

Abdul Rashid and ors. Vs. Jitendra and ors.

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Court : Madhya Pradesh

Decided On : Aug-09-2001

Reported in : 2003ACJ57

Judge : J.G. Chitre and ;A.M. Sapre, JJ.

Appeal No. : M.A. No. 621 of 1998

Appellant : Abdul Rashid and ors.

Respondent : Jitendra and ors.

Advocate for Def. : S.S. Swami, Adv.

Advocate for Pet/Ap. : Indira Vyas, Adv.

Disposition : Appeal allowed

Judgement :

A.M. Sapre, J.

1. Claimants are dissatisfied with what is awarded to them by the learned Claims Tribunal in their claim petition which was decided by the impugned award passed on 25.4.1998 by 1st A.M.A.C.T. Badwani, in Claim Case No. 53 of 1995. They want more compensation and hence, they are in appeal under Section 173 of the Motor Vehicles Act.

2. Claimants (appellants herein) are the legal representatives of the deceased one Shakir Khan. Deceased was working as a motor mechanic. He was aged 30 years. On 22.8.1995, when deceased Shakir Khan was engaged in the repair of truck, at about 9 o'clock in the morning, the offending truck bearing No. MH 17-A 9394 came from the opposite direction and dashed the standing truck, on which deceased Shakir Khan was working. The impact of dash by offending truck on the standing truck was so violent that Shakir Khan died on the spot. This led to filing of a claim petition by the legal representatives of the deceased which included his father, mother, wife, sons and daughters. It was alleged in the claim petition that Shakir Khan was earning Rs. 5,000 per month and the accident had occurred due to the rash and negligent driving of the offending vehicle. A claim of Rs. 7,00,000 was filed against the non-applicants which included the owner, driver and insurance company of the offending vehicle.

3. The matter was contested only by the insurance company whereas, the other two non-applicants are ex parte despite service. The defence of insurance company was, that no case of rash and negligent driving was alleged nor made out against the offending vehicle and that the driver of the offending vehicle was not holding a valid licence and, therefore, they are not liable to pay compensation, or/and, no liability can be fastened on them arising out of the accident in question.

4. By impugned award the Claims Tribunal allowed the claim petition of the petitioner in part. It was held that the accident was due to rash and negligent driving of the offending vehicle and the driver, who was driving the said vehicle. It was also held that insurance company failed to prove any of its defences and, therefore, it is liable to indemnify the loss arising out of the policy in question.

5. So far as the case of grant of compensation to the claimants was concerned, it was held that the deceased was earning Rs. 3,000 per month and was spending Rs. 2,000 on the dependants. Dependency would, therefore, work out to Rs. 24,000 yearly and thus, taking the age of the deceased to be 30 years, applied the multiplier of 8. Accordingly a sum of Rs. 1,92,000 was determined as compensation payable for the loss. In addition, a sum of Rs. 5,000 towards loss of consortium and Rs. 2,000 towards funeral expenses were also awarded. In all,

thus, a sum of Rs. 1,99,000 was awarded to the claimants which was made payable jointly and severally by all the non-applicants. Certain directions were given for utilization of the amount in question which was to carry interest at the rate of 12 per cent per annum. It is against this award, the claimants have felt aggrieved and have filed this appeal.

6. Heard Ms. Indira Vyas, the learned Counsel for the appellants and Mr. S.S. Swami, learned Counsel for respondent No. 2.

7. Learned counsel for the claimants (appellants herein) only made one submission. According to her, looking to the age of the deceased (30 years) the learned Claims Tribunal erred in applying the multiplier of 8. According to learned Counsel, the Claims Tribunal should have applied multiplier of 18 in terms of the Schedule appended to the Motor Vehicles Act.

8. Learned counsel for the respondents supported the impugned award and prayed for its upholding.

9. Having heard the learned Counsel for the parties and having perused the impugned award, we find substance in the submission made by the appellants. In our opinion, the Tribunal should have applied the multiplier of 18 instead of 8. Mere perusal of the Schedule would indicate that if the age of deceased is falling between 25 and 30 then, a multiplier of 18 is prescribed. We do not find any compelling reason to deviate from the multiplier prescribed in the Schedule and apply a lower multiplier.

10. In our considered opinion and to meet the ends of justice, the multiplier of 18 would have been the most acceptable figure which should have been applied to the facts of this case.

11. Accordingly and in view of the aforesaid discussion, the claimants are held entitled for enhanced compensation. Accordingly taking the dependency of Rs. 24,000 per year if it is multiplied by 18 then the figure comes to Rs. 4,32,000. This will also include a sum of Rs. 5,000 towards loss of consortium and Rs. 2,000 for the funeral expenses which are already awarded by the Claims Tribunal and we

uphold the said two factors.

12. Accordingly, the present appeal is allowed. The compensation awarded by the Tribunal is enhanced to Rs. 4,32,000. The enhanced sum will carry interest at the rate of 9 per cent per annum. All other findings recorded by the Claims Tribunal are upheld.

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