

Ramdhun Tiwari and ors. Vs. Devi Singh and ors.

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Court : Madhya Pradesh

Decided On : Mar-25-2003

Reported in : III(2004)ACC542; 2004ACJ600

Judge : Bhawani Singh, C.J. and ; S.S. Kemkar, J.

Appeal No. : M.A. No. 907 of 1997

Appellant : Ramdhun Tiwari and ors.

Respondent : Devi Singh and ors.

Advocate for Def. : Amrit Ruprah and ; Chandrahas Dubey, Adv.

Advocate for Pet/Ap. : Umakant Sharma, Adv.

Judgement :

Bhawani Singh, C.J.

1. This appeal is directed against the award of the Motor Accidents Claims Tribunal, Shahdol, in Claim Case No. 7 of 1995, dated 10.3.1997.

2. Briefly stated, the accident took place on 31.12.1994, when the truck No. MP 20-B 0832, driven by Devi Singh rashly and negligently, hit the motor cycle No. MKA 2719 near Kannabahara causing the death of Ramesh Tiwari. The allegation is that the accident took place due to the rash and negligent driving of the truck by Devi Singh. The truck was owned by Gurmeg Singh and insured with National

Insurance Co. Ltd. Compensation of Rs. 8,82,000 has been claimed. The deceased was doing business in grocery, video parlour and flour mill.

3. The respondent Nos. 1 and 2 submit that the truck was being driven slowly and carefully while the deceased was driving the motor cycle at great speed and hit the truck resulting in injuries and ultimately death. The claim is exaggerated, there is no liability to pay the compensation. The deceased was 45 years old at the time of accident. Clear facts have not been stated with respect of business of the deceased. The insurance company with which the motor cycle was insured, has not been made party in Claim Case No. 7 of 1995 filed by Sheetal Tiwari (respondent No. 6 herein). The owner of the truck committed breach of conditions of the insurance policy and the driver of truck did not possess valid driving licence.

4. It is stated that the parents of the deceased are not dependent on him. The Claims Tribunal held that the accident took place as alleged. The deceased died in this accident, therefore, the owner and driver of the truck jointly and severally, and the insurance company with which the truck was insured, are liable to pay compensation. Age of the deceased has been taken to be 32/33 years and the dependency at Rs. 900 per month. Compensation of Rs. 1,35,000 is awarded by the Claims Tribunal along with interest at the rate of 12 per cent per annum. Claims Tribunal disposed of both the claim cases by the impugned award, out of which arises the present appeal. Therefore, the whole matter of compensation can be examined and decided in this appeal.

5. Heard counsel for the parties. Record perused. From evidence, there is no doubt with respect to taking place of accident due to rash and negligent driving of the offending truck by driver Devi Singh, owned by Gurmeg Singh and insured with National Insurance Co. Ltd. Therefore, finding of the Claims Tribunal on this point is confirmed.

6. The important question for examination is whether the claimants have been awarded just compensation in this case. Mr. Umakant Sharma, counsel appearing for the claimants submits that looking to the business carried on by the deceased and income therefrom, just compensation has not been awarded by the Claims Tribunal. Ramdhun Tiwari has specifically stated that the deceased was carrying

on business in grocery, maintaining the account thereof besides flour mill and video parlour giving Rs. 7,000 to the family out of total income of Rs. 10,000, therefore, the dependency has not been properly worked out nor the proper multiplier used for determination of compensation.

7. Mrs. Amrit Ruprah, learned counsel appearing for the insurance company, opposes the claim. She submits that there is no dependable evidence to assess the income of the deceased. Grocery business is in the name of Ramdhun Tiwari, flour mill in the name of Janak Dulari and video parlour in the name of daughter of deceased sister. Similar is the submission of Mr. Chandrahas Dubey, counsel appearing for respondent Nos. 4 and 5.

8. The determination of income of the deceased is a complex question in this case. It may be true that the deceased was looking after grocery shop and video parlour, but both these businesses are not in his name nor the flour mill. The grocery shop seems to be of Ramdhun Tiwari, flour mill in the name of Janak Dulari and video parlour in the name of relation of the deceased. However, with regard to grocery shop, participation of the deceased cannot be ruled out because Ramdhun Tiwari is attending the business only at times, may be due to old age. Therefore, the account of business was also being maintained by the deceased, hence his participation is more as compared to Ramdhun Tiwari. Consequently, it would be just and proper to hold that participation of deceased in grocery business was 70 per cent and that of Ramdhun Tiwari 30 per cent. The total income from three sources is Rs. 10,000 as per Ramdhun Tiwari, therefore, from one source it should be Rs. 3,333, dividing by 70 per cent, figure comes to Rs. 2,333. After deducting 1/3rd towards personal expenses, the annual dependency comes to (Rs. 1,556 x 12) Rs. 18,672 multiplied by 17 compensation works out to Rs. 3,17,424 plus Rs. 7,000 for loss of expectancy of life, Rs. 5,000 for loss of consortium to wife, Rs. 2,500 loss to estate and Rs. 2,000 for funeral expenses. Accordingly, compensation of Rs. 3,33,924 (rupees three lakh thirty-three thousand nine hundred twenty-four) is awarded to the claimants as under:

(1) Ramdhun Tiwari 15 per cent (2) Janak Dulari 15 per cent (3) Swati 40 per cent
(4) Sheetal (Respondent 30 per cent No. 6 herein)

The enhanced compensation will carry interest at the rate of 9 per cent per annum from the date of application till payment. Swati is minor, therefore, her share be invested in FDR in a nationalised bank through Ramdhun Tiwari and Janak Dulari, till she attains the majority. Costs on parties.

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