

Bhuri and ors. Vs. Omi and ors.

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Court : Madhya Pradesh

Decided On : Jan-29-2008

Reported in : 2009ACJ1390

Judge : Arun Mishra, J.

Appellant : Bhuri and ors.

Respondent : Omi and ors.

Judgement :

Arun Mishra, J.

1. The appeal has been preferred by the claimants for enhancement of compensation aggrieved by award dated 31.1.2001 passed by Second Motor Accidents Claims Tribunal, Gwalior in Claim Case No. 18 of 1997.

2. The claimants are widow and children of deceased Prabhu Dhakad, aged 50 years who died in an accident on 30.12.96 while he was sitting on a culvert near village Therki, truck (No. MP 06-6942) came from Khandi side, it was driven rashly and negligently by Omi alias Omprakash and dashed several persons who were sitting on culvert and fell down in a ditch below culvert. Prabhu and others sustained injuries, Prabhu succumbed to the injuries, report of the accident was lodged at concerned police station by Murli, offence against driver was registered under Sections 279, 337 and 304-A of the Indian Penal Code, 1860, compensation

of Rs. 12,20,000 was claimed, deceased was doing business, he was running a kirana shop and his income was claimed to be Rs. 10,000 per month.

3. The only question agitated in appeal is about quantum of compensation as such other facts are not being referred to. The Tribunal has awarded compensation of Rs. 1,40,000 to the claimants assessing the income of the deceased at Rs. 15,000 per annum prescribed for non-earning member applying the multiplier of 13, the aforesaid compensation has been worked out inclusive of the customary amount. Dissatisfied with the same, appeal has been preferred.

4. I have heard the learned Counsel for parties and gone through the evidence on record.

5. The main question for consideration is about the income of deceased. No doubt about it that accounts were not placed on record, but Murari, CW 1, son of deceased, has stated that the deceased used to run a kirana shop and used to look after the agriculture also. Family was having 30-40 bighas of agricultural land, they were the members of a joint Hindu family. Kirana shop has been closed after death of Prabhu Dhakad while agriculture was being carried on by sons of deceased as stated by aforesaid witness. It was not appropriate for the Tribunal to assess the income as provided for a non-earning member for an earning member. It would be appropriate to assess the income of the deceased at Rs. 3,500 per month, annual income, thus, comes to Rs. $3,500 \times 12 = \text{Rs. } 42,000$, making 1/3rd deduction towards the self expenditure of the deceased which amount he would have spent on himself had he been alive, loss of annual dependency comes to Rs. 28,000, multiplier of 13 is applicable as the age of deceased was between 45-50 years. Thus, capitalising the loss the amount comes to Rs. $28,000 \times 13 = \text{Rs. } 3,64,000$. Further, a sum of Rs. 40,000 is awarded to the claimants under the customary heads such as loss to estate, loss of expectancy of life and funeral expenses, inclusive of a sum of Rs. 10,000 awarded to the widow on account of loss of consortium. Thus, the total compensation comes to Rs. $3,64,000 + \text{Rs. } 40,000 = \text{Rs. } 4,04,000$ (rupees four lakh four thousand). The enhanced compensation to carry the interest at the rate of 7 per cent per annum from the date of filing of claim petition till realization.

6. Resultantly, the appeal is allowed in part to the aforesaid extent. No costs.

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