-claimants, I am of the opinion that the learned Tribunal did not commit any error in holding that annual income of Bhagwanlal Dubey was Rs. 21,000. I confirm finding of learned Tribunal about annual income of deceased Bhagwanlal Dubey.

8. It has been argued by the learned Counsel appellants-claimants that looking to size of family, deduction on account of personal expenses of deceased Bhagwanlal Dubey should be one-fourth instead of one-third. He placed reliance on judgment dated 23.7.2004 passed in M.A. No. 568 of 2000, judgment dated 11.2.2003 passed in M.A. No. 362 of 1998 and judgment dated 20.7.2004 passed in M.A. No. 304 of 1994. In these decisions of M.P. High Court, it has been held that there is no rule that one-third amount should always be deducted from annual income of deceased towards personal expenses of the deceased. Deduction is normally one-third, if number of dependants is more, necessarily amount spent by bread-earner towards his own personal expenses will be much less. In this case, one-fifth amount and one-fourth amount has been deducted for personal expenses of the deceased. In all the above citations, a number of dependants was five and more.

9. In the present case also, number of dependants of deceased Bhagwanlal Dubey is five, so it can safely be presumed that the amount spent by the deceased Bhagwanlal Dubey for his own personal expenses will be less than one-third of annual income. Looking to age of deceased and age of the appellants-claimants and considering these facts, deduction of one-fourth instead of one-third towards personal expenses of the deceased is sufficient. As per above discussion, I am of the view that learned Tribunal erred in deducting one-third amount of annual income for deceased''s personal expenses.

10. Annual income of deceased Bhagwanlal Dubey is proved as Rs. 21,000. After deducting one-fourth amount for personal expenses of the deceased Bhagwanlal, Rs. 15,750 comes as dependency of appellants-claimants. Deceased Bhagwanlal Dubey was 43 years of age at the time of his death, multiplier of 15 applied by learned Tribunal is proper and adequate. So, total amount of compensation towards pecuniary loss shall be Rs. 15,750 x 15 = Rs. 2,36,250. On other counts the learned Tribunal awarded Rs. 17,000 which has not been challenged by both parties. After adding this amount to the above said compensation amount comes to Rs. 2,53,250. As per above discussion it is held that the appellants-claimants are entitled to get the total compensation amount of Rs. 2,53,250 instead of Rs. 2,27,000 on pecuniary death of Bhagwanlal Dubey. Consequently, this appeal is allowed and awarded amount is modified and enhanced and instead of Rs. 2,27,000 to get Rs. 2,53,250 and the appellants-claimants are entitled to get this amount from respondent Nos. 1 to 3.

11. Appellants-claimants shall get 6 per cent per annum interest on this enhanced amount from the date of award passed by learned Tribunal. While, remaining amount shall carry interest at the rate awarded by the learned Tribunal. Respondent Nos. 1 to 3 shall be jointly and severally liable for payment

of this award amount. It shall be disbursed in accordance with direction given by learned Tribunal. No order as to costs.

