

(1987) 01 MP CK 0006
Madhya Pradesh High Court
Case No: None

Manoramadevi and Others

APPELLANT

Vs

N.D. Patel and Others

RESPONDENT

Date of Decision: Jan. 19, 1987**Citation:** (1987) 2 ACC 382**Hon'ble Judges:** R.K. Verma, J; G.G.Sohani, J**Bench:** Division Bench

Judgement

R.K. Verma, J.

This is an appeal by the claimants against the Award dated 19-7-1982 passed by the Member, IIIrd Additional Motor Accident Claims Tribunal in claim case No. 98/79 whereby the learned Member has awarded compensation of Rs. 5000/- with interest thereon at the rate of 6% per annum from the date of presentation of the claim petition till realisation. The claimants-appellants have prayed for enhancement of the compensation amount to four lacs. The Respondent No. 1 who is the owner of the truck in question which caused the accident has, however, filed a cross-objection alleging the compensation awarded to be excessive.

2. The material facts leading to this appeal, briefly stated, are as under:

On 15-3-1979 between 12 and 12.30 P.M. Pradeep Kumar was going on his scooter from Navlakha towards Loha Mandi and when he reached on Navlakha road in front of Khalsa Timber Merchant the respondent No. 2, who was driving truck No. M.P I. 3468, reversed the truck from Sarvodaya Saw Mill and brought it on the road all of a sudden with speed" without blowing any horn and thus, dashed the truck against the scooter driven by Pradeep Kumar who was thrown off the scooter to a considerable distance as a result of the impact of the collision and sustained multiple greivous injuries to which he ultimately succumbed on the way while being taken on an auto-rickshaw to the M.Y. Hospital. The driver respondent No. 2 after the accident tried to escape by driving the said truck further from the place of the accident but he was stopped by the people who had gathered around there and was

apprehended.

3. The truck in question stood insured at the relevant time with the Insurance Company respondent No. 3.

4. The claimants-appellants who are the parents, sister and brother of the deceased Pradeep Kumar filed the Claim Petition before the Claims Tribunal on 22-5-1979 claiming an amount of Rs. 4,00,000/- as compensation. After trial the learned trial Court found that the accident was the result of rash and negligent driving of the truck in question by the driver respondent No. 2 but it also found that the deceased Pradeep Kumar was also partly responsible as he tried to over-take the said truck from its wrong side i.e. left side. The learned Tribunal, therefore, held contributory negligence on the part of Pradeep Kumar to the extent of 50%. Accordingly, while the Tribunal determined the amount of compensation as Rs. 10,000/-, he held the claimants-appellants entitled to 50% of that amount. As such the claimants-appellants have been awarded Rs. 5000/- by way of compensation for the accident of Pradeep Kumar alongwith interest at the rate of 6% per annum as aforesaid.

5. Being aggrieved by the low compensation awarded the claimants have preferred this appeal.

6. Learned Counsel for the appellants has pointed out that the respondent No. 2, the driver of the truck, had turned the truck towards the left as has been noticed in paragraph 23 of the impugned Award. The learned Counsel, therefore, contended that the entire negligence for the accident is, therefore, attributable to the truck driver who suddenly turned the truck towards left and thereby causing collusion with the scooter which was being properly driven on its left-side. The contention of the learned Counsel, in our opinion, deserves to be accepted and we accordingly hold that the accident was caused solely by rash and negligent driving of the truck by the truck driver respondent No. 2. On this finding of ours, the compensation of Rs. 10,000/- as determined by the learned Tribunal, becomes payable to the claimants-appellants but the learned Counsel has contended that the learned Tribunal has committed an error in unduly reducing the amount of compensation consequent to taking into consideration various amounts which have become payable under life insurance policies of Pradeep Kumar.

7. Having gone through the Award we find that the fact of amounts becoming payable under the various Life Insurance Policies of the deceased Pradeep Kumar influenced the mind of the learned Tribunal to a considerable extent in determining the amount of compensation, which has been determined at an unreasonably low figure. The Income Tax Returns (Ex. C-10) of the deceased Pradeep Kumar who was assessed as an individual, shows the total income as Rs. 16,060/-. Pradeep Kumar was 21 years of age when he died. It is conceivable that he would have been married about five years after the date of accident, had he survived the accident. It

can fairly be assumed that until his marriage he would have, after meeting the expenses of his personal needs, contributed about 50% of the income to his parents for the expenses of the other members of the family viz., the claimants who would have thus, received a total benefit of about Rs. 40,000/- in five years. The learned Counsel for the respondents has, however, cited a Full Bench decision of this Court in *Kashmiran Mathur and Ors. v. Sardar Rajendra Singh and Anr.* 1983 MPLJ. 113 in support of his contention that the benefit receivable by the appellants under the Insurance Policies has been accelerated by the death of the deceased and as such the compensation is liable to be reduced. Taking into account the acceleration of the interest of the claimants in the benefits we deem it appropriate to fix the compensation at Rs. 25,000/- only as just compensation in the circumstances of the case.

8. The cross-objection filed by the respondent No. 1 praying for further reduction of the compensation amount awarded by the learned Tribunal has no merit and deserves to be dismissed.

9. In the result this appeal is partly allowed. The Award passed by the learned Tribunal is modified to the extent that the respondents shall pay instead of 5000/-, an amount of Rs. 25,000/- to the claimants appellants Nos. 1 and 2 as compensation together with interest at the rate of 6% per annum from the date of presentation of the claim petition till the said amount is paid. The cross-objection filed by the respondent No. 1 is, however, dismissed, The parties shall bear their own costs of this appeal.