

Gauri Bai and ors. Vs. Ramesh Kumar and ors.

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Court : Madhya Pradesh

Decided On : Aug-19-1993

Reported in : I(1994)ACC276; 1994ACJ1044

Judge : K.M. Agarwal and ;K.L. Issrani, JJ.

Appeal No. : M.A. No. 171 of 1993

Appellant : Gauri Bai and ors.

Respondent : Ramesh Kumar and ors.

Judgement :

K.M. Agarwal, J.

1. Being aggrieved by the award made by the Claims Tribunal, Jabalpur, the claimants have preferred this miscellaneous appeal for enhancement of the amount of compensation.

2. It was not disputed that in an accident with the truck driven by the respondent No. 1, owned by the respondent No. 2 and insured with the respondent No. 3, one Manbahadur died on 4.3.1981 at about 8 p.m. After the accident, the appellants as the wife and children of the deceased filed a claim petition against the respondents. In the claim petition, the Claims Tribunal was pleased to award a sum of Rs. 21,500/- to the appellants along with interest at the rate of 6 per cent

per annum from the date of petition. Being aggrieved, the claimants have preferred this appeal for enhancement of the amount of compensation as aforesaid.

3. Having heard the learned counsel for the parties, we are of the view that the finding recorded by the Claims Tribunal about the contributory negligence of the deceased does not call for any interference. As discussed and pointed out in paras 18 and 23 of the impugned award, the deceased was driving his bicycle in a drunken state of mind. He was hit by dala of the truck which is generally on the rear portion of any truck. The evidence shows that the deceased was driving his bicycle in a zigzag manner and, therefore, possibility cannot be ruled out that because of his drunken state of mind he could not keep himself at a safe distance from the passing truck and met with the accident. Accordingly, we further find that the Claims Tribunal was right in returning a finding that out of the total amount of compensation payable to the claimants, $\frac{1}{3}$ rd of such amount is liable to be deducted from it on account of contributory negligence of the deceased.

4. The Claims Tribunal determined the monthly income of the deceased at Rs. 381. He was 35 years of age on the date of the accident and was a peon in some office. The monthly dependency of the appellants was determined at Rs. 200/- and accordingly, by applying the multiplier of 15 years, compensation of Rs. 36,000/- was worked out. After so working out the amount of compensation, a sum of Rs. 12,000/- was deducted towards contributory negligence of the deceased, which was $\frac{1}{3}$ rd of the total amount of compensation determined. Accordingly, the amount of compensation payable to the appellants was reduced to Rs. 24,000/-. The appellants were found to have also received ex gratia payment of Rs. 2,500/- on account of the death of deceased Manbahadur. The Claims Tribunal further made a deduction of this amount of Rs. 2,500/- from the amount determined at Rs. 24,000/- after making deduction of $\frac{1}{3}$ rd amount on account of contributory negligence of the deceased. We are of the view that such amount of ex gratia payment could not be deducted from the amount payable to the legal representatives of the deceased. Accordingly, the award deserves to be modified to that extent.

5. We further find that the monthly dependency of the appellants was incorrectly assessed at Rs. 200/- per month. A person like the deceased having monthly income of Rs. 381/- and a family of six persons (1 wife and 4 children) could not have afforded to spend a huge amount of Rs. 181/- per month on himself. We think the deceased might have been utilising a sum of Rs.81/- wholly as his pocket expenses. Accordingly, the dependency of the appellants ought to have been determined at Rs. 300/- per month by the Claims Tribunal. If so determined, the compensation payable to the appellants would work out to Rs. 54,000/- by applying 15 years' multiple. 1/3rd of this amount comes to Rs. 18,000/- which is liable to be deducted towards contributory negligence of the deceased. Accordingly, the compensation payable to the appellants works out to Rs. 36,000/- after deducting Rs. 18,000/- from the amount of Rs. 54,000/-. As we have found earlier, the respondents are not entitled to claim adjustment of any amount received by the claimants towards ex gratia payment.

6. Under the said circumstances, this appeal deserves to be partly allowed and it is hereby partly allowed. The amount of compensation determined by the Claims Tribunal is enhanced to Rs. 36,000/- with usual interest as awarded by the Claims Tribunal and the costs of this appeal. Counsel's fee Rs. 200/-, if already certified.