Anita and ors. Vs. Dharmendra and ors.

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Court : Madhya Pradesh

Decided On : Mar-06-2007

Reported in : 2008ACJ2086

Judge : Abhay Gohil and ;S.K. Gangele, JJ.

Appellant : Anita and ors.

Respondent : Dharmendra and ors.

Advocate for Pet/Ap. : Mr. N.K. Gauri

Disposition : Appeal allowed

Judgement :

Abhay Gohil, J.

1. This is the claimants appeal for enhancement of compensation under Section 173 of Motor Vehicles Act, against the award passed by Fourth Additional Motor Accidents Claims Tribunal, Gwalior in Claim Case No. 84 of 2000 passed on 28.2.2001 and awarded compensation of Rs. 1,79,500.

2. Briefly stated that on 30.4.1996 the deceased Vinod Kumar had gone towards Vikkey Factory where he was sitting with Kailash, at the same time at about 11 to 11.30, one Maruti van bearing No. UP 93-B 5975 came from Dabra side, respondent No. 1, Dharmendra was driving the said Maruti van, he was driving the

same rashly and negligently, he came on the wrong side and did not apply any brakes or blow the horn and hit Vinod Kumar and Kailash, who were sitting on the roadside, both had sustained severe injuries and died on spot. Thereafter, the driver Dharmendra, respondent No. 1 leaving Maruti van on the spot ran away from there. The matter was reported to P.S. Jhanshi Road where crime was registered and matter was investigated. The claimants those who are widow, one son and three daughters including mother and grandmother of the deceased have filed claim petition.

3. In the claim petition it was pleaded on behalf of the claimants that deceased was engaged in the business of selling leather of dead animals and was earning Rs. 5,000 per month. Widow, one son, three daughters, mother and grandmother were all dependent on the income of the deceased and have claimed compensation of Rs. 26,71,000.

4. Claim was contested by respondents, though it is admitted position on record that the aforesaid Maruti van bearing No. UP 93-B 5975 was insured with the respondent No. 3, insurance company and it was owned by respondent No. 2, Awadesh Kumar who was resident of Civil Lines, Jhanshi and respondent No. 1, Dharmendra was driver of the said vehicle, they have denied the allegations of the claim petition and the defence of the owner-respondent No. 2 and driver-respondent No. 1 was that if any claim is payable to the claimants the same is the liability of the insurance company. It was further pleaded by the insurance company that there was no accident even though the vehicle was insured with insurance company and vehicle was being driven by an unauthorised person and the claim is on higher side. After considering the evidence on record learned Tribunal recorded finding that on 30.4.1996 respondent No. 1 was driver of the aforesaid Maruti van and accident took place because of rash and negligent driving by the driver. It was found proved that on account of accident Vinod Kumar died because of the injuries sustained in the accident. Tribunal also found that the claimants are dependants and are entitled for compensation and awarded compensation of Rs. 1,79,500 against which the claimants have filed this appeal for enhancement of compensation.

5. Mr. N.K. Gauri, counsel for appellants submitted that award is on the lower side, the Tribunal has not considered the proper income of the deceased. Admittedly no income certificate or any other certificate to show that he was engaged in the aforesaid business has been produced on record, only oral evidence is on record. Anita, PW 1, widow of the deceased has stated that the age of her husband was around 25 years, he was enjoying good health, he was engaged in the business of purchasing and selling of leather of dead animals, he was giving her Rs. 150-Rs. 200 per day towards household expenses and on the occasion of festivals he was also paying some more amount to her, in the cross-examination she has admitted that their marriage took place in the year 1987 when her age was around 15 years and age of her husband was around 18 years, she was not knowing that how much money was involved in this kind of business, she was also not knowing that from which Mandi he was purchasing the leather and where he was selling it. She has admitted that income of her husband was the only source of income to her family, there was nobody in the family to earn their livelihood. Claimants also examined Bahadur Singh, PW 2, who is the eyewitness of the incident and who had lodged F.I.R., Exh. P2. On the basis of aforesaid oral evidence and in the absence of any documentary evidence Tribunal has considered the income of the deceased as Rs. 15,000 per annum. It was argued on behalf of the appellants that as per Second Schedule this income has been considered for a non-working person but he was a working person, engaged in business and there is no rebuttal to the oral evidence about the income and the deceased was having huge family and all the claimants are dependent on him.

6. It is true that the principle of notional income as per Second Schedule is applicable for the non-working person. On the basis of oral evidence and looking to the size of the family it can be held that the deceased was an earning person, therefore, the principle of notional income will not be applicable. So far as the question of income is concerned, in the absence of any documentary evidence for engagement in the business of selling of leather much reliance cannot be placed. But it can be held that even if he was a casual worker in the year 1996 when the accident took place, he must be earning Rs. 60-Rs. 70 per day and Rs. 1,800 per month for 25 days in a month and considering the future prospects his income can be considered at Rs. 2,000 per month, that is, Rs. 24,000 per annum. Therefore,

in the facts and circumstances of the case we hold that the income of the deceased was Rs. 24,000 per annum and looking to the size of the family, he must not be spending 1/3rd amount on himself, therefore, we hold that he was spending V4th amount on himself and spending the remaining 3/4th on the dependants. Thus we deduct 1/4th amount, towards his personal expenses and hold that the amount of dependency would come to Rs. 18,000 per annum. There is no dispute that the age of the deceased was 25 years at the time of accident and Tribunal has recorded the finding that the age of the deceased was around 24 years but in the post-mortem report the same is mentioned as 25 years. Considering this fact that for the age group of 22 to 25 years the multiplier of 17 is applicable and Tribunal has rightly applied multiplier of 17. Therefore, on application of this multiplier on the amount of dependency of Rs. 18,000 the total compensation comes to Rs. 18,000 x 17 = Rs. 3,06,000. We further allow a sum of Rs. 14,000 in various heads like loss of consortium, loss of love and affection, loss to the estate and towards funeral expenses. We compute the total compensation as Rs. 3,20,000 (rupees three lakh twenty thousand) for which the claimants are entitled. Enhanced amount will carry interest at the rate of 8 per cent per annum from the date of filing of this appeal till payment. The enhanced amount shall be deposited in the name of minor children equally in any nationalised bank for the minimum period of 5 years and claimants would be entitled for monthly interest thereon.

Accordingly this appeal is allowed as indicated above.