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Court : Madhya Pradesh

Decided On : Jan-16-2006

Reported in : II(2006)ACC201; 2006ACJ2383

Judge : A.M. Sapre and ;A.K. Tiwari, JJ.

Acts : Motor Vehicles Act - Sections 173

Appeal No. : M.A. Nos. 57, 129, 134, 135, 167 and 248 of 1999

Appellant : Meena and ors.

Respondent : Madhya Pradesh State Road Trans. Corpn. and anr.

Advocate for Def. : S.H. Karanjwala, Adv.

Advocate for Pet/Ap. : Manish Jain, Adv.

Judgement :

A.M. Sapre, J.

1. The decision rendered in this appeal shall govern disposal of other connected five appeals being M.A. Nos. 57, 129, 134, 135 and 167 of 1999, because firstly all these appeals arise out of the same award passed by Claims Tribunal and secondly they are inter se same parties, i.e., in the nature of cross-appeals filed against each other and lastly, all these appeals arise out of the same motor

accident.

3. Facts in all these appeals being common to a large extent except insofar as they relate to personal claim of the claimants, they need mention in brief infra.

2. This is an appeal (M.A. No. 248 of 1999) filed by the claimants under Section (Honda) 173 of the Motor Vehicles Act against an were award, dated 16.9.1998, passed by learned Third Additional Member, Motor Accidents Claims Tribunal, Ujjain in Claim the ase No. 7 of 1994. By impugned award, the learned Member of the Claims Tribunal awarded a total sumof Rs. 1,85,000 to the claimants for the death of one Rajesh who ied in a motor bus accident. In this appeal filed by the claimants, i.e., legal representatives of the deceased Rajesh, the question which arises for consideration is whether any case for further enhancement in the compensation awarded by the Tribunal is made out and if so to what extent?

4. On 21.1.94, Suresh Chandra, Rajesh and Akhilesh were going on motor cycle from Shajapur to Maxi when they dashed by a bus bearing No. MP 09- S 0273 belonging to State Road Transport. The impact of dash was so violent that all three died on the spot. At the relevant time, the bus was being driven by respondent No. 2 (N.A. No. 2). It is this incident which gave rise to filing of three claim petitions, i.e., Claim Petition Nos. 6, 7 and 8 of 1994. So far as Claim Petition No. 6 of 1994 was concerned, the same was filed by the legal representatives of deceased Akhilesh, whereas Claim Petition No. 7 of 1994 was filed by the legal representatives of the deceased Rajesh. Similarly, Claim Petition No. 8 of 1994 was filed by the legal representatives of Suresh. In all these three claim petitions, out of which these appeals arise, the claimants claimed compensation for the death of three deceased referred supra. In all these claim petitions, claimants pleaded negligence of bus driver driving the bus, i.e., at the time of accident due to which the accident occurred causing death of three persons. Respondcnts/non-applicants denied the material averments but admitted the occurrence of accident. Parties adduced evidence. By impugned award, the Claims Tribunal allowed all the three claim petitions in part and awarded compensation to each set of claimants. It is against this award, the claimants have filed three appeals being M.A. Nos. 248, 57 and 134 of 1999 whereas

M.P.S.R.T.C., i.e., non-applicant has filed three appeals being M.A. Nos. 135, 167 and 129 of 1999 against these three set of claimants challenging the award rendered against them. So, if in three appeals filed by claimants referred supra, the question is: whether compensation awarded to the claimants is adequate or not and if not, whether it is liable to be enhanced and if so to what extent? The questions involved in other three appeals filed by the M.P.S.R.T.C. are whether excessive compensation is awarded to claimants and if so, whether any case for reduction in compensation awarded by the Tribunal is made out? And secondly, whether finding in relation to nature of accident which is recorded in favour of claimants and against the M.P.S.R.T.C. holding them (driver of M.P.S.R.T.C.) negligent is factually and legally sustainable? This is how in all these appeals and cross-appeals whole controversy is involved.

5. Heard Mr. Manish Jain, the learned Counsel for the appellants and Mr. S.H. Karanjwala, the learned Counsel for the respondents.

6. Having heard the learned Counsel for the parties and having perused the record of the case, we are inclined to allow the appeals in part filed by the claimants, i.e., M.A. Nos. 248, 57 and 134 of 1999 and dismiss the appeals filed by M.P.S.R.T.C., i.e., M.A. Nos. 135, 167 and 129 of 1999. As a consequence, the impugned award deserves to be modified in favour of the claimants, i.e., appellants of three appeals mentioned above to the extent indicated infra.

