

Mishri Bai and ors. Vs. Munna and ors.

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Court : Madhya Pradesh

Decided On : May-23-2005

Reported in : 2006ACJ1653

Judge : S.S. Jha and ;P.K. Jaiswal, JJ.

Appeal No. : M.A. No. 131 of 2001

Appellant : Mishri Bai and ors.

Respondent : Munna and ors.

Advocate for Def. : Akhilesh Gupta and ;Amit Bansal, Advs.

Advocate for Pet/Ap. : R.K. Goyal, Adv.

Disposition : Appeal allowed

Judgement :

S.S. Jha and P.K. Jaiswal, JJ.

1. This appeal is filed by the claimants for compensation. Claim petition filed by the claimants has been dismissed by the trial court.

2. Deceased Prem Giri aged about 45 years was an employee in the Health Department and was earning around Rs. 4,000 (rupees four thousand only) per month. On 28.11.1.996, deceased was standing on the footpath at A.B. Road,

village Budhadogar when a Matador bearing registration No. MP 07-4995 driven in a rash and negligent manner dashed against Prem Giri which caused serious injuries in the head and body which resulted in his death. Respondents denied the factum of accident.

3. Claims Tribunal after considering the evidence, dismissed the claim holding therein that accident has not taken place. Trial court has considered the evidence on record and held in para 10 of the award that no F.I.R. about the incident was lodged either by eyewitness Ashok Kumar Jain or Devendra Giri, son of deceased. F.I.R. was lodged 22 days after the incident and it appears that F.I.R. was lodged after death of Prem Giri in the hospital at Gwalior. Panchnama of dead body was prepared which has been signed by Devendra Giri, son of deceased. In the panchnama of dead body, it is specifically mentioned that accident had taken place due to fall while alighting from the terrace. The fact mentioned in the F.I.R. and the claim petition are contradictory in nature. It is mentioned in the claim petition that the deceased was standing on the footpath when accident occurred whereas in the F.I.R., Exh. P2, it is mentioned that deceased was travelling on the roof of Matador and he fell from Matador and died. Thus the fact remains that in the F.I.R. and complaint there is no conflicting statement and this fact is established that deceased has suffered injury due to the use of the said motor vehicle. If it is accepted that deceased was travelling in Matador and sitting on the roof of Matador then also he died in the accident in the use of the said motor vehicle. As such, finding of Claims Tribunal that no accident took place is set aside and it is held that Prem Giri suffered injuries and died during the use of the said motor vehicle which resulted into his death.

4. Now, the question remains regarding quantum of compensation. Deceased was an employee in the Health Department. Claimants have produced salary certificate, Exh. P9. As per Exh. P9, income of deceased was Rs. 3,962 (rupees three thousand nine hundred and sixty-two). Thus his yearly income was Rs. 47,520 (rupees forty-seven thousand five hundred and twenty). Deceased had left behind his widow and children. Therefore, it can be safely presumed that deceased was spending 1/3rd of his income upon himself and remaining income was spent on the members of his family. Thus, annual dependency is determined

at Rs. 31,680 (rupees thirty-one thousand six hundred eighty). Deceased was 45 years of age. Therefore, multiplier of 13 will be applicable in this case. On applying multiplier of 13, compensation is determined at Rs. 4,11,840 (rupees four lakh eleven thousand eight hundred forty). Appellant will also be entitled for damages under various heads such as loss to estate, funeral expenses, loss of consortium, etc., for a sum of Rs. 18,160 (rupees eighteen thousand one hundred and sixty). Total compensation is determined at Rs. 4,30,000 (rupees four lakh thirty thousand only). Claimants will also be entitled for interest at the rate of 6 per cent on the enhanced amount of compensation from the date of filing of this appeal.

5. Appeal succeeds and is allowed with costs. Counsel's fee as per schedule, if certified.

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