

Durga Prasad Vs. Suvrati and ors.

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Court : Madhya Pradesh

Decided On : Mar-20-2003

Reported in : III(2004)ACC203; 2004ACJ1046; 2003(2)MPHT437;
2003(3)MPLJ99

Judge : R.B. Dixit, J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 168, 171 and 173

Appeal No. : Misc. Appeal No. 594/2002

Appellant : Durga Prasad

Respondent : Suvrati and ors.

Advocate for Def. : B.N. Malhotra, Adv. for Respondent No. 3 and ;None for Respondent Nos. 1 and 2

Advocate for Pet/Ap. : N.D. Singhal, Adv.

Judgement :

R.B. Dixit, J.

1. Learned Addl. Claims Tribunal, Shivpuri at Karcra by impugned award dated 23-4-2002 passed in Claim Case No. 16/2001 has granted compensation of Rs. 15,000/- for the death of deceased Tulsia sister of appellant.

2. It is not disputed that deceased Tulsia died in motor accident on 6-6-2001 and she was having 8 Bigha of agricultural land in her possession and was living with appellant at the time of accident.

3. Learned Trial Court by impugned award has held that deceased was aged about 75 years and was living with appellant, however, since appellant was not dependent on her, he is not entitled for any compensation except funeral expenses of Rs. 10,000/- and Rs. 500/- for love and affection.

4. Learned Counsel for appellant has contended that deceased was having income of Rs. 50,000/- from her agricultural land and applicant being brother was dependent upon her, therefore, compensation could not be awarded assessing this income of deceased. However, learned Counsel for respondent No. 3, on the other hand has submitted that deceased being 75 years of age was depending upon appellant who is brother aged about 50 years and in the circumstances, it cannot be said that applicant was dependent on the deceased. Reliance is placed on a decision of Apex Court in the case of Chaturbhuj Pande v. Collector, Raigarh, reported in AIR 1969 SC 255, wherein, it has been observed that in assessing value of evidence, Judges are bound to call in aid their experience of life and test the evidence on the basis of probabilities. Evidence of only one party even when no evidence of rebuttal is led by opposite party need not necessarily be accepted.

5. There is no evidence on record that deceased herself was working as labourer in the agricultural field and therefore, it had rightly been held by learned Trial Court that appellant was not dependent on deceased. He still holds the land and is getting benefit of it which was previously held by deceased. However, compensation in no way can be less than Rs. 50,000/- as has been held by this Court in the case of Anwar Shah v. Ashok, reported in 2000 (1) MPWN 112.

6. Learned Counsel for appellant relies upon a Division Bench decision of this Court in the case of United India Insurance Co. Ltd. v. Mohd. Ashique and Ors., reported in 1998 ACJ 589, where deceased aged about 42 years and was agriculturist while the claimants were widow and others, it was held that assets left by deceased and three legal heirs have been getting benefit therefrom during life time of deceased, no deduction for value of such assets can be allowed. However,

it is to be noticed that in the present case, dependents are not widow or others but younger brother of deceased.

7. Hon. Supreme Court in the case of Gujrat State Road Transport Corporation, Ahmedabad v. Ramanbhai, reported in AIR 1987 SC 1690, has also made it clear that it is to be remembered that in the Indian family, brothers, sisters and brothers' children and sometimes foster children live together and they are dependent upon the bread winner of the family and if the bread winner is killed on account of a motor vehicle accident, there is no justification to deny them compensation.

8. In the facts and circumstances of the present case, it is not proved that the deceased was the bread winner of appellant. In the circumstances, applicant/appellant is not entitled to compensation more than Rs. 50,000/-, however, amount already awarded by Tribunal is also to be added to it.

9. For the reasons stated hereinabove, this appeal is partly allowed and it is directed that the appellant is entitled to compensation of Rs. 65,000/-together with interest at the rate of 9% per annum from the date of application.