7. We have gone through the evidence adduced by the parties. So far as the claimants are concerned, they have examined Ishwari Lal, PW 4, as one of the eyewitnesses who witnessed the accident. He has in clear terms deposed and we have no reason to disbelieve his version that it is the bus which dashed the motor cycle. He has deposed that bus was in speed and dashed the motor cycle which was corning from opposite direction. It is clear from his evidence that no case of negligence could be attributed to motorcyclist because in his cross-examination, nothing was taken out so as to put blame on the motorcyclist. Ishwari Lal was an eyewitness. He had no interest in the case. He was not related to any of the claimants. He happened to be on the spot with his tractor-trolley on road when this incident occurred. We, therefore, find no case to disbelieve him and accept his

evidence for holding that accident occurred due to negligence of bus driver. In our opinion, the Tribunal was justified in placing reliance on the evidence of Ishwari Lal, PW 4, in forming an opinion that the accident in question did occur due to sheer negligence of bus driver. True it is, that the non-applicants also examined the bus driver, the non-applicant No. 2, but in our opinion, apart from the fact that he was an interested witness, his testimony does not inspire confidence when read in its totality. His version was not supported by Ishwari Lal. No such story was put to Ishwari Lal in cross-examination. In fact, Ishwari Lal denied the manner in which such accident occurred. We, thus, believe Ishwari Lal and disbelieve Ram Karan, non-applicant No. 2, in their respective oral version. As a consequence, we uphold the finding of Claims Tribunal on this issue and reject the prayer made by the M.P.S.R.T.C. in their three appeals referred supra. This takes us to the issue of quantum in each case.

8. Coming to appeal, i.e., M.A. No. 248 of 1999, it is a case of death. Rajesh, aged 24, an agriculturist died. The Tribunal took Rs. 1,500 as his monthly income and worked out Rs. 1,000 as dependency. On this basis and applying multiplier of 15, worked out compensation of Rs. 1,80,000 payable to the claimants. In addition, a sum of Rs. 5,000 was awarded towards funeral expenses and loss of consortium and love and affection, etc. In all, thus, a total compensation of Rs. 1,85,000 was awarded. According to appellants of M.A. No. 248 of 1999, it is on lower side and hence, deserves to be enhanced whereas according to M.P.S.R.T.C., it is on higher side and hence, deserves to be reduced.

9. Having heard learned Counsel for the parties and having perused record of the case out of which this appeal arises, we are inclined to allow the appeal in part and modify the impugned award by enhancing the compensation to some extent as indicated infra.

10. In our opinion, looking to the age of the deceased, the proper multiplier was 17 in place of 15 that should have been applied in this case by the Tribunal. So far as income is concerned, the same does not call for any interference for want of any evidence adduced by the parties. In other words, the Tribunal was justified in taking Rs. 1,500 as deceased's monthly income.

11. This finding is not liable to be interfered with by this Court at the instance of either parties for enhancement or reducing. It is a notional income which every claimant is entitled to claim in terms of Schedule appended to Act and hence, there arise no question of any reduction in the income. We, therefore, uphold this finding.

12. Accordingly, the claimants, i.e., the appellants are entitled to claim a sum of Rs. 12,000 x 17 = Rs. 2,04,000. In addition, in our opinion, the claimants are entitled to claim a total of Rs. 15,000 towards funeral expenses, loss to estate, loss of love and affection, consortium, etc., in lump sum as against Rs. 5,000 awarded by the Tribunal. So, the claimants are held entitled to claim a total sum of Rs. 2,04,000 + Rs. 15,000 = Rs. 2,19,000.

13. In other words, the claimants are held entitled to total sum of Rs. 2,19,000 by way of compensation for the death of Rajesh.

14. The compensation awarded to the claimant is just, reasonable and proper looking to the facts and circumstances of the case and taking into account the law laid down by the Supreme Court in these types of cases. Indeed in such cases, no fixed and any static formula is provided for determining the compensation and the same is required to be determined on the basis of evidence adduced and the relevant factors mentioned supra. It is on this basis, the courts have to work out the award of reasonable compensation.

15. In this view of the matter, the appeal succeeds and is allowed in part. Impugned award is modified to the extent indicated above. The enhanced sum will carry interest at the rate of 6 per cent per annum from the date of application till realization. All other findings are upheld being not under challenge.

Counsel's fees Rs. 1,500, if certified.

