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Court : Madhya Pradesh

Decided On : Sep-27-2001

Reported in : 2003ACJ727; 2002(1)MPLJ110

Judge : S.P. Srivastava and ;R.B. Dixit, JJ.

Appeal No. : M.A. No. 343 of 2001

Appellant : Daljeetsingh and ors.

Respondent : Hardeepsingh and ors.

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

Disposition : Appeal dismissed

Judgement :

S.P. Srivastava, J.

1. Heard the learned Counsel for the appellants.

2. Perused the record.

3. This appeal filed under Section 173 of the Motor Vehicles Act, 1988 is directed against the award of the Additional Motor Accidents Claims Tribunal praying for the enhancement of the amount of compensation determined at a figure of Rs. 1,71,500 carrying 12 per cent per annum interest. The appellants have prayed for

the modification of the award seeking enhancement of the compensation amount to the figure of Rs. 4,56,000 with the enhanced rate of interest at the rate of 18 per cent per annum.

4. The facts in brief, shorn of details and necessary for the disposal of this appeal lie in a narrow compass: In an accident on 9.9.1998, involving the offending motor vehicle, a jeep bearing registration No. MP 06-B 6446, Shyama Bhadoria, the wife of appellant No. 1 and the mother of appellant No. 2, aged 3 years and appellant No. 3, aged 5 years, had met her untimely death. The deceased at the time of her death was aged about 26 years and according to the appellants she was running a school besides doing teaching work there. Her income, according to the assertions made in the application filed under Section 166 of the Motor Vehicles Act, was about Rs. 10,000 per month. The appellants claimed to be dependent on the income of the deceased.

5. According to the appellants Shyama-devi, the deceased, was not a spendthrift and the expenditure on herself never exceeded Rs. 500 per month. The remaining part of her income was her contribution for the appellants.

6. An amount of Rs. 5,00,000 has been claimed as compensation towards loss to estate/income on account of the untimely death of Shyamadevi; A further amount of Rs. 3,00,000 was claimed towards compensation to make up the loss of future income of the deceased from which the appellants stood deprived. An amount of Rs. 30,000 was claimed towards mental and physical pain. An amount of Rs. 20,000 was claimed for the loss of consortium by appellant No. 1. Appellant Nos. 2 and 3 claimed an amount of Rs. 40,000 towards loss of love and affection on account of the death of their mother. Another sum of Rs. 40,000 was claimed by the appellant Nos. 2 and 3 on account of untimely death of their mother as they claimed to have been deprived of higher education and marriage in a higher family. A further amount of Rs. 50,000 has been claimed for the loss of amenities, happiness, guidance from which appellants stood deprived of on account of the death of Shyamadevi. An amount of Rs. 20,000 was claimed for the funeral expenses and additional amount of Rs. 20,000 was claimed towards loss to the estate. Thus, the appellants raised a claim of Rs. 10,20,000, along with an interest

at the rate of 18 per cent per annum.

7. The aforesaid application filed under Section 166 of the Motor Vehicles Act was contested on various grounds denying the claim of the appellants. In support of their claim with regard to the income of the deceased the appellants had filed on record a letter of appointment showing that Shyama Bhadoria, the deceased, had been appointed as an Assistant Teacher in Shivdarshan Madhyamik Vidyalaya, Gingarkhi (Mehgaon) on 28.6.94. In her service-book the date of her birth as recorded was 6.7.1973. She had passed the Intermediate examination in the year 1989 from Arts group and had an experience of three years in adult education. Her appointment was on temporary basis and she was paid salary in the time pay-scale of Rs. 1,200-2,040. Her service-book, which was brought on record, indicates that in the month of August, 1998 she stood placed in the time pay-scale of Rs. 2,500-4,500 and was getting a salary of Rs. 3,000 per month.

8. Mahendra Jain, who had been examined by the claimants in support of their case as PW 2 had stated that deceased Shyamadevi used to reside in an accommodation taken on rent in Gohad. Daljeet-singh, the husband of the deceased, had examined himself as PW 1. He had asserted that his wife was getting a salary of Rs. 3,000 per month. He had also stated that he had engaged a lady, named Maya, as an 'aaya' to look after his children and was paying her a salary of Rs. 2,000 per month to her. He claimed to be employed as a teacher in the same school in which his wife, Shyama, had been employed. He further stated that he used to get a salary of Rs. 5,000 per month. He had, however, admitted that the service of the deceased Shyama was terminable at any time.

9. Rajesh Singh Jadon had been examined as PW 3, who is an Assistant Teacher in the same school, who had proved the service-book referred to hereinabove and had asserted that he had been appointed in the year 1996 at a salary of Rs. 3,000 per month and even on 30.1.2001, on which date his statement was recorded, he was getting the same salary. He also admitted that service-book of the deceased Shyama was not countersigned by any officer of the Education Department.

10. The Tribunal on careful consideration of the evidence and the materials brought on record came to the conclusion that the offending motor vehicle was

being driven rashly and negligently which had resulted in the accident causing the death of deceased. The service-book relied upon by the claimants was found to be suspicious as the signature of the Principal had been made not on the original service-book but on various slips of papers which had been pasted thereon. No explanation had been furnished for such a course having been adopted. There were various over-writings in the service-book which had neither been explained nor authenticated. The entries found in the service-book and relied upon by the claimants in support of their claim in regard to the income of the deceased was rejected as not worth reliance holding the same to be not proved in accordance with law but also unacceptable in view of the various suspicious entries occurring therein which have been indicated in detail in para 11 of the impugned judgment.

11. However, the Tribunal proceeded to determine the amount of compensation taking into consideration the notional income as provided for under the Schedule referred to in Section 163A of the Motor Vehicles Act. The notional income of the deceased was held to be Rs. 1,500 per month. The Tribunal further found that the husband of the deceased was also employed and was getting a salary of Rs. 5,000 per month according to his own case. In the aforesaid view of the matter the Tribunal did not accept the claim of the appellants that they were fully dependant on the income of the deceased. The Claims Tribunal further rejected the claim of the appellants that appellant No. 1 had engaged a lady named Maya as the 'aaya' not only to look after the children but also for cooking food, etc. It was further held by the Tribunal that the deceased must have been spending half of her income on herself and, therefore, taking her total income to be Rs. 18,000 per annum after deducting 50 per cent thereof applying the multiplier of 18 the amount of compensation was determined to be Rs. 1,62,000. Apart from that amount the appellants were also awarded an additional amount of Rs. 9,500 towards loss of consortium, loss to estate, loss of affection, funeral expenses, etc., thus, a total amount of Rs. 1,71,500 was determined payable as the 'just compensation' which amount was to carry an interest at the rate of 12 per cent per annum.

12. Learned Counsel for the appellants has strenuously urged that the Tribunal has erred in determining the income of the deceased to be Rs. 1,500 per month contending that in view of the evidence on record the income ought to have been

held to be Rs. 3,000 per month.

13. The contention of learned Counsel for the appellants is not at all acceptable. It may be noticed that the submission in this regard is solely based on the entries in the service-book. We have examined the service-book carefully. This document is not at all reliable in view of various suspicious circumstances as noticed by the Motor Accidents Claims Tribunal in quite detail. The observations of the Motor Accidents Claims Tribunal in this connection are amply borne out from the evidence and the materials brought on record.

14. Learned Counsel for the appellants has next contended that the Tribunal has erred in excluding 50 per cent of the income of the deceased while calculating the amount of compensation asserting that not more than 1/3rd of the income was liable to be excluded.

15. So far as this aspect of the matter is concerned, it cannot be overlooked that the husband of the deceased was also an earning member of the family of the deceased. On his own showing he had an income of Rs. 5,000 per month. Where both the husband and wife are earning members of the family, in normal course both must have been contributing towards the household expenditure. In the facts and circumstances of the present case, it cannot be said that the husband would in any way be dependent on the wife though the wife in the ordinary course of nature would have shared a part of the burden of the household. The husband, therefore, cannot claim any compensation on the basis of the dependency.

16. It must be emphasised that while determining the 'just compensation' it should not be lost sight of that an unfortunate tragedy is not expected to lead to windfall for heirs or legal representatives of the deceased. Where wife is an earning member of her family, getting an income much less as compared to the income of her husband, it is not unreasonable to hold that she in the normal course would have contributed to the household expenditure about 50 per cent of her income and the remaining amount would have been utilised by her for expenditure on herself. The contention of the learned Counsel for the appellants that only 1/3rd of the amount of the income should have been excluded and not one-half, taking into consideration the peculiar facts and circumstances of this case is not at all

acceptable.

17. So far as the use of multiplier is concerned, it may be noticed that for the purpose of calculating the just compensation, the annual dependency of the dependants has to be determined in terms of the annual loss due to the abrupt termination of life. The suitable multiplier has to be determined by taking into consideration the number of years of the dependency of various dependants as well as the number of years by which the life of the deceased was cut short and the various imponderable factors such as the early natural death or the deceased becoming incapable of supporting the dependants due to illness or other natural handicap or calamities, the age of the dependants and their developing, their independent source of income, etc., excluding, however, the amount of insurance policies of the deceased to which the dependants may become entitled on account of its maturity on account of the death. It must further be emphasised, however, that the method of multiplying the amount of annual loss to the dependants with the number of years by which the life has been cut short without anything else cannot be sustained.

18. In our considered opinion it would be safe to proceed to assess the compensation by adopting the method of multiplier making a judicious use of the appropriate number of the years of purchase. The multiplier is to be chosen having regard to the peculiar facts of each case. If it is found that the deceased prematurely died at a very young age and if it is further revealed that the longevity in his/her family was more, then it would be safe to take a higher multiplier with a view to arrive at a figure of total compensation.

19. The choice of multiplier has, however, to be made by the court using its own experience and having due regard to the peculiar facts of each case because the ultimate goal is not to adhere to any rigid formula but to award a compensation which is just. The age of the deceased cannot be taken to be either a conclusive or a paramount factor in the determination of the compensation, except in those cases where the remaining years of the life expectancy are less than the multiplier which is sought to be applied.

20. As the determination of the question of compensation depends on several imponderables and there is always a likelihood of there being a margin of error, if the assessment made by the Tribunal is not considered to be unreasonable it will not be proper to interfere in the same.

21. Since it is the just compensation which is required to be awarded no method of calculation of compensation would be justified if it does not result in awarding the amount which is not 'just' looking to the peculiar facts of each case.

22. Taking into consideration the totality of the circumstances, we are of the considered opinion that the impugned award cannot be held to be vitiated in law so as to warrant an interference by this court in the present proceedings.

23. This appeal consequently fails and is dismissed in limine.

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