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Court : Himachal Pradesh

Decided On : Apr-28-2011

Judge : Deepak Gupta, J.

Appeal No. : FAO No. 425 of 2004

Appellant : Krishna Devi and ors.

Respondent : Transport Commissioner and ors.

Advocate for Def. : Mr. Jagdish Thakur; Ms. Sunita Sharma; Mr. Sanjeev Sood, Adv.

Advocate for Pet/Ap. : Mr. Dinesh Bhanot, Adv.

Judgement :

1. By means of this appeal the claimants claim enhancement of compensation and also challenge the findings of the learned Motor Accident Claims Tribunal that the accident in question was due to the contributory rash and negligent driving of the deceased and driver of Bus No.HR-03PA-0107.

2. Briefly stated the facts of the case are that claimants Krishna Devi and Mela Ram are the parents of the late Shri Atma Ram. It is not disputed that Atma Ram was employed as a driver of Mohindra vehicle No.HP-12-8586 by respondent No.6, Zamila. Admitted facts are that on 5.9.2002 a head on collision took place between the vehicle driven by deceased Atma Ram and Bus No. HR-03PA-0107

which was coming from Baddi side. In the claim petition it was alleged that the accident occurred due to the rash and negligent driving of the driver of the bus. The learned Tribunal held that both the drivers were equally responsible for the accident. The learned Tribunal assessed the income of the deceased at Rs.3,000/- per month, the dependency of the claimants at Rs.2,000/- per month and by applying the multiplier of 10 assessed loss of income at Rs.2,40,000/- + interest and awarded Rs.10,000/- as conventional damages. Thus total compensation of Rs.2,50,000/- was awarded. Since the deceased was held responsible for the accident award was passed for Rs.1,25,000/- only.

3. Shri Dinesh Bhanot, learned counsel for the claimants, submits that the accident occurred solely due to the rash and negligent driving of the driver of the bus. He also submits that the income of the deceased was Rs.6,000/- per month and not Rs.3,000/- per month. His last contention is that the future prospects of the deceased have not been taken into consideration.

4. As far as negligence is concerned, the claimants only examined PW-2 Mohammad Alam, who states that he was sitting in the bus in question. According to this witness when the bus was overtaking a truck, which was at a high speed from the opposite side the jeep being driven by the deceased came and the bus hit against the jeep.

On the other hand RW-1 Gurmit Singh, who is the driver of the bus appeared as his own witness. According to him he had dropped a passenger at Khera and had just restarted the bus and had hardly travelled a short distance when the vehicle being driven by the deceased came on a high speed from the opposite side and hit the bus. The only suggestion put to this witness in cross-examination on behalf of the claimants is that there were PWD labourers working on the left side of the road and in order to rescue the PWD labourers he struck against the jeep.

This is the only ocular evidence led in this regard. The only other document relied upon is the F.I.R. Ext.PW-3/A, which has been proved by the plaintiffs themselves and in this F.I.R. it is mentioned that the accident occurred due to the negligence of both the drivers. The stand of the claimants with regard to

the manner in which the accident occurred is not clear itself.

Whereas the eye witness states that the accident occurred when the bus driver was overtaking a truck on a high speed when the bus driver himself stepped into the witness box no such suggestion was put to him and the only suggestion put to him was that he tried to avoid hitting labourers and then moved to the wrong side. Even if this suggestion is accepted to be correct it is apparent that the driver either had to hit the labourers or the vehicle in question. Therefore, the findings of the learned Tribunal with regard to negligence cannot be faulted with and the same are upheld.

5. Coming to the question of quantum, the main argument of Shri Dinesh Bhanot, Advocate, is that the income of the deceased should have been taken at Rs.6,000/- per month since respondent No.6 owner of the vehicle while appearing as RW-2 stated that she was paying Rs.3,000/- per month as salary and Rs.100/- per day as daily expenses to the deceased. Daily expenses would be paid only for the days when the deceased would have come for duty.

Respondent No.6 was cross-examined by the other respondents and was forced to admit that she could not produce any documentary evidence with regard to the salary of the deceased or the daily allowance paid to the deceased. Assuming for the sake of argument that respondent No.6 being a lady may not have been maintaining complete record about the salary being paid on monthly basis, it is but obvious, that if she had to pay daily expenses of Rs.100/- per day then some record with regard to the attendance of the deceased and payments made to the deceased would have to be kept. It is thus obvious that the version that she was paying Rs.100/- per day is not correct.

6. Having held so, it is obvious that the income of the deceased would have been Rs.3,000/- per month. He was young man of 27 years and his future income would have to increase. In *Sarla Verma (Smt.) and others vs. Delhi Transport Corporation and another*, (2009) 6 SCC 121, it is held that in the case of the deceased in the age group of 20-30 years increase of 50% can be granted where there is some evidence to show that there is chance of increase of income

especially when the deceased is in the organized employment. In this case there is no evidence worth the name that the deceased was in the organized employment but this Court cannot lose sight of the fact that the deceased was a young man and over a period of time his salary would have increased.

Therefore, I feel that it would be appropriate to grant an increase of 25%, which would mean that for the purpose of this case his income would be taken at Rs.3,750/- per month.

7. Now comes the question of dependency.

The claimants are the parents. Other than the bald statement of the mother, who appeared as PW-1 that her husband is not doing anything no material has been placed on record to show that the husband was dependent on the deceased.

Therefore, dependency of the claimants could not be more than 50%, which would mean that the dependency would be Rs.1,875/- per month or Rs.22,500/- per year. The claimant was aged 51 years and as per the multiplier approved in Sarla Verma's case (supra) at such age the appropriate multiplier would be 11, which would make the compensation at Rs.2,47,500/-.

In addition thereto the claimant would be entitled to Rs.10,000/- as conventional damages and another sum of Rs.10,000/- for funeral expenses etc. The total compensation, therefore, works out to Rs.2,65,500/-, which is rounded off to Rs.2,70,000/-. Since the deceased was himself guilty of driving negligently, the claimants would be entitled to compensation of Rs.1,35,000/-. Therefore, the award of the learned MACT is modified to that extent. The enhanced amount shall be paid to the mother only. The appeal is accordingly disposed of. No costs.