

**Devdas and ors. Vs. Kalyan and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/504264](http://sooperkanoon.com/504264)

**Court :** Madhya Pradesh

**Decided On :** Mar-20-2007

**Reported in :** 2007ACJ1756

**Judge :** Arun Mishra and ;K.S. Chauhan, JJ.

**Appellant :** Devdas and ors.

**Respondent :** Kalyan and ors.

**Judgement :**

**Arun Mishra, J.**

1. This appeal has been filed for enhancement of compensation by the claimants as against an award dated 31.1.2005 passed by the Motor Accidents Claims Tribunal, Khandwa in Claim Case No. 90 of 2003.

2. In an accident dated 5.9.2003 when the deceased was sitting by the side of the road and was talking to another person, jeep (MP 09-JZ 0121), came from opposite side, Kalyan drove it rashly and negligently and dashed the deceased. He sustained severe injuries and was taken immediately to District Hospital, Khandwa, where he was declared dead. Jeep was owned by Deem Dineshwar and insured with United India Insurance Co. Ltd. It was claimed that age of deceased was 28-29 years. He was earning a sum of Rs. 3,500 by working as tractor driver. In addition, he used to receive a sum of Rs. 50 per day as

allowance, thus, he was earning a sum of Rs. 5,000 per month. Compensation of Rs. 14,80,000 was claimed.

3. The owner and driver denied that the accident was caused by the jeep. Driver was holding a valid and effective driving licence, he was not negligent, liability, if any, was that of insurer.

4. The insurer in the written statement, inter alia, contended that deceased himself was negligent. Driver of the jeep was not having valid and effective driving licence as such insurer was not liable to make payment of compensation.

5. The Claims Tribunal has found that accident was caused by driver of the jeep who drove it rashly and negligently and crushed the deceased. Deceased died due to injuries sustained in the accident. Income has been assessed at Rs. 1,500 per month. Compensation of Rs. 1,88,000 inclusive of customary amount has been awarded along with interest at the rate of 6 per cent per annum from the date of filing claim petition till realisation. Dissatisfied with the quantum of compensation, this appeal has been preferred.

6. We have heard the learned Counsel for parties and gone through the evidence on record.

7. Age of deceased has not been disputed as found by the Claims Tribunal to be 34 years, deceased was a driver of the tractor, though it was claimed that deceased used to earn a sum of Rs. 3,500 per month by way of salary and Rs. 50 per day by way of allowance. Sumanbai, CW 1, has supported the aforesaid claim. Ramu, CW 2, has stated that deceased used to drive the tractor for the last 4-5 years, thus, it would be appropriate to assess the income of the deceased at Rs. 2,500 per month, there appears to be exaggeration in the income stated by widow of deceased, thus, annual income comes to Rs. 30,000, making 1/3rd deduction for self-expenditure which he would have spent on himself had he been alive, loss of annual dependency comes to Rs. 20,000, multiplicand of 17 is applicable at the age of 34 years, same is applied. Thus, compensation comes to Rs. 20,000 x 17 = Rs. 3,40,000. In addition claimants are further held entitled for a sum of Rs. 30,000 on account of funeral expenses, loss to estate and loss of expectancy of life,

inclusive of a sum of Rs. 7,500 awarded to the widow for loss of consortium. Thus, total compensation comes to Rs. 3,40,000 + Rs. 30,000 = Rs. 3,70,000 (rupee three lakh seventy thousand). The compensation enhanced by this court to carry the interest at the rate of 7 per cent per annum from the date of filing of claim petition till realisation.

8. Consequently, appeal is allowed in part to the aforesaid extent. No order as to costs.

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