

Dilkhush and ors. Vs. Bherulal and ors.

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Court : Madhya Pradesh

Decided On : Jun-21-2005

Reported in : IV(2006)ACC895; 2006ACJ2341

Judge : Deepak Verma and ;Ashok Kumar Tiwari, JJ.

Acts : Limitation Act - Sections 5; Code of Civil Procedure (CPC) - Order 41, Rule 22

Appeal No. : M.A. No. 1520 of 2000

Appellant : Dilkhush and ors.

Respondent : Bherulal and ors.

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

Advocate for Pet/Ap. : Sudhanshu Vyas, Adv.

Judgement :

Deepak Verma and Ashok Kumar Tiwari, JJ.

1. This appeal is respondent at the instance of claimants, against the award dated 12.9.2000, passed by Motor Accidents Claims Tribunal, Mandsaur, in M.V. Case No. 21 of 2000, whereby and wherein for death of one Siyaram, present appellants have been awarded a sum of Rs. 2,00,000 together with interest against

respondents jointly and severally.

2. This appeal is for enhancement. The No. 3 has also filed a cross-objection on 2.2.2005, under Order 41, rule 22 of Civil Procedure Code. Since said cross-objections are barred by more than 31/2 years, it has also filed an application under Section 5 of the Limitation Act.

3. We have heard learned Counsel for parties and perused record.

4. Deceased Siyaram was travelling in a tractor-trolley bearing registration No. MP 14-G 4282 and MP 14-G 4283, respectively, on 16.12.1999. Said trolley was being used for transportation of soyabean from village Nataram to Mandsaur. According to claimants, Siyaram was working on the said trolley as a labourer for loading. Thus, he was entitled to travel thereon. Due to rash and negligent driving of tractor and trolley attached thereto, by respondent No. 2, Siyaram was thrown off the trolley and came under it. He sustained bodily injuries in the said accident. He was taken to hospital, but he succumbed to the same.

5. On account of his death in the said accident, appellants being widow, minor daughters, son and parents have filed a claim petition. On appreciation of evidence available on record, the Claims Tribunal awarded a sum of Rs. 2,00,000. It was averred by the appellants that deceased Siyaram was working as a labourer and was earning Rs. 100 per day. It was further averred that apart from above, he was also working as an electrician and making additional income thereby. However, on appreciation of evidence available on record, Claims Tribunal came to the conclusion that deceased was earning Rs. 50 per day. Monthly income was assessed at Rs. 1,500 and after making the usual deduction that the deceased must have been spending on himself, dependency of appellants have been worked out at Rs. 1,000 per month. Looking to the age of deceased and that of the appellants, multiplier of 14 has been adopted.

6. Learned Counsel for the appellants submitted that income has been assessed on lower side and proper multiplier has also not been adopted.

7. The learned Counsel appearing for respondent-insurance company submitted that in the light of cross-objection filed by it, no liability could have been fastened on the insurance company or in any case, the amount already awarded is just and proper and does not call for any enhancement. In alternative, it was submitted that since this respondent has already satisfied the award fully, if any enhancement is to be made, the same should be made against owner and driver, respondent Nos. 1 and 2, only. This has been submitted on the strength of latest judgment of Supreme Court in *New India Assurance Co. Ltd. v. Asha Rani* 2003 ACJ 1 (SC), which now holds the field.

8. Deceased was working as a labourer and even in the year 1999, taking a most modest computation, he must have been earning at least Rs. 75 per day. Since he would not have worked for the whole month continuously and would have taken few days off also, it can safely be inferred that he must have been earning at least Rs. 2,000 per month, which comes to Rs. 24,000 per annum. After deducting the usual amount that the deceased must have been spending on himself, dependency of appellants would work out at Rs. 16,000 per annum. Looking to the age of deceased and that of appellants, proper multiplier to the facts of the case would be 17. Thus, Rs. 16,000 x 17: Rs. 2,72,000. To this, we add further amount of Rs. 38,000 towards various other heads such as loss of company, loss to estate, loss of consortium, loss of love and affection and funeral expenses, etc., making the compensation at Rs. 3,10,000. The appeal, therefore, stands allowed to the extent that the appellants shall be entitled to receive in all a sum of Rs. 3,10,000. Difference amount would carry interest at the rate of 6 per cent per annum from the date of application till it is actually paid. Keeping in mind the latest judgment of Supreme Court in the matter of *Asha Rani* 2003 ACJ 1 (SC), which has been followed subsequently in many more judgments, the liability to pay enhanced amount would be that of respondent Nos. 1 and 2 only. No liability is being fastened on insurance company, respondent No. 3, to pay the enhanced amount. It is being held so as respondent No. 3 has already satisfied the award in the light of earlier, judgment of Supreme Court reported in *New India Assurance Co. Ltd. v. Satpal Singh* 2000 ACJ 1 (SC). Since the cross-objections of respondent No. 3 is hopelessly barred by limitation and also keeping in mind that the amount awarded under the original award already stands satisfied by the

respondent No. 3, the same are hereby dismissed. In the facts and circumstances of the case, parties to bear their own costs of litigation throughout.

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