Nirmala and ors. Vs. Jitendra Kumar and ors.

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SooperKanoon Citation : sooperkanoon.com/511193

Court : Madhya Pradesh

Decided On : Feb-06-2008

Reported in : 2009ACJ1485

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

Appellant : Nirmala and ors.

Respondent : Jitendra Kumar and ors.

Advocate for Def. : Mr. S. Dandwate

Advocate for Pet/Ap. : Mr. S. Patwa

Judgement :

A.M. Sapre, J.

1. This is an appeal filed by the claimants under Section 173 of the Motor Vehicles Act, 1988, against an award dated 29.8.2005 passed by the learned Member, M.A.C.T., Indore (M.P.) in Claim Case No. 79 of 2005. By impugned award the Tribunal has awarded a total sum of Rs. 4,18,000 for the death of one Kundanlal. This appeal is filed by claimants for enhancement as according to claimants, the compensation awarded to claimants by the Tribunal is on lower side and it should be enhanced in this appeal. So the question that arises for consideration in this appeal is whether any case is made out for enhancement in the compensation

awarded by the Tribunal and, if so, to what extent and under what head(s)?

2. 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 or claimant or who is liable to pay compensation, etc. and whether offending vehicle is insured or not? It is for the reason that firstly, all these findings are recorded in favour of claimants by the Tribunal and secondly, none of these findings though recorded in claimants' favour and against the respondents are under challenge at the instance of any of the respondents such as, owner/driver, or insurance company either by way of cross-appeal or cross-objection. In this view of the matter, we do not wish to burden our order by detailing facts on all these issues which are not really necessary.

3. It is a death case. On 20.5.2004, one Kundanlal, aged 42 years, a businessman doing the business of hosiery, died in vehicular accident. It is this incident, which gave rise to filing of claim petition by his legal representatives under Section 166 of the Motor Vehicles Act against the owner, driver and insurer of the offending vehicle seeking compensation for the death of Kundanlal. It was contested only by insurer whereas driver and owner remained ex parte. Parties adduced evidence. However, by impugned award, the Tribunal partly allowed the claim petition and awarded a total compensation of Rs. 4,18,000. It was held that though the yearly income of the deceased Kundanlal from his business is around Rs. 95,000 but for dependency it works out to Rs. 29,000. In the opinion of Tribunal, a sum of Rs. 66,000 was being earned by his 2 sons (applicant Nos. 2 and 3) and hence only a sum of Rs. 29,000 was held as loss to the estate for determining the compensation payable to claimants. Applying multiplier of 14 and awarding a sum of Rs. 12,000 for conventional heads, the Tribunal awarded a total compensation of Rs. 4,18,000. It is this determination, which is impugned in this appeal by the claimants contending that what is awarded by Tribunal by way of compensation payable to claimants. Applying the multiplier of 14 and awarding a sum of Rs. 12,000 for conventional heads, the Tribunal awarded a total compensation of Rs. 4,18,000. It is this determination, which is impugned in this appeal by the claimants contending that what is awarded by Tribunal by way of compensation to the claimants is on lower side hence it be enhanced.

4. Heard Mr. S. Patwa, learned Counsel for the appellants and Mr. S. Dandwate, learned Counsel for the respondents.

5. Having heard the learned Counsel for the parties and having perused the record of the case, we are inclined to allow this appeal in part.

6. We have gone through the evidence adduced by the parties and in particular the evidence on the question of income of deceased. Having gone through the same, we are of the view that Tribunal committed an error in taking only Rs. 29,000 as basis for determination of compensation. It is not in dispute that Tribunal has recorded a categorical finding in para 14 and in our view rightly that yearly income of the deceased from his business was Rs. 95,000. This finding is based on the income tax returns (Exhs. P12, P13 and P14). We accept this finding as being properly recorded. In our view, it is this income, Rs. 95,000, which should have been legitimately made basis for determining the compensation payable to claimants. Merely because deceased's 2 sons are getting some monthly salary from their service is no ground to hold that their salary is liable to be deducted from Rs. 95,000 and then dependency be calculated. We, therefore, cannot subscribe to the reasoning assigned by the Tribunal on this deduction because in our view due to death of real bread-earner of family there was a loss of income to the family, which included deceased's 2 young sons. At best and all that the Tribunal could do in such eventuality was to hold that 2 sons were not dependent upon the deceased because they had an independent income and only widow was entitled to claim the compensation for the death of her husband. But in no case the income of sons could be deducted from the yearly income of deceased for granting compensation to the widow who in her own right was entitled to claim compensation being the sole dependant and having no independent income of her own.

7. In this view of the matter, we take Rs. 95,000 as basis for determining the compensation payable to claimants. Deducting 1/3rd, we get around Rs. 60,000. To this, we apply the same multiplier, which was applied by Tribunal, i.e., 14. Though learned Counsel for the appellants urged for applying 15 but we do not find any good ground to apply 15 in place of 14. In the totality of the facts and

circumstances of the case, we apply 14. In this way, we get a sum of Rs. 60,000 x 14 = Rs. 8,40,000. Adding Rs. 12,000 awarded towards conventional heads, which in the facts of this case we consider to be just and proper, we get a sum of Rs. 8,40,000 + Rs. 12,000 = Rs. 8,52,000.

8. In other words, the claimants are held entitled for a total sum of Rs. 8,52,000 by way of compensation for the death of Kundanlal.

9. The compensation awarded to the claimants is 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 the award of reasonable compensation.

10. Learned Counsel for the appellants 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 case 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.

No costs.