16. This takes us to M.A. No. 57 of 1999. This is also a death case. Suresh died. He was aged 24 years. The Tribunal took Rs. 1,500 as his monthly income and worked out dependency at Rs. 1,000. Accordingly, the Tribunal applied multiplier of 15 and determined the compensation at Rs. 1,80,000. An amount of Rs. 5,000

was then awarded for other statutory compensation and accordingly, a total compensation of Rs. 1,85,000 was awarded to the claimant. According to appellants, it is on lower side and hence, it be enhanced.

17. We have gone through the evidence adduced by the claimant on the question of quantum. We find that the deceased Suresh was an income tax payer. He was businessman. Exhs. P18 and P19 are the copies of his income tax return, which discloses that his yearly income is around Rs. 40,000. He was married and survived by his wife and daughter (respondent Nos. 2 and 3). In our opinion, we hold that his yearly income was Rs. 40,000 in place of Rs. 15,000 determined by the Tribunal. After deducting 1/3rd we get a figure of say Rs. 27,000. Applying the multiplier of 17 in place of 15, that being the proper one in terms of Schedule, we get a figure of Rs. 27,000 x 17 = Rs. 4,59,000. To this, we wish to add Rs. 15,000 towards statutory compensation of funeral expenses, loss of love and affection, consortium, etc., thereby making a total of Rs. 4,59,000 + Rs. 15,000 = Rs. 4,74,000.

18. In other words, the claimant is held entitled for a total sum of Rs. 4,74,000 by way of compensation for the death of Suresh.

19. The compensation awarded to the claimant is just, reasonable and proper looking to the facts and circumstances of the case and taking into account the law laid down by the Supreme Court in these types of cases. Indeed in such cases, no fixed and any static formula is provided for determining the compensation and the same is required to be determined on the basis of evidence adduced and the relevant factors mentioned supra. It is on this basis, the courts have to work out the award of reasonable compensation.

20. In this view of the matter, the appeal succeeds and is allowed in part. Impugned award is modified to the extent indicated above. The enhanced sum will carry interest at the rate of 6 per cent per annum from the date of application till realisation. All other findings are upheld being not under challenge except that the amount in question shall be disbursed to respondent Nos. 2 and 3 they being the real claimants of the amount being widow and daughter of deceased. Accordingly the award is modified to this extent.

Counsel's fees Rs. 1,500, if certified.

21. This takes us to M.A. No. 134 of 1999. It is also a death case. One Akhilesh died. He was aged 25 years. He was businessman--dealer of coal. He was awarded a total compensation of Rs. 1,84,000 almost like the other two set of claimants. According to appellant, it is on lower side and hence, deserves to be enhanced and hence, appeal.

22. We have gone through the evidence. We notice that deceased was an income tax assessee. Exhs. P2 to P17 are the returns of deceased indicating his income which discloses that his yearly income is around Rs. 40,000. In our opinion, we hold that his yearly income was Rs. 40,000 in place of Rs. 15,000 determined by the Tribunal. After deducting 1/3rd we get a figure of say Rs. 27,000. Applying the multiplier of 17 in place of 15, that being the proper one in terms of Schedule, we get a figure of Rs. 27,000 x 17 = Rs. 4,59,000. To this, we wish to add Rs. 15,000 towards statutory compensation of funeral expenses, loss of love and affection, consortium, etc., thereby making a total of Rs. 4,59,000 + Rs. 15,000 = Rs. 4,74,000.

23. In other words, the claimant is held entitled for a total sum of Rs. 4,74,000 by way of compensation for the death of Akhilesh.

24. The compensation awarded to the claimant is just, reasonable and proper looking to the facts and circumstances of the case and taking into account the law laid down by the Supreme Court in these types of cases. Indeed in such cases, no fixed and any static formula is provided for determining the compensation and the same is required to be determined on the basis of evidence adduced and the relevant factors mentioned supra. It is on this basis, the courts have to work out award of the reasonable compensation.

25. In this view of the matter, the appeal succeeds and is allowed in part. Impugned award is modified to the extent indicated above. The enhanced sum will carry interest at the rate of 6 per cent per annum from the date of application till realization. All other findings are upheld being not under challenge. Counsel's fees Rs. 1,500, if certified.

26. Accordingly and in this view of the matter, all the three appeals filed by claimants, i.e., M.A. Nos. 248, 57 and 134 of 1999 are allowed in part whereas, all the three cross-appeals filed by M.P.S.R.T.C., i.e., M.A. Nos. 135, 167 and 129 of 1999 are dismissed.

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