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SooperKanoon Citation : sooperkanoon.com/511459

Court : Madhya Pradesh

Decided On : Jul-17-2008

Reported in : 2009ACJ2435

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

Appellant : Bondar

Respondent : Revaram and ors.

Advocate for Def. : Mr. A.N. Soni

Judgement :

A.M. Sapre, J.

1. This is an appeal filed by the claimants under Section 173 of Motor Vehicles Act (for short called 'the Act') against an award dated 13.4.2007 passed by the learned Additional Member, M.A.C.T., Kukshi, Distt. Dhar in Claim Case No. 5 of 2006. By impugned award, the Tribunal has awarded total sum of Rs. 1,30,000 for the death of one Kalu. This appeal is filed by the claimants for enhancement as according to claimants compensation awarded by the Tribunal is on lower side hence 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 which caused the accident 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 16.9.2005, Kalu, aged around 21 years, labourer by occupation, died in vehicular accident. It is this incident which gave rise to filing of claim petition by his legal representatives claiming compensation for his death. It was essentially filed against owner, driver and insurer of offending vehicle. It was contested by non-applicants. Parties adduced evidence. By impugned award, the Claims Tribunal partly allowed the claim application and awarded total compensation of Rs. 1,30,000 to claimants. It was held that deceased was earning Rs. 1,500 per month as labourer. Applying the multiplier of 10 and finding the deceased to be unmarried, the Tribunal awarded a total compensation of Rs. 1,30,000. It is against this determination, claimant have come up in appeal contending that it is on lower side and hence, it be enhanced.

4. Heard Mr. Manish Jain, the learned Counsel for the appellant and Mr. A.N. Soni, learned Counsel for the respondent No. 1.

5. We have gone through the evidence adduced by the claimants. Having gone through the same, we are of the view that Tribunal should have held the deceased's monthly income to be Rs. 3,000 in place of Rs. 1,500. In the present day scenario, even unskilled labourer earns Rs. 100 per day. In such circumstances, we can safely hold that deceased who was a labourer (unskilled), as has come in evidence of claimants, who are his legal representatives, was earning Rs. 3,000 per month, i.e., Rs. 36,000 per year. To this extent, the finding of Tribunal is modified in favour of claimants in part.

6. Deducting 73rd out of Rs. 36,000, we get a sum of Rs. 24,000 towards dependency. This we deduct because we notice that in the facts appearing, 1/3rd deduction is permissible. We also hold on evidence adduced that age of deceased was 21 years at the time of accident. This we consider it proper to hold on the strength of age of parents. In this way, we apply the multiplier of 17 for calculating the dependency, i.e., $\text{Rs. } 24,000 \times 17 = \text{Rs. } 4,08,000$. To this, we add a sum of Rs. 25,000 under conventional heads such as funeral expenses, loss of love and affection and consortium thereby makes a total of $\text{Rs. } 4,08,000 + \text{Rs. } 25,000 = \text{Rs. } 4,33,000$.

7. In other words, the claimants are held entitled to a sum of Rs. 4,33,000 by way of compensation for the death of Kalu.

8. 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.

9. Learned Counsel for the appellant 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.

10. 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.