(1983) 09 MP CK 0006

Madhya Pradesh High Court

Case No: None

State of Madhya Pradesh		APPELLANT
	Vs	
Bhama Devi and Others		RESPONDENT

Date of Decision: Sept. 19, 1983

Acts Referred:

- Fatal Accidents Act, 1855 - Section 2

Citation: (1984) 1 ACC 245

Hon'ble Judges: G.P. Singh, J; Faizan Uddin, J

Bench: Division Bench

Judgement

G.P. Singh, J.

This is an appeal u/s 110-D of the Motor Vehicles Act, 1939, against an award in favour of the respondents on account of the death of one Kailash Kumar Agarwal. The Tribunal award a sum of Rs. 1,53,000/- as compensation to the dependents who are the widow and children of the deceased.

2. The accident giving to the rise claim case before the Tribunal took place on 8th December 1976. The deceased was going on a motor cycle from Manendragarh to Chirmiri. He was accompanied by Shila Samuel (C.W.3) who was riding on the pillion. The motor cycle was going up a slope. From the other side i.e. Chirmiri side, a jeep of the Education Department was coming. There was a collision between these two vehicles in which the deceased was injured. He died on 18th December, 1976 in the hospital. The case of the respondents-claimants was that the motor cycle was going at moderate speed on the left side of the road and the accident happened because of the negligence of the driver of the jeep who was driving it at an excessive speed. The fact that the motor cycle was being driven on the left side of the road and it was going at a moderate speed is supported by the evidence of Shila Samuel (C.W. 3) and Mohanlal (C.W. 4). Mohanlal is a labourer who was working near the place of the

accident on the road. The evidence of these two witnesses has been believed by the Tribunal and we do not find any good ground to take a contrary view. The very fact that the motor cycle was going up a slope makes it reasonably possible that the speed of the motor cycle was moderate. The other side of the version is deposed to by Laxman (D.W. 2) who is the driver of the jeep and Badri Prasad (D.W. 1) who is Assistant District Inspector of Schools (A.D.I.S.) and who was also in the jeep at the time of the accident. The statements of these two witnesses are that they saw that from the opposite direction a motor cycle was coming at an excessive speed from the right side. The driver of the jeep stopped the vehicle on the left side. It was also stated that the deceased was talking to Shila Samuel (C.W. 3), who was riding on the pillion, unmindful of the jeep coming from the opposite direction. The evidence of these witnesses has been disbelieved and the Tribunal''s conclusion on this aspect is correct. Badri Prasad (D.W. 1) lodged the First Information Report which is R.I. In that report, it is not stated that the jeep was stopped on seeing the motor cycle coming from the opposite direction. This fact is also not stated in the written statement. Had it been a fact that the jeep was stationary and then the collision took place, the fact would have been specifically mentioned in the first Information Report or at least in the written statement. The statements of Laxman and Badri Prasad before the Tribunal were clearly after thought. These witnesses were rightly disbelieved by the Tribunal. We accept the finding of the Tribunal that the driver could not control the jeep possibly because of its excessive speed while moving down the slope and that it was the negligence of the driver of the jeep which caused the accident.

3. Coming to the question of quantum of damages, the deceased was a P.W.D. Contractor. He was taking contracts in his own name as also in partnership. He was assessed to Income Tax. The assessment of Income Tax for the assessment year 1973-74 showed that his individual income was Rs. 7,900/ and his partnership income, in which his share was 40%, was Rs. 25,150/-. The returns of income for the assessment years 1974-75 and 1975-76 had also been filed but there was no assessment. From the income assessed for the year 1973-74, the Tribunal reduced that, the income of the deceased was Rs. 1,500/- per month. That finding appears to be perfectly justified. The deceased was aged 34 years. Having regard to the age of the deceased and his working life, a multiplier of 18 adopted by the Tribunal cannot be said to be on the higher side. The Tribunal estimated the loss of yearly dependency at Rs. 9,600/. That too is reasonable. The Tribunal has awarded Rs. 1,000/- for medical expenses and Rs. 5,000/ on account of pain and suffering and loss of expectation of life u/s 2 of the Fatal Accidents Act, 1855. The Tribunal has deducted Rs. 25,000/-, the amount received from Insurance Policy by the widow. The amount awarded by the Tribunal is reasonable. It cannot be described to be excessive. It may be a moot question whether the Tribunal was justified in deducting the amount of Rs. 25,000/- on account of Insurance Policy received by the widow. As no cross-appeal has been filed by the respondents, we do not want to enter into that

controversy.

4. The appeal fails and is dismissed with costs.