

**Sonali and ors. Vs. Dinesh and ors.**

**Sonali and ors. Vs. Dinesh and ors.**

**SooperKanoon Citation :** [sooperkanoon.com/511853](http://sooperkanoon.com/511853)

**Court :** Madhya Pradesh

**Decided On :** Sep-27-2007

**Reported in :** 2008ACJ1534

**Judge :** Arun Mishra and ;S.A. Naqvi, JJ.

**Appellant :** Sonali and ors.

**Respondent :** Dinesh and ors.

**Judgement :**

**S.A. Naqvi, J.**

1. Appellants have preferred this appeal being aggrieved by the impugned award dated 31.8.2004 passed by the Motor Accidents Claims Tribunal, Khandwa in Claim Case No. 62 of 2003 for enhancement of compensation amount.

2. Admitted facts are that Atul Shah, respondent No. 2, was owner of bus No. MP 12-B 3745 and Dinesh, respondent No. 1, was driver of the bus on the date of the incident. New India Assurance Co. Ltd., respondent No. 3, was insurer of the bus.

3. The facts of the case in brief are that appellant Nos. 1 and 2 are daughter and son of the deceased Sukhlal alias Ramcharan; appellant No. 3, Anita Bai is widow of the deceased and appellant No. 4, Savitri Bai is mother of the deceased. They were dependent on the deceased. Deceased was earning Rs. 9,000 per month

working as carpenter. On 11.5.2003 deceased was coming by motor cycle with Sukhlal, son of Tantulal. Sukhlal, son of Tantulal was driving motor cycle. Respondent No. 1 by driving bus No. MP 12-B 3745 rashly and negligently dashed motor cycle by front side near village Chhegaon. At the time of accident the motor cycle was stationary. Sukhlal alias Ramcharan, Sukhlal, son of Tantulal and Ashok sustained injuries and succumbed to the injuries. The report was lodged and case was registered against respondent No. 1.

4. Respondents are jointly and severally liable to pay compensation amount to appellants. Appellants filed claim petition for compensation to the tune of Rs. 29,80,000.

5. Respondent Nos. 1 and 2 denied the averments of claim petition. They pleaded that respondent No. 1 was not driving bus rashly and negligently. Sukhlal alias Ramcharan did not die in the accident. Sukhlal alias Ramcharan was driving motor cycle, in excessive speed rashly under intoxication and dashed it against the culvert. No accident caused by bus hence they are not liable to pay compensation to appellants. The defence of respondent No. 3 is that the respondent No. 1 was not holding a valid and effective driving licence on the date of incident. Sukhlal alias Ramcharan was driving motor cycle with two pillion riders. The vehicle was being driven in contravention of the terms and conditions of the insurance policy, therefore, insurer is not liable to pay compensation amount to the appellants. Respondents prayed to dismiss the claim petition.

6. After hearing both parties, perusing evidence and material on record, learned Tribunal partly allowed the claim petition and awarded compensation of Rs. 1,99,000 along with 7 per cent interest. Aggrieved by the impugned award, appellants have preferred this appeal for enhancement of compensation amount.

7. We have heard both the parties, perused impugned award and evidence on record. Learned counsel for the appellants contended that the compensation amount awarded by Tribunal is very low. Learned Tribunal committed error in assessing the monthly income of deceased Sukhlal alias Ramcharan. Learned Tribunal also committed error in awarding compensation for customary heads in lower side. He prayed to allow the appeal and enhance the compensation amount,

adequately. Respondent No. 3 supported the impugned award and prayed to dismiss the appeal. The only question to be considered in this appeal is adequacy of quantum of award by learned Tribunal. No other point has been agitated by learned Counsel for both the parties.

8. Looking to the evidence on record, we are of the view that learned Tribunal has not committed error in holding age of deceased Sukhlal alias Ramcharan to be in between 30 and 35 years. We affirm the finding of the Tribunal regarding age of deceased. Anita, AW 1, deposed that her husband Sukhlal alias Ramcharan was a carpenter and used to earn Rs. 9,000 to Rs. 10,000 per month. Gopal, AW 2, also deposed that the deceased was a carpenter and deceased worked with him for 3 to 4 years. Sukhlal alias Ramcharan was earning Rs. 9,000 to Rs. 10,000 per month. No evidence in rebuttal has been adduced by respondents. No documents have been filed by appellants to prove the monthly income of deceased. Looking to the totality of evidence of Anita and Gopal, we are of the view that it can be safely held that deceased was earning Rs. 3,000 per month from his carpenter's job. Consequently, we hold that deceased was earning Rs. 3,000 per month i.e., deceased was earning Rs. 36,000 per annum. Certainly, appellants were dependent on deceased. Deceased ought to have spent 1/3rd amount of his earnings if he had been alive. Deducting 1/3rd amount for expenditure of the deceased, dependency of the appellants on the deceased comes to Rs. 24,000 per annum. The age of deceased was in between 30 and 35 years. Suitable multiplier of 18 is applicable to determine the loss of dependency. Consequently, loss of dependency comes to Rs. 24,000 x 18 = Rs. 4,32,000. Appellants are entitled to get compensation amount for loss of dependency Rs. 4,32,000. In addition to that the appellants are entitled to get Rs. 40,000 towards customary heads, i.e., loss to estate, loss of expectancy of life, loss of love and affection inclusive of Rs. 10,000 for loss of consortium to the appellant No. 3, i.e., widow of the deceased. Consequently, appellants are entitled to get total compensation amount of Rs. 4,72,000 from the respondents. Certainly, the compensation amount awarded by learned Tribunal is on lower side. Consequently, appeal is partly allowed. The compensation amount is enhanced from Rs. 1,99,000 to Rs. 4,72,000. The enhanced amount shall carry interest at the rate of 6 per cent per annum from the date of filing of the claim petition till realisation. The respondents

are jointly and severally liable to indemnify compensation amount to appellants. Appellant Nos. 1 to 3 shall get 80 per cent of compensation amount along with proportionate interest and the respondent No. 4 shall get 20 per cent of amount along with proportionate interest. The amount of compensation of respondent Nos. 1 and 2 shall be deposited as F.D.R. in a nationalised bank till they attained age of majority adult. No order as to costs.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**