

**Ashok Kumar and ors. Vs. Arvind Kumar and ors.**

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**Court :** Madhya Pradesh

**Decided On :** Feb-03-2003

**Reported in :** II(2004)ACC154; 2004ACJ109; 2003(3)MPHT96

**Judge :** Bhawani Singh, C.J. and ;S.L. Jain, J.

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

**Appeal No. :** Misc. Appeal No. 1480/99

**Appellant :** Ashok Kumar and ors.

**Respondent :** Arvind Kumar and ors.

**Advocate for Def. :** Sanjay K. Agarwal, Adv. for Respondent No. 3

**Advocate for Pet/Ap. :** Anil Lala, Adv.

**Disposition :** Misc. appeal allowed

**Judgement :**

ORDER

Bhawani Singh, C.J.

1. Through this appeal, award of Motor Accidents Claims Tribunal, Mandla in Claim Case No. 36 of 1998 dated January 18, 1999 has been challenged.

2. Briefly stated, appellants are parents and brother and sisters of Rajesh Kumar Kuchwaha (21) who died in the motor accident on February 22, 1995 when Truck No. CPK 7955 driven by Anand Kumar Patel, owned by Arvind Kumar and insured with National Insurance Company Limited, hit truck No. MPQ 6636 which was being repaired by the deceased at the relevant time. Allegation is that the accident took place due to the negligence of driver of Truck No. CPK 7955. Deceased was earning Rs. 2000/- per month by way of salary and Rs. 1000/- as Mechanic with Hind Motor Garage, Mandla. As a result of this accident, the truck he was repairing fell on him resulting in serious injuries on feet, thigh, waist, knees, buttock and chest. He was taken to hospital for treatment but he died on the way. Compensation of Rs. 17,60,000/- is claimed. Owner and driver of Truck No. MPQ 6636 did not file written statement, therefore, proceeded ex parte, nor led defence at later stage. National Insurance Co. Ltd. denied the allegations and stated that mother being the only legal heir, other claimants have no justification to claim compensation. The income of deceased has also been disputed. The Insurance Company further alleges that driver of Truck No. CPK 7955 was not rash and negligent in driving the truck, the deceased was himself negligent as a result accident took place. Contributory negligence is also pleaded.

3. Claims Tribunal comes to the conclusion that the accident took place due to rash and negligent driving of Truck No. CPK 7955. Allegation of contributory negligence by the other vehicle has been rejected. Claimant No. 2 Smt. Gita Devi has been held entitled to claim the compensation. Ultimately, compensation of Rs. 2,00,000/- has been awarded with interest at the rate of 12% per annum to claimant Smt. Gita Devi.

4. Award has been challenged on the ground of inadequacy and all claimants being entitled to compensation. From the evidence, it is clear that deceased was 21 years old at the time of accident. He was driver-cum-mechanic earning Rs. 3000/- per month from both the sources. This version has not been challenged by the respondents by some kind of evidence. There is no dispute that the deceased was driver of the Truck No. MPQ 6636. At the time of accident, he was under it doing repair work, which shows he was driver as well as mechanic, earning Rs. 3000/- per month from both the sources. Earning of Rs. 3000/- from both the

sources is not much, therefore, statement with regard to income of deceased has to be accepted. After deducting one-third towards personal expenditure of deceased, yearly dependency comes to Rs. 24,000/-. Looking to the age of the deceased and the dependents, it would be just and reasonable to apply multiplier of seventeen. Accordingly the compensation works out to Rs. 4,08,000.00 plus Rs. 7000/- for loss of expectancy of life, Rs. 2500/- for loss to the estate and Rs. 2000/- towards funeral expenses, taking the total to Rs. 4,19,500/-.

5. Consequently, appeal is allowed and award of the Claims Tribunal is modified. All the claimants are held entitled to compensation of Rs. 4,19,500/- (Rupees Four lacs nineteen thousand five hundred only). Enhanced compensation will carry interest at the rate of nine per cent per annum from the date of application till payment. The compensation is distributed as under :--

(1)Ashok Kumar (father)35%(2)Smt. Gita Devi (mother)35%(3)Ku. Lata (sister)10%(4)Ku. Anju (sister)10%(5)Sanju alias Sanjay (brother)10%

Owner and driver of Truck No. CPK 7955 shall be jointly and severally liable for payment of compensation. Because the vehicle was insured with the National Insurance Company Limited, Jabalpur, it shall be paid by the Insurance Company within two months.

Costs on parties.

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