(2009) ACJ 2721

Madhya Pradesh High Court (Gwalior Bench)

Case No: None

Farzana Begum and Others		APPELLANT
	Vs	
National Insurance Co. Ltd. and Others		RESPONDENT

Date of Decision: Nov. 3, 2008

Citation: (2009) ACJ 2721

Hon'ble Judges: S.K. Gangele, J

Bench: Single Bench

Judgement

S.K. Gangele, J.
The appellants have filed this appeal against the award dated 8.7.2002 passed by the Third Additional Motor Accidents Claims Tribunal, Gwalior in Claim Case No. 63 of 2001, with regard to enhancement of compensation.

2. On 30.8.2001 deceased Mohinuddin Qureshi had been driving his Sunny bike. When the vehicle reached near Ganesh Temple, A.B. Road then a truck bearing registration No. HR 46-A 709, which was being driven by Ramashish, respondent No. 3 rashly and negligently hit against Mohinuddin Qureshi. He died on the spot. Shamshuddin, who was pillion rider along with Mohinuddin also received injuries in the said accident. F.I.R. of the accident was lodged at Police Station Bahodapur and a case vide Crime No. 274 of 2001 was registered against the driver of the offending truck. Subsequently, the appellants-applicants filed a claim application before the Motor Accidents Claims Tribunal at Gwalior claiming a total compensation of Rs. 30,00,000 on account of the death of Mohinuddin Qureshi. Appellant-applicant No. 1 is the wife and appellant-applicant Nos. 2 to 6 are the sons and daughters of the deceased Mohinuddin and appellant-applicant No. 7 is the mother.

3. The offending truck No. HR 46-A 709 was insured with National Insurance Co. Ltd., respondent No. 1. The appellants pleaded that deceased Mohinuddin Qureshi had been

working as "B" class contractor in the government departments. He was also working on a lathe machine named as Firm Star Mechanical Workshop, Bahodapur and he was proprietor of that firm. Monthly income of the deceased Mohinuddin Qureshi was near about Rs. 15,000 at the relevant time.

4. The respondents denied the pleadings of the appellants-applicants. Before the Claims Tribunal the appellants-applicants filed near about 100 documents to substantiate the fact that deceased had been doing contract works and he was also proprietor of the Firm Star Mechanical Workshop, Bahodapur. Copy of the bank account has also been filed. It is an admitted fact that the deceased was a registered "B" class contractor in Public Health and Engineering Department at Gwalior