

Shraddha Vs. Badresh and ors.

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Court : Madhya Pradesh

Decided On : Sep-13-2005

Reported in : 2006ACJ2067

Judge : N.K. Mody, J.

Appeal No. : M.A. No. 310 of 2003

Appellant : Shraddha

Respondent : Badresh and ors.

Advocate for Def. : S.V. Dandwate, Adv.

Advocate for Pet/Ap. : D.D. Vyas and ;Anita Sharma, Advs.

Judgement :

N.K. Mody, J.

1. Being aggrieved by the inadequacy of the amount awarded vide award dated 18.12.2002 passed by learned M.A.C.T., District Jhabua (M.P.) in Claim Case No. 127 of 1997 whereby a sum of Rs. 1,50,000 has been awarded along with interest at the rate of 9 per cent per annum, the present appeal has been filed.

2. Learned Counsel for the appellant submits that appellant was aged 24 years at the time of accident and was literate lady running Fine Art classes. It is submitted

that at the time of accident appellant was pregnant, as she was carrying a male baby of 7 months. It is submitted that on account of accident which took place on 3.7.1997, appellant delivered a dead male baby by operation. It is submitted that the amount of Rs. 1,50,000 has been awarded out of which Rs. 70,000 is for medical expenses and Rs. 80,000 is on account of other heads which is on lower side. Learned Counsel submits that permanent disability was assessed as 15 per cent for which the medical evidence has been produced and doctor has been examined. Appellant was admitted in hospital for a period of 45 days, it is also submitted that no amount has been awarded on account of permanent disability which was assessed by learned Tribunal as 15 per cent. Similarly, no amount has been awarded on account of death of first male baby.

3. Learned Counsel for the appellant submits that because of death of a male baby the appellant suffered mental shock, apart from physical pain and suffering and will also suffer on that account in her future life. It is submitted that it was the first pregnancy of the appellant and thereafter, appellant has delivered a female baby in February 2004, i.e., after a period of 7 years.

4. Learned Counsel for the appellant placed reliance on a decision in the matter of Divisional Controller, B.T.S. Division, Karnataka State Road Trans. Corporation v. Vidya Shinde 2005 ACJ 69 (Karnataka), wherein Karnataka High Court has awarded a sum of Rs. 1,50,000 on account of death of stillborn male baby. In this case mother sustained grievous injuries while traveling as pillion rider on scooter. Male born baby kept in I.C.U. died after two days of delivery. It is submitted that in this case for the injuries sustained by mother separate claim petition was filed. Further reliance was placed on R.D. Hattangadi v. Pest Control (India) Pvt. Ltd. 1995 ACJ 366 (SC), wherein Hon'ble Supreme Court has laid down the gravity for awarding pecuniary and non-pecuniary damages. It was held:

.that damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages

may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to work, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

5. Learned Counsel for respondent No. 3 further submits that from the record it is proved that the appellant was having a pregnancy of 28 weeks. Since for giving a birth conception of 36 weeks are necessary, therefore, no separate amount can be awarded on account of death of alleged male child. It is also submitted that the case of Karnataka State Road Trans. Corpn. 2005 ACJ 69 (Karnataka), is altogether different. In that case the lady claimant gave birth to a live male child, who died after two days, therefore, that case is not applicable.

6. Learned Counsel for the respondent No. 3 submits that Rs. 1,50,000 has been awarded by the learned Tribunal to the appellant which is just and proper looking to the injuries sustained by the appellant. It is submitted that out of the amount of Rs. 1,50,000, Rs. 80,000 covers the non-pecuniary damages including the compensation payable to the appellant on account of death of male baby. It is submitted that appellant was carrying pregnancy of 28 weeks which can be said to be a foetus only.

7. It is not in dispute that claimant was pregnant and the child was in the womb of the mother at the time of accident. It is also not in dispute that the mother who is appellant herein has sustained grievous injuries and on account of which she was hospitalized. It is also not in dispute that if claimant had not suffered injuries, child in her womb would not have been affected. She had to undergo a surgery and delivered a dead male baby. For the purpose of considering the case for awarding compensation even the stillborn baby has to be considered as child. Stillborn baby

died in the womb due to the injuries sustained by the appellant in the accident. In the opinion of this Court there is a nexus between the accident and the cause of death of the child. Appellant is entitled for compensation on account of death of or stillborn male baby. It was first delivery of the appellant. Since, no separate amount has been awarded on that account, therefore, this appeal stands allowed. Appellant shall be further entitled for a sum of Rs. 1,00,000 on account of death of stillborn male child. Total sum for which appellant shall be entitled comes to Rs. 2,50,000. The enhanced amount of Rs. 1,00,000 shall carry interest at the rate of 6 per cent per annum from the date of application.

8. With the aforesaid modifications in the award, appeal stands disposed of. No order as to costs.

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