Chandan Singh and anr. Vs. S.E.W. Construction Co. Ltd. and ors.

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Court : Madhya Pradesh

Decided On : Jan-03-2003

Reported in : II(2004)ACC746; 2003ACJ1382

Judge : Bhawani Singh, C.J. and ;S.L. Jain, J.

Appeal No. : M.A. No. 296 of 2002

Appellant : Chandan Singh and anr.

Respondent : S.E.W. Construction Co. Ltd. and ors.

Advocate for Def. : V.R. Rao and ;S.K. Rao, Advs.

Advocate for Pet/Ap. : A.K. Jain, Adv.

Disposition : Appeal allowed

Judgement :

Bhawani Singh, C.J.

1. Through this appeal, award of Motor Accidents Claims Tribunal, Jabalpur in M.V.C. No. 7 of 2000, dated 7.11.2001, has been challenged by the claimants who are parents of deceased Ajay Senger.

2. Material facts of the case are that in the morning of 4.10.1999 at about 10 a.m., Ajay Senger (deceased) met with an accident when dumper No. MP 10-A 5599

driven by Ashok Garhewal, owned by S.E.W. Construction Co. Ltd. and insured with United India Insurance Co. Ltd., hit the motor cycle on which deceased was coming from the opposite side. As a result of this accident, deceased died on the spot. He was 27 years old, a brilliant student who, after completing degree in Master of Business Administration course, was selected by Maheshwar Hydel Power Corporation Ltd., Mandleshwar (Khargone) against the post of Management Trainee on contract basis for a period of 5 years. On the date of accident, he was being paid stipend of Rs. 6,000 per month. Looking to his bright career, he could acquire the status of Deputy General Manager in future and earn salary of Rs. 40,000 to Rs. 50,000 per month. Accordingly, compensation of Rs. 8,60,40,000 is claimed along with interest. Allegation is that the accident took place due to rash and negligent driving by dumper driver otherwise it could not have happened.

3. Respondents have contested the claim alleging that the deceased was responsible for the accident. He lost balance on hearing the horn of the dumper. Moreover, the driver stood exonerated of criminal liability, by the court when he was prosecuted for offence under Section 304A of Indian Penal Code.

4. United India Insurance Co. Ltd. alleges that the insurance company with which the motor cycle was insured, should also have been made party to the case.

5. On the pleadings of parties, Claims Tribunal framed as many as six issues. After recording of evidence and hearing the parties, finding drawn are that the accident took place as alleged as a result of which the deceased died. It is said that insurance company with which motor cycle was insured, was not a necessary party. Both the driver of the dumper and motor cycle possessed valid driving licence. Ultimately, the compensation of Rs. 4,44,000 has been awarded with interest at the rate of 9 per cent per annum from the date of application till payment.

6. Mr. A.K. Jain, the learned Counsel appearing for appellants, vehemently urges that the Claims Tribunal did not assess the compensation justly and properly. It did not take into consideration the fact that deceased was a brilliant student appointed by the company where he was to earn promotion after promotion and reach the

stage of General Manager who generally gets monthly salary of Rs. 50,000. He was likely to complete training after four months and get into the post of Engineer. Accordingly, Tribunal has chosen low multiplier of 12 instead of 18 applicable in this case.

7. Mr. S.K. Rao representing insurance company submits that at the time of incident deceased was receiving stipend of Rs. 6,000, therefore, the Claims Tribunal has rightly arrived at the dependency and looking to the nature of evidence multiplier of 12 has rightly been applied. Moreover, the deceased was receiving handsome salary and the award of compensation to the mother is quite reasonable. It is sheer guess to say that deceased could have reached the post of General Manager in the company at later stage since his future was bright.

8. Mr. V.R. Rao, learned Counsel representing the construction company submits that claimant has not produced satisfactory evidence as to the salary of various posts which he could think of achieving at later stages. Therefore, only satisfactory figure on which dependency can be worked out is the stipend of Rs. 6,000, which the deceased was receiving at the time of accident. Mr. Rao further submits that 2/3rd of the dependency would have gone to the deceased and 1/3rd left to the claimant and there is no challenge to the denial of compensation to the father of deceased, therefore, he cannot be paid the compensation. Learned Counsel for the respondents also submits that claimants have already been paid Rs. 2,00,000 by the company towards Group Insurance Policy, therefore, this amount should be deducted from the compensation which may be worked out.

9. Giving serious consideration to the matter, we proceed to record that Ajay Senger was 27 years old at the time of accident. He had been selected by the company to work for five years initially as Management Trainee, then Assistant Manager on the date of accident, deceased had completed the training for 8 months. He was receiving stipend of Rs. 6,000 per month and was to become Assistant Manager. Looking to the hierarchy of service, the last being of General Manager whose monthly salary is Rs. 50,000 per month, it would not be unrealistic to conclude that after completion of one year, the deceased would at least get Rs. 10,000 per month along with the other perquisites generally available to company

employees. Future chances of promotion were also there, but for determination of suitable multiplier, all ponderables and imponderables of life have to be taken into consideration besides the age of the parents, lesser being of the mother (47). Suitable multiplier should be 18.

10. Fixing the monthly income of the deceased at Rs. 10,000, deducting 1/3rd towards personal expenditure and rejecting contention of Mr. V.R. Rao, dependency works out to Rs. 6,666 per month and yearly Rs. 79,992. Using multiplier of 18, compensation works out to Rs. 14,39,856. In addition, claimant shall be entitled to Rs. 10,000 for loss of expectancy of life, Rs. 2,500 for loss to estate and Rs. 2,000 towards funeral expenses taking the total amount of compensation to Rs. 14,54,356. It shall carry interest at the rate of 9 per cent per annum from the date of application till payment.

11. Now, we deal with the contention whether father of deceased is entitled to compensation. Mr. V.R. Rao, the learned Counsel, submits that father is not dependent on the deceased since he was employed and receiving handsome salary, however, the compensation may be awarded to the mother. We do not appreciate this contention to the extent it is advanced. Simply because legal representatives of the deceased are earning members and do not depend upon the deceased for survival, claim for compensation cannot be denied. Assuming all the legal heirs of the deceased are in service and receiving salary or their own income, does it mean that claim petition is to be dismissed as not maintainable? We are satisfied that this is not the purpose of the legislation and in case it is held as contended by the respondents, the tortfeasor(s) are the beneficiaries which is not the purpose of the legislation. Compensation is assessed as awarded for the death of a person to his legal heirs who sustain loss on account of his death by the tortfeasor(s) or wrongdoer(s). Therefore, compensation is awardable and distributed amongst legal representatives depending on the facts of the case. Simply because, the award of compensation to the father has not been challenged, court can consider the fact and award compensation as per law.

12. Accordingly, the appeal is allowed. The award is modified and compensation of Rs. 14,54,356 is awarded along with interest at the rate of 9 per cent per annum

from the date of application till payment as under:

(1) Chandan Singh (father) 30 per cent

(2) Sheela Senger (mother) 70 per cent

Compensation shall be paid to the claimants within three months without making deduction of any amount paid to the claimants by the company, whether by way of ex gratia payment or Group Insurance or otherwise.