

Neha and ors. Vs. Mukesh and ors.

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Court : Madhya Pradesh

Decided On : Apr-18-2006

Reported in : III(2006)ACC519; 2007ACJ2136

Judge : S.K. Seth, J.

Appellant : Neha and ors.

Respondent : Mukesh and ors.

Disposition : Appeal allowed

Judgement :

S.K. Seth, J.

1. This appeal is against the award dated 25.1.2001 passed by the Tenth Motor Accidents Claims Tribunal, Indore in M.V. Case No. 394 of 1999. By the impugned award, Claims Tribunal assessed and awarded a total sum of Rs. 2,80,000 (rupees two lakh eighty thousand) as compensation for the death of one Sushilabai.

2. Relevant facts in short are as under:

Deceased Sushilabai, a government servant holding post of Assistant Teacher, met with an accident on 9.2.1990. On account of said accident, she sustained head injury. The deceased succumbed to injuries on 12.2.1990 in Choithram

Hospital, Indore. Learned Claims Tribunal based upon the evidence, found that only respondent No. 1 was responsible for causing the accident on account of his rash and negligent driving, therefore, directed respondent Nos. 1 and 2 to pay compensation while exonerating other respondents from the liability to pay compensation.

3. Learned Counsel for appellants submitted that the Tribunal failed to see the distinction between composite negligence and contributory negligence. According to him it was case of composite negligence, therefore, both the scooterists ought to have been held liable to pay compensation jointly and severally. Attacking quantum, it was contended that while assessing the quantum, no amount was awarded towards the future prospects of the deceased who was working as an Assistant Teacher in a government school. Thus, according to him the amount deserves to be enhanced suitably. Per contra, learned Counsel appearing for respondent No. 5 submitted that just and proper amount of compensation has been worked out which is payable to the appellants. It was also contended that the Tribunal rightly found that respondent No. 1 alone was responsible for causing the accident; therefore, no amount of compensation is recoverable from respondent No. 5.

4. After having heard rival submissions at length and perusing record, in the considered opinion of this Court, the present appeal deserves to be allowed. It is not in dispute that the deceased was going ahead of the scooters. The place of accident is densely populated area in the heart of the city. The accident took place in the afternoon. It is also not in dispute that scooter bearing registration No. CPE 5055 was in the lead. Other scooter (MBI 1155) came from behind and in the process of overtaking, it dashed against the other scooter. As a result, scooter bearing registration No. MBI 1155 lost control and hit the deceased and she fell down and sustained injuries. From the evidence available on record and specially eyewitness account of PW 4 and PW 5, in the considered opinion of this Court, both the scooter riders were responsible for causing the accident. The Tribunal failed to see that present was a case of composite negligence between two scooterists. Thus, the finding of Tribunal, that only respondent No. 1 was liable to pay the compensation, is unsustainable. Thus, accordingly, I hold that both the

scooterists were responsible for causing the accident on account of their rash and negligent driving in thickly populated area.

5. Now coming to the quantum, learned Claims Tribunal assessed total monthly income of deceased at Rs. 2,320. This was done without taking future prospects into account. At the time of accident, deceased was working as Assistant Teacher and was due for promotion in the year 1993. At the time of accident her age was only 45 years. The Tribunal adopted multiplier of 15 for the purpose of determining future loss of dependency. The learned Counsel for the appellants submitted that learned Claims Tribunal has not awarded any sum towards future prospects of the deceased. She was a qualified teacher having M.A., B.Ed. degrees to her credit and all other things being equal, she would have earned promotions up to the post of principal. I find force in the submission of learned Counsel for the appellants. In a case of composite negligence joint tortfeasors are equally responsible for payment of compensation without apportioning liability. In such a case the victim or legal representatives are entitled to recover the entire amount together with interest from any one of joint tortfeasors. Learned Counsel for appellants is also right in saying that while assessing the compensation the Tribunal ought to have taken into account the future prospects of deceased and the promotion which she was likely to get. Thus, considering overall facts and future prospects, one can safely assume the take home salary of deceased at Rs. 3,000 per month. Deceased was a teacher, therefore, after deducting 1/3rd for her personal expenditure, which she must have been spending on herself, loss of dependency comes to Rs. 2,000 per month and annual loss of dependency comes to Rs. 24,000. For the future loss of dependency looking to the age of deceased, Tribunal has rightly applied multiplier of 15 which comes to Rs. 3,60,000. Deceased left behind besides her husband, one son and three daughters, therefore, under the conventional heads, one can safely add another sum of Rs. 30,000 that would take care of compensation under various heads like loss of consortium, love and affection, loss to estate, funeral expenses, etc. From the evidence it is also clear that after the accident, deceased was taken to hospital and during treatment she succumbed to her injuries on 12.2.1990 in Choithram Hospital, Indore which was the best available hospital from the medical facilities at that point of time in Indore or surrounding areas. For three days, appellants especially the husband, must

have gone under tremendous amount of anguish, strain, both mental and physical. No amount has been awarded by the Tribunal for the expenses incurred on the treatment of deceased in order to save her life. Considering overall facts, a sum of Rs. 10,000 would be appropriate sum under this head.

6. Thus, the appellants are entitled to recover a total sum of Rs. 4,00,000 (rupees four lakh) jointly and severally from the respondents except respondent No. 3. The enhanced amount shall carry interest at the rate of 6 per cent per annum from the date of application till it is actually paid. Thus, appeal is allowed with costs throughout. The impugned award is modified to the extent indicated herein above. Counsel's fee Rs. 1,500, if certified.

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