

Omwati Sharma and ors. Vs. Ashok Kumar and ors.

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Court : Madhya Pradesh

Decided On : Feb-29-1996

Reported in : 1996ACJ968

Judge : S.K. Dubey and ;Shambhoo Singh, JJ.

Appeal No. : M.A. Nos. 714 and 825 of 1995

Appellant : Omwati Sharma and ors.

Respondent : Ashok Kumar and ors.

Advocate for Def. : R.K. Thakur, Adv.

Advocate for Pet/Ap. : R.N. Singh and ;Prashant Singh, Adv.

Disposition : Appeal dismissed

Judgement :

S.K. Dubey, J.

1. The appellants-claimants have filed Misc. Appeal No. 825 of 1995 for enhancement of the compensation awarded vide award dated 29.4.1995 in Claim Case No. 56 of 1991, passed by the Additional Motor Accidents Claims Tribunal, Satna. Misc. Appeal No. 714 of 1995 has been filed by the insurance company aggrieved of the said award.

2. Facts giving rise to this appeal are thus:

One Moolchand Sharma aged about 53 years who was employed in the Public Works Department of the State of Madhya Pradesh while going on scooter was hit by tanker bearing No. MIA 9581 driven by respondent No. 2, owned by respondent No. 1 and insured by respondent No. 3 in M.A. No. 825 of 1995, as a result of which he died instantaneously. The claimants are the widow of the deceased aged 48 years, 4 daughters aged 29 years, 27 years, 21 years and 19 years; and 4 sons aged 31 years, 25 years, 23 years and one Deepak Kumar. Out of the sons Pramod Kumar aged 31 is married while two daughters Nirmala and Pramila aged 29 and 27 years are also married, claimed compensation to the tune of Rs. 23,51,000/- for the death of Moolchand Sharma.

3. Respondents contested the claim. The Tribunal on the evidence adduced by the parties recorded a categorical finding that the accident occurred due to the rash and negligent driving of the driver of the tanker. At the time of his death, deceased was getting Rs. 4,000/- (Sic. per month. Dependency was fixed at Rs. 2,000/-) per month, yearly Rs. 24,000/-. The Tribunal applied the multiplier of 4 to the multiplicand of Rs. 24,000/- and determined the compensation of Rs. 96,000/- and in the head of consortium and loss of company an amount of Rs. 67,000/- was fixed. Thus the Tribunal awarded the compensation of Rs. 1,63,000/- with interest at the rate of 12 per cent per annum from the date of application. Aggrieved of this award the claimants have come up in appeal for enhancement of the compensation while the insurance company has challenged the award. The owner and driver have not filed any appeal.

4. Mr. R.N. Singh and Mr. Prashant Singh for the appellants-claimants and Mr. R.K. Thakur for the appellant insurance company heard.

5. It is settled that the insurance company cannot challenge the award and findings of rash and negligent driving and quantum except on the grounds under Section 149 of the Motor Vehicles Act, 1988, which is not the case here; hence the appeal filed by the insurance company has no merit and has to be dismissed.

6. Coming to the appeal of the claimants, though the Tribunal has applied sound and logical method of multiplier, however, determination of dependency at Rs. 2,000/- is on the lower side looking to the number of dependants; the deceased could not have spent on himself an amount of Rs. 2,000/-; hence out of Rs. 4,000/- 1/3rd deduction on personal living expenses of the deceased would have been proper whereby the monthly dependency would come to Rs. 2,600/-, yearly dependency would come to Rs. 31,200/-; by applying the multiplier of 8 the amount of compensation would come to Rs. 2,49,600/-. In the head of consortium a conventional figure of Rs. 10,000/- is proper for which the widow is entitled. The total compensation, to which the claimants would be entitled, would be Rs. 2,59,600/- with interest at the rate of 12 per cent per annum from the date of application till payment. The insurance company shall deposit the said amount within a period of 2 months, of course, after giving due adjustment of the amount already deposited with its proportionate interest. On deposit the Tribunal shall disburse the amount to the claimants taking into consideration the guidelines laid down by the Supreme Court in General Manager, Kerala State Road Trans. Corporation v. Susamma Thomas 1994 ACJ 1 (SC).

7. In the result the appeal of the insurance company fails and is hereby dismissed. The appeal of the claimants is allowed by enhancing the amount of compensation. As a consequence of that the award passed by the Tribunal shall stand modified accordingly. The insurance company shall also bear the costs of this appeal. Counsel's fee Rs. 500/- if pre-certified.

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