

Krishna Bai and ors. Vs. RiyajuddIn and ors.

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Court : Madhya Pradesh

Decided On : Feb-21-2008

Reported in : 2009ACJ1508

Judge : A.M. Sapre and ;S.K. Seth, JJ.

Appellant : Krishna Bai and ors.

Respondent : RiyajuddIn and ors.

Advocate for Def. : Mr. C.P. Singh

Advocate for Pet/Ap. : Mr. Subodh Abhyankar

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 27.9.2002 passed by the learned Additional Member, Motor Accidents Claims Tribunal, Sendhwa in Claim Case No. 87 of 2001. By impugned award, the Tribunal has awarded a total sum of Rs. 5,44,032 with interest to the claimants for the death of Om Prakash, who died in a vehicular accident. According to the 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 compensation awarded by the Tribunal on facts/evidence is made out in the compensation awarded and, if so, to what extent?

2. Heard Mr. Subodh Abhyankar, learned Counsel for the appellants and Mr. C.P. Singh, learned Counsel for the 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 firstly all these findings are recorded in favour of the claimants 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 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 10.4.2001 Om Prakash aged 41 years working as cotton agent, died in a vehicular accident. It is this incident which gave rise to filing of claim petition by his legal representatives under Section 166 of the Act against non-applicant No. 1, driver; non-applicant No. 2, owner and non-applicant No. 3, insurer of offending vehicle, claiming compensation for his death. It was contested by non-applicant No. 3 (insurance company) whereas non-applicant Nos. 1 and 2 remained ex parte. Parties adduced evidence. The Claims Tribunal by impugned award partly allowed the claim petition and accordingly, awarded total compensation of Rs. 5,44,032. It was held that deceased was aged 41 years, that his yearly earning was Rs. 68,000. Deducting 1/3rd out of total income and applying the multiplier of 12, the Claims Tribunal awarded a total sum of Rs. 5,44,032. The Claims Tribunal did not award any compensation under conventional heads. It is against this award, the claimants have felt aggrieved and filed this appeal contending that it is on lower side hence, it be enhanced suitably.

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 claimants. Having gone through the same, we are of the view that looking to the dependants in the family of deceased, i.e., widow and four minor daughters; it is just and proper to deduct 1/4th out of total income in place of 1/3rd. So far as the deceased's yearly income is concerned, the same does not call for any interference. It is for the reason that Tribunal has placed reliance on the income tax returns of the deceased. We, therefore, find no good ground to enhance the yearly income determined by the Tribunal, i.e., Rs. 68,000.

7. Deducting 1/4th out of total income, we get a sum of Rs. 51,000 for calculating dependency. Applying the multiplier of 15 in place of 12 applied by Claims Tribunal, because of deceased's age (41 years), we get a sum of Rs. 51,000 x 15 = Rs. 7,65,000. To this, we add a lump sum amount of Rs. 25,000 awarded towards conventional heads being just and proper and we get a total sum of Rs. 7,65,000 + Rs. 25,000 = Rs. 7,90,000.

8. In other words, the claimants are held entitled for a total sum of Rs. 7,90,000 by way of compensation for the death of Om Prakash.

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 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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