

Dr. Deo Patodi and anr. Vs. Devendra Arora and anr.

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SooperKanoon Citation : sooperkanoon.com/513343

Court : Madhya Pradesh

Decided On : Oct-13-2006

Reported in : II(2007)ACC236; 2008ACJ265

Judge : S. Samvatsar and; Manjusha P. Namjoshi, JJ.

Appellant : Dr. Deo Patodi and anr.

Respondent : Devendra Arora and anr.

Judgement :

ORDER

1. This appeal is filed by the claimants under Section 173 of the Motor Vehicles Act challenging award dated 9.5.2005 passed by XV Additional Member Judge, Motor Accident Claims Tribunal in Claim Case No. 19/2004 whereby the Claims Tribunal has awarded an amount of Rs. 9,38,000 as compensation to the present appellant, who are parents of the deceased Deepak Kumar for his death.

2. The brief facts of the case are that Deepak was travelling in a Car No. M.P. 09/H.C.5868 on 12.6.2003. He was going from Indore towards Bhopal and met with an accident in the way. Deepak was 22 years of age at the time of accident. He died on 18.6.2003, during this period he was admitted in Bhandari Hospital, Indore and Chirau Hospital, Bhopal. After his death the present appellant has filed Claim Petition for compensation for the death of the deceased. The Claims Tribunal held that the accident has taken place due to rash and negligent driving of

the vehicle by respondent No. 1 and the vehicle was insured with respondent No. 2. The Claims Tribunal held that the respondents jointly and severally liable for payment of compensation.

3. The claimants have filed this appeal for enhancement of amount of award. The Insurance Company has tiled their cross-objection for reduction of the amount of compensation.

4. The Insurance Company in their cross-objection has also challenged the finding about the negligence. So far as question about negligence is concerned, from the evidence on record, it appears that the vehicle was being driven by respondent No. 1 and the deceased was travelling merely as a passenger and the accident took place and the car dashed to a roadside tree and serious head injuries were caused to the deceased Deepak Patodi. Considering this fact that the deceased was travelling as a passenger cannot be said to be negligent because he was not driving the vehicle. In such circumstances principle of *res ipsa loquitur* will apply and the finding about negligence not to be interfered with.

5. Now, the second question is about the quantum. The Claims Tribunal has found that the deceased was student in Daly College, Indore and, thereafter, he went to England, where he has passed his B.B.A. examination from De Montfort University, United Kingdom, (England) in November 2003. The Counsel for the appellant submitted that in U.K. the deceased was doing part-time job and was earning an amount of 1,008 Pounds. According to him at that time the rate of exchange was Rs. 80 approximately and, therefore, it was to be held that the deceased was earning Rs. 80,000 per month. It is also urged that the deceased has received an employment offer from U.S.A. based Company. A copy of the said letter is Ex. P-56 whereby it was offered on an annual fixed salary of 41,600 \$ i.e. Rs. 18,72,000. This letter is dated 12th April, 2003. The deceased was also offered admission in MBA Course in Australia. He was also a sportsman and a Champion of Junior Squash Championship in the year 1998. Thus, it is clear that the deceased had a brilliant career and a good earning capacity.

6. Mr. Dandwate on the other hand submitted that at the time of accident the deceased had come back from England and was preparing for getting admission

in Australia and, therefore, in this period he was unemployed and, therefore, his income should be assessed on notional basis and, therefore, there is no basis of supporting the finding of the Claims Tribunal that the deceased was earning Rs. 18,000 per month. Therefore, the amount of compensation should be assessed accordingly. There is no dispute that the deceased was unmarried at the time of accident and the present appellants are his father and mother. The Counsel of Insurance Company has urged that since the appellants are father and mother, they are not at all dependent on the deceased, therefore, their compensation should not be awarded by the Claims Tribunal.

7. After hearing the arguments and perusing the record we found that on the date of accident the deceased may not have been earning. He has returned from U.K. few days prior to the said accident, where he was earning 1,008 pounds per month i.e. about Rs. 80,000 per month. The life in U.K. is very expensive.

8. Considering this fact, we find that Claims Tribunal has assessed his income at the rate of Rs. 18,000 per month which cannot be said to be unreasonable or unjust. The deceased has no doubt bright future, hence, the said finding does not require any interference.

9. The Claims Tribunal has deducted 2/3rd amount of personal expenses relying on the basis of the judgment passed by the High Court of M.P., at Bench Gwalior in Halkibai and Anr. v. Managing Director Rajasthan State Road Transport Corporation and Anr. I . wherein this Court has held that in case of death of unmarried person looking to the fact that he would have married in near future 2/3rd amount should be deducted towards his own expenses. A similar view is taken by the Apex Court in the case of Donat Louis Machado v. L. Ravindra : (1998)8SCC633 . But from perusal of both these judgments it appears that this judgment did not lay down any hard and fast rule, on the other hand the Apex Court in the case of Viiay Kumar Durga v. Vidyadhar Datta 2006 Vol. 2 SCC 242 has assessed the compensation after deduction of 1/3 rd amount for the death of an unmarried. In case of Fakeerappa and Anr. v. Karnataka Cement Pipe Factory and Ors. : (2004)2SCC473 , the Apex Court has deducted 1/3rd amount towards the own expenses and awarded compensation to the appellants/parents at 2/3rd.

10. In this case we also found that Trial Court has committed error in deducting 2/3rd amount towards expenses of the deceased and assessing compensation of 1/3rd of the annual income of the deceased. In the present case as per the finding of the Court below the deceased was earning Rs. 18,000 per month and, therefore, his annual income will come to Rs. 2,16,000. After deducting 1/3rd amount dependency will come to Rs. 1,44,000. The age of the mother is 46 years while the age of the father is 51 years. In such circumstances, we deem it fit to apply a multiplier of 13, thus the compensation will come to Rs. 18,72,000. Counsel for the appellants submits that apart from this amount the claimants are entitled to other compensation like medical loss, mental agony, loss of love and affection, etc. So far as compensation towards these heads is concerned the multiplier system takes care of all these factors. The appellants are entitled to the medical expenses. In the present case the Claims Tribunal has found that the claimants must have spent an amount of Rs. 2,00,000 towards treatment.

However, the Tribunal has not awarded the said amount as the original bills were not produced before the Tribunal and only photocopies of the original bills (Ex. P-64 to Ex. P-102) were exhibited. Now the original bills are produced by the appellants of Rs. 1,15,524 before this Court. This amount could not be denied by the present appellant. Apart from this amount the appellant must have spent some other amount for going to Bhopal and Indore for treatment. Considering this fact we award an amount of Rs. 1,25,000 towards the medical expenses and traveling expenses. The claimants are also entitled to compensation on other heads like funeral expenses, etc. The said amount is assessed to Rs. 25,000.

11. Thus the clients are entitled to compensation to the tune of Rs. 20,22,000 are also entitled to interest at the rate of 6% from the date of filing of this appeal on enhanced amount.

12. Appeal stands allowed with no order as to costs and the cross-objections filed by the Insurance Company are dismissed.