Ramesh Dubey and anr. Vs. Anil Kumar Mashih and ors.

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Court : Chhattisgarh

Decided On : Jul-21-2004

Reported in : 2006ACJ915

Judge : A.S.V. Moorthy, C.J. and; L.C. Bhadoo, J.

Appeal No. : M.A. No. 1092 of 1996

Appellant : Ramesh Dubey and anr.

Respondent : Anil Kumar Mashih and ors.

Advocate for Def. : Srikumar Agrawal and; A. Gupta, Advs.

Advocate for Pet/Ap. : Yashwant Tiwari, Adv.

Judgement :

A.S.V. Moorthy, C.J. and L.C. Bhadoo, J.

1. Mr. Yashwant Tiwari, learned Counsel for the appellants. Mr. Srikumar Agrawal, Senior Advocate with Mr. A. Gupta, the learned Counsel for respondent No. 3. Heard both the counsel.

2. One Anil was going on a scooter in J.P. Square, Cross Avenue, Sector-6, Bhilai at 15.30 hours on 9.3.1994, when a truck bearing registration No. MP 24-C 1308 driven in a rash and negligent manner came from the opposite direction and dashed against the scooter, as a result of which said Anil was thrown away and

died on the spot.

3. The father and the mother by name Ramesh and Pushpa filed Claim Case No. 54 of 1994 on the file of Third Additional Motor Accidents Claims Tribunal, Durg claiming compensation of Rs. 51,30,000. Tribunal held that the claimants are entitled for compensation of Rs. 50,000. Being aggrieved by the said award the present appeal has been filed by the appellants-claimants.

4. The only question that arises for consideration is as to what is the just and proper compensation payable to the claimants.

5. There is no dispute that victim Anil was, at the relevant time, aged 25 years and the father and mother, by name, Ramesh and Pushpa were aged 57 and 45 years respectively.

6. The next question is as to what was the income that the deceased was getting from his various businesses and how much he was contributing to his parents.

7. The claim of the parents is that the deceased was holding diploma in refrigeration and air conditioning and that he was getting daily income of not less than Rs. 100. But, this claim of the parents has been disputed by the respondents. A specific question was put to the parents in the cross-examination with regard to this and they have replied to the effect that the diploma obtained by the victim has not been produced before the court. In the circumstances, we are not inclined to accept the claim of the parents that the victim was earning either Rs. 5,000 as claimed in the claim petition or at least Rs. 3,000 as claimed in the evidence.

8. Other business, according to the parents, is the juice shop which the deceased was running in Sector-9, Bhilai. In fact, this claim of the parents has not been seriously disputed by respondents. Hence, we have to proceed on the basis that the deceased was in fact running a business, namely, juice shop. Apart from this, it is also in evidence that there is one more juice shop, but of course that was looked after by the father of the deceased. It also transpires from the evidence that whenever the father was not available, the victim used to look after the shop. From this business the deceased was getting not less than Rs. 3,000 per month.

Parents would also claim that deceased was looking after a flour mill. They would contend that he was getting not less than Rs. 2,000 per month. But, here again we do not find any evidence to substantiate this. No licence was produced before the court by the parents.

9. There is one other piece of evidence, which is of much significance, i.e., document Exh. PL It is nothing but an order of assessment passed by the Income Tax Department. From this document it transpires that the deceased paid Rs. 1,400 by way of income tax. Of course, this document does not disclose as to what was the gross or net income of the deceased. Probably, this order came to be passed in summary assessment.

10. The above facts and circumstances would disclose that the deceased was in fact earning a substantial amount which we would take not less than Rs. 3,500 to Rs. 4,000 per month. Out of this sum the deceased would have certainly contributed Rs. 2,000 to his parents which would come to Rs. 24,000 per year. Considering the age of the deceased so also the claimants, we are of the opinion that the proper multiplier to be adopted is 11 and in which case one can arrive at a figure of Rs. 2,84,000. To this figure we have to add Rs. 10,000 towards love and affection and Rs. 5,000 towards funeral expenses, which would take us to a total figure of Rs. 2,99,000. We would round it off as Rs. 3,00,000. The Tribunal has awarded only Rs. 50,000. Hence, we have to enhance the award by Rs. 2,50,000. In other words, we hold that the appellants-claimants would be entitled for a sum of Rs. 2,50,000 over and above what has already been fixed by the Tribunal. This enhanced amount shall carry the interest at the rate of 9 per cent per annum from the date of presentation of the claim petition.

Accordingly, the appeal is disposed of.

Parties are entitled for certified copy of this order.