

Ashima and ors. Vs. Hariprakash and ors.

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Court : Madhya Pradesh

Decided On : Jan-20-2003

Reported in : III(2003)ACC229; 2005ACJ55

Judge : Deepak Verma and ;A.K. Gohil, JJ.

Acts : [Motor Vehicles Act, 1988](#) - Sections 2(21) and 149(2)

Appeal No. : M.A. No. 734 of 2000

Appellant : Ashima and ors.

Respondent : Hariprakash and ors.

Advocate for Def. : Anil Goyal, Adv.

Advocate for Pet/Ap. : G.K. Neema, Adv.

Judgement :

Verma and Gohil, JJ.

1. This appeal is directed under section 173 of the [Motor Vehicles Act, 1988](#) against the award dated 10.2.2000 passed by XV Addl. M.A.C.T., Indore in Claim Case No. 9 of 1999 for enhancement of compensation.

2. The brief facts of the case are that on 11.9.1998 at about 4 p.m. while deceased Rajeshkumar Gupta was walking along the AB Road near Dewas Naka, opposite

Gopal Weighing Centre, one truck bearing registration No. MP 09-KB 902 belonging to respondent No. 1 and was being driven rashly and negligently by the respondent No. 2 hit the deceased and he died on the spot. A report of the said accident was lodged at P.S., Lasoodiya on the same day. The claimants, wife, son and parents of the deceased, filed claim petition seeking compensation of Rs. 15,00,000. The respondent Nos. 1 and 2, despite service, remained absent and were proceeded ex pane in the trial. The respondent No. 3, insurance company, filed its reply denying the liability on the ground that respondent No. 2 driver was not having a valid driving licence at the time of accident. After framing issues and recording evidence, the Claims Tribunal recorded a finding that the accident occurred due to rash and negligent driving of the vehicle and that the claimants are entitled for compensation. The Tribunal also recorded a finding that respondent No. 2, driver, was not having valid driving licence at the time of the accident was not found proved and awarded a total compensation of Rs. 4,39,000.

3. The deceased was a third party and was working as a commission agent in two Bhopal based private companies and was also earning around Rs. 5,000 per month. Two certificates in this regard Exhs. P-10 and P-11 have been produced on record. He was M.Sc. Postgraduate in Mathematics. PW 2, the wife of the deceased, has stated in her statement that the deceased was the only bread-earner in her family and that he was giving a sum of Rs. 4,000 every month to her for family expenses. Having considered this evidence, Claims Tribunal has assessed the income of the deceased at the rate of Rs. 4,000 per month and after deducting one-third of it towards personal expenses, a sum of Rs. 3,000 has been considered as amount of dependency per month, thus, the yearly dependency comes to Rs. 36,000. It has also come in the evidence that at the time of accident the deceased was aged about 32 years and after applying a multiplier of 12, the Tribunal has awarded a sum of Rs. 4,32,000 towards damages, Rs. 2,000 for funeral expenses, Rs. 5,000 towards consortium and, thus, awarded a total compensation of Rs. 4,39,000, against which the claimants have filed this appeal for enhancement of compensation.

4. We have heard learned counsel for the parties and perused the record. It was submitted by the counsel for the appellants that though the Tribunal has

considered the age of the deceased as 32 years, it has not applied the proper multiplier in this case. In reply, the counsel for the respondent insurance company submitted that they have filed cross-objections on the ground that in this case the driver was having licence only to drive light motor vehicle whereas on the date of accident he was driving a truck which comes within the purview of heavy motor vehicle. He further submitted that the insurance company is, therefore, not liable for payment of compensation and it be exonerated.

5. So far as the cross-objections filed by the respondent insurance company are concerned, the Tribunal has rejected the objection of the insurance company on the ground that from the registration of the vehicle, the weight of the vehicle in question was seen to be 7155 kg. and as per section 2 of Motor Vehicles Act, a vehicle having weight up to 7500 kg. comes within the purview of light motor vehicle, therefore, the vehicle involved in this accident was a light motor vehicle. The insurance company has also not led any evidence on this point that the weight of the offending vehicle was more than 7500 kg. Thus, the Claims Tribunal has rightly assessed the factual aspect of the matter and no case as such is made out either to allow the cross-objections or to interfere in the findings recorded by the Claims Tribunal. More so the deceased was having a driving licence to drive light motor vehicle, but the insurance company has not led any evidence in rebuttal to prove that the driver was disqualified to drive the heavy motor vehicle. Hence, the same are dismissed.

6. From the post-mortem report Exh. P-15, it is clear that age of the deceased at the time of accident was 32 years. Exh. P-3 is the Higher Secondary Certificate of the deceased and according to which his date of birth was 3.5.1966. Therefore, on the date of accident, i.e., on 11.9.1998, his age was rightly considered as 32 years, thus, it is obvious that the Tribunal has not applied a proper multiplier in this case. As per Second Schedule of the [Motor Vehicles Act, 1988](#) for the age group of 32-35, the proper multiplier is 17 instead of 12. So far as the income of the deceased assessed by the Tribunal is concerned, it appears to be just and proper looking to the evidence on record. PW 2 in her cross-examination has stated that the deceased was paying a sum of Rs. 4,000 per month towards family expenses. However, the claimants have not examined any person who had issued

certificates in this regard (Exhs. P-10 and P-11) to prove the income of the deceased. Thus, looking to the evidence on record, it appears that the Claims Tribunal has rightly assessed the income as well as the dependency of the deceased.

7. Thus, looking to the evidence on record, proper compensation in this case would be the amount of yearly dependency Rs. 36,000 multiplied by 17 which comes to Rs. 6,12,000. Therefore, the amount of compensation is enhanced from Rs. 4,32,000 to Rs. 6,12,000. The Tribunal has also awarded a sum of Rs. 5,000 for loss of consortium and Rs. 2,000 towards funeral expenses. The amount of funeral expenses is enhanced from Rs. 2,000 to Rs. 10,000 and looking to the age of the wife and the fact that son of the deceased born after his death, the amount of consortium is also enhanced from Rs. 5,000 to Rs. 15,000. A sum of Rs. 5,000 is further awarded to the parents of the deceased towards loss of love and affection. Thus, total compensation comes to Rs. 6,42,000 instead of Rs. 4,39,000. The Claims Tribunal has not awarded any interest on the compensation from the date of the filing of the claim petition till realisation nor has assigned any cogent reasons for not awarding the same. Accordingly, the interest at the rate of 9 per cent per annum is also allowed on the aforesaid amount from the date of the claim petition till its payment. This amount be apportioned among the claimants as directed by the Tribunal with interest.

8. Consequently, this appeal is allowed and the compensation is enhanced as indicated above. The respondents shall be liable to pay compensation jointly and severally within two months with costs of . 1,000 payable to the counsel for the appellants, if certified. Memo of award be prepared accordingly. Record be returned.