

**Shriram and ors. Vs. Pradeep Kumar and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/511184](http://sooperkanoon.com/511184)

**Court :** Madhya Pradesh

**Decided On :** Feb-01-2008

**Reported in :** 2009ACJ1483

**Judge :** A.M. Sapre and ;S.R. Waghmare, JJ.

**Appellant :** Shriram and ors.

**Respondent :** Pradeep Kumar and ors.

**Advocate for Def. :** Mr. Milind Phadke

**Advocate for Pet/Ap. :** Mr. Sameer Verma

**Judgement :**

**A.M. Sapre, J.**

1. This is an appeal filed by the claimants, who are legal representatives of the deceased under Section 173 of the Motor Vehicles Act, 1988, against an award dated 1.2.2006, passed by learned Tenth Additional Member, Motor Accidents Claims Tribunal, Indore in Claim Case No. 41 of 2004. By impugned award, the Tribunal has awarded a total sum of Rs. 1,97,500 with interest to the claimants for the death of one Kiran, who died in a vehicular accident. According to claimants, the compensation awarded is on a lower side and hence, it needs to be enhanced. It is for claiming enhancement in the compensation awarded by the Tribunal, the

claimants have come up in appeal. So the question that arises for consideration is, whether any case for enhancement in the compensation awarded by the Tribunal on facts/evidence is made out in the compensation awarded and if so, to what extent

2. Heard Mr. Sameer Verma, learned Counsel for the appellant and Mr. Milind Phadke, learned Counsel for respondent insurance company.

3. It is not necessary to narrate the entire facts in detail such as how the accident occurred, who was negligent in driving the offending vehicle, who is liable for paying compensation, etc. It is for the reason that all these findings are recorded in favour of the claimant by the Tribunal. Secondly, none of these findings though recorded in claimants' favour are under challenge at the instance of any of the respondents such as owner/driver or the insurance company either by way of cross-appeal or cross-objection. In this view of the matter, we do not wish to burden our judgment by detailing facts on all these issues.

4. It is a death case. On 11.6.2004 Kiran, a married woman, aged around 32 years, resident of Indore died in vehicular accident. She was said to be working as field worker in Indore city. It is this incident which gave rise to filing of claim petition by her legal representatives (appellants herein) under Section 166 of the Act against the respondents, who are owner, driver and insurance company of offending vehicle, claiming compensation for the death of Kiran. So far as owner and driver (non-applicant Nos. 1 and 2) were concerned, they remained ex parte, whereas the claim was contested by only insurance company (non-applicant No. 3). Parties adduced evidence. By impugned award, the Tribunal partly allowed the claim petition and awarded a total sum of Rs. 1,97,500 by way of compensation. It was held that the deceased was earning Rs. 15,000 yearly, i.e., notional income prescribed under the Schedule. Applying the multiplier of 17 and further awarding a sum of Rs. 44,500 under conventional heads as also towards medical expenditure incurred in saving her, a total sum of Rs. 1,97,500 were awarded. It is this determination which is impugned in this appeal by the claimants contending that it be suitably enhanced.

5. Having heard learned Counsel for the parties and having perused record of the case, we are inclined to allow the appeal in part.
6. We have gone through the evidence adduced by the parties on the question of income of Kiran, i.e., deceased. Having gone through the same, we find that there is evidence adduced by the claimant to prove that she was earning Rs. 3,500 per month by doing field work for the Institute called 'Vishwas Samajik Vikas Kendra (Mann)'. It is proved by Exh. P51 as also by PW 3, Jawala Prasad. There is nothing to disbelieve this oral and documentary evidence because no rebuttal evidence was adduced by insurance company. We, therefore, hold on the basis of Exh. P51 and the evidence of Jawala Prasad, who has proved this certificate on behalf of the Institute that deceased was earning Rs. 3,500 as her monthly salary.
7. In this way deducting 1/3rd and some more, she being a lady, we get a sum of Rs. 2,000 per month. So we get a sum of Rs. 2,000 x 12 = Rs. 24,000. To this we add Rs. 24,000 x 17 = Rs. 4,08,000 rounded off to Rs. 4,00,000. To this we add a sum of Rs. 44,500 already awarded by the Tribunal which in our opinion is just and proper. In this way, we get a sum of Rs. 4,00,000 + Rs. 44,500 = Rs. 4,44,500 by way of compensation.
8. In other words, the claimants are held entitled for a total sum of Rs. 4,44,500 by way of compensation for the death of Kiran.
9. The compensation awarded to the claimants is a just, reasonable and proper looking to the facts and circumstances of the case and taking into account the law laid down by the Supreme Court in these types of cases. Indeed in such cases, no fixed and any static formula is provided for determining the compensation and the same is required to be determined on the basis of evidence adduced and the relevant factors mentioned supra. It is on this basis, the courts have to work out award of reasonable compensation.
10. Learned Counsel for the appellants has cited some authorities for claiming enhancement. We have gone through these authorities. In our opinion and as observed supra, every case depends upon facts of each case and one can rely upon the cases for awarding compensation.

11. In this view of the matter, the appeal succeeds and is allowed in part. Impugned award is modified to the extent indicated above. The enhanced sum will carry interest at the rate of 6 per cent per annum from the date of application till realization. All other findings are upheld being not under challenge.

Counsel's fee Rs. 1,500, if certified.

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