

Ravish and ors. Vs. Rakesh and ors.

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Court : Madhya Pradesh

Decided On : Jul-27-2005

Reported in : 2006ACJ317

Judge : Arun Mishra and ;U.C. Maheshwari, JJ.

Acts : Indian Penal Code (IPC) - Sections 304A

Appeal No. : M.A. No. 1245 of 2001

Appellant : Ravish and ors.

Respondent : Rakesh and ors.

Advocate for Def. : Anil Lala, Adv.

Advocate for Pet/Ap. : A. Agrawal, Adv.

Disposition : Appeal allowed

Judgement :

Arun Mishra, J.

1. This appeal is preferred by the claimants aggrieved by the award dated 10.4.2001 passed by First Motor Accidents Claims Tribunal in Claim Case No. 06 of 2000.

2. Claimants are legal representatives of the deceased and three minor children of late Jagdish Yadav. Jagdish Yadav was working as Senior Agriculture Development Officer in Narmada Valley Development Authority. He was drawing salary of Rs. 8,580 per month. On 17.10.1999 when he was going from Khandwa to Khargone along with pillion rider Praveen Dubey on his motor cycle, he met with an accident on Deogaon-Bhikangaon Road with Tempo Trax MP 10-A3125, it was alleged that Rakesh drove Tempo Trax in a rash and negligent manner and dashed the motor cycle owing to which Jagdish Yadav and Praveen Dubey sustained serious injuries. Jagdish died on the way to the hospital. The motor cycle was also damaged. The F.I.R. of the accident was lodged at Police Station, Deogaon, by Praveen Dubey, CW 1. The offence was registered against one Rakesh, the driver of Tempo Trax under Section 304A of Indian Penal Code.

3. Tempo Trax was owned by Umesh. It was insured with New India Assurance Co. Ltd. Total compensation of Rs. 27,10,280 was claimed.

4. The driver and the owner did not file their written statement before the Claims Tribunal. The insurer in written statement contended that it was case of negligence on the part of the deceased himself. He drove the motor cycle rashly and negligently. Both the deceased and the driver of Tempo Trax did not have a valid and effective licence at the time of accident in violation of insurance policy, hence the insurer is not liable for payment of compensation.

5. Learned Claims Tribunal found that the driver of Tempo Trax, respondent No. 1, drove the vehicle rashly and negligently and dashed the motor cycle owing to which Jagdish Yadav died. It was not the case of contributory negligence. Deceased was not negligent. The learned Tribunal has found the salary of the deceased at Rs. 8,580 per month. However, considering chances of promotion, the learned Claims Tribunal has assessed the income of the deceased at Rs. 10,000 per month. 1/3rd amount has to be deducted for self expenditure of the deceased which he would have spent on himself, had he been alive. The widow of the deceased was receiving Rs. 3,000 per month as family pension. This amount has been deducted from the dependency. Only Rs. 36,000 has been worked out as dependency. The age of the deceased was 44 years. The multiplier of 14 has

been applied. Thus the compensation of Rs. 5,61,000 has been awarded inclusive of funeral expenses and other customary heads. In addition, for the damage to the motor cycle Rs. 12,000 has been awarded. Thus, total compensation of Rs. 5,73,000 has been ordered to be paid along with interest at the rate of 9 per cent per annum from the date of filing of claim petition along with costs Rs. 1,500, being dissatisfied with the award the claimants have preferred this appeal for enhancement of compensation.

6. After hearing learned Counsel for the parties and going through the award and record, in our opinion the approach of the learned Claims Tribunal cannot be said to be proper for determining compensation. There is nothing on record that deceased was due for promotion or was found fit. It is just a chance which was not certain. The enhancement of salary to Rs. 10,000 per month was not proper. Salary as drawn ought to have been taken as the basis for determining compensation in the facts and circumstances of the case. The deceased was drawing the salary of Rs. 8,580 per month including the dearness allowance which has to be taken into consideration while determining the just compensation payable.

7. The deduction made on account of receiving the family pension is illegal and impermissible. No such amount can be deducted as per settled law as the family pension is not the benefit arising out of the accident. It is otherwise avoidable, if death takes place in other manner. At the age of 44 years the multiplier of 15 is applicable whereas the multiplier of 14 has been applied.

8. Coming to the question of quantum of compensation, the salary of the deceased apparent from the salary certificate, P/10, he was drawing Rs. 8,580 per month. After deducting 1/3rd which amount deceased would have spent on himself, had he been alive, monthly loss of dependency comes to Rs. 5,720 and annual (Rs. 5,720 x 12) = Rs. 68,640 is worked out as yearly dependency. After applying the multiplier of 15, Rs. 68,640 x 15 = Rs. 10,29,600. We are not disturbing the amount of Rs. 12,000 awarded on account of damage to the motor cycle, as no cross-objection has been filed. We award the sum of Rs. 5,000 on account of loss of consortium to widow, Rs. 5,000 on account of loss of expectancy of life, Rs.

2,000 towards funeral expenses and Rs. 2,500 for loss to the estate. Thus, the total compensation for death comes to Rs. 10,29,600 + Rs. 5,000 + Rs. 5,000 + Rs. 2,000 + Rs. 2,500 = Rs. 10,44,100 (rupees ten lakh, forty-four thousand and one hundred only) and Rs. 12,000 for the damage to motor cycle is not disturbed. The enhanced amount to carry interest at the rate of 6 per cent per annum from the date of filing of the claim case.

9. The appeal is allowed in part. No costs.

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