

Dev Kanya and ors. Vs. Jaggu and ors.

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Court : Madhya Pradesh

Decided On : Sep-02-2005

Reported in : II(2006)ACC192

Judge : A.M. Sapre and ;Ashok Kumar Tiwari, JJ.

Appellant : Dev Kanya and ors.

Respondent : Jaggu and ors.

Advocate for Def. : Mr. Dandwate

Advocate for Pet/Ap. : Mr. Sanjay Patwa

Judgement :

ORDER

A.M. Sapre, j.

1. This is an appeal filed by the claimants under Section 173 of the Motor Vehicles Act against an award, dated 29.8.2002, passed by learned Additional Member, Motor Accident Claims Tribunal, Ujjain in Claim Case No. 24 of 2001.

2. The only question that arises for consideration in this appeal is, whether any case for enhancement in compensation awarded by the Tribunal is made out or not?

3. In view of short controversy it may not be necessary to narrate the entire facts in detail. Indeed, all the materials issues such as the manner in which the accident occurred, how it occurred? are decided in favour of claimants and hence, they need not be taken note of except to the extent necessary.

4. It is death case. One Bane Singh, aged 30 years died in vehicle accident on 19.12.2000 while travelling in tractor/trolley. He was claimed to be a Mistry (masson) and was engaged in civil work on daily wages. The legal representatives of Bane Singh (appellants herein) filed a claim petition out of which this appeal arises claiming compensation for the death of Bane Singh. The claim was resisted by the non-applicants. Parties adduced evidence. However by impugned award, the Tribunal allowed the claim in part and awarded a total sum of Rs. 1,85,000 together with interest at the rate of 9% p.a. from the date of application till realization. It was also held that company is liable to discharge the liability arising out of the accident and hence, award was passed also against the company. It is against this award, the claimant has filed appeal seeking enhancement in the compensation awarded to the claimant.

5. Heard Mr. Sanjay Patwa, learned Counsel for the appellants and Mr. Dandwate, learned Counsel for the respondent No. 4.

6. We have gone through the evidence adduced by the claimants on the question of earning of deceased. The Tribunal has taken Rs. 15,000 as his yearly income by taking note of his notional income but not what was deposed in evidence. In our view, taking note of evidence and its worth, we hold that his monthly income was Rs. 2,500 and thus yearly Rs. 30,000. After deducting 1/3rd, we get Rs. 20,000. Taking into account his age, the multiplier of 18 would be proper multiplier. In this way, the claimant is entitled to claim a total sum of Rs. 3,60,000. The enhanced sum shall carry interest at the rate of 6% p.a from the date of application till realization.

7. So far as liability of Insurance Company is concerned, the same in the light of law laid down in the case of National Insurance Company v. Baljit Kaur and Ors. : AIR 2004 SC1340 , may not be there because deceased was a gratuitous passenger in the trolley. However, keeping in view the ratio of Full Bench of this

Court, reported in : 2003(4)MPHT574 Jugal Kishore and Ors. v. Ramlesh Devi and Ors. the Insurance Company has to satisfy the award in favour of third party and then recover the amount from the insured.

8. Accordingly and in view of aforesaid principle of law, the appeal succeeds and is allowed in part. The impugned award is modified to the extent that claimant is held entitled to recover a total sum of Rs. 3,60,000 from the non-applicants jointly and severally. The enhanced sum shall carry interest at the rate of 6% p.a. from the date of application till realization. However, the Insurance Company on depositing the awarded sum will have a right to recover from the Insured in these very proceedings the awarded sum.

Counsel fees Rs. 1,500, if certified.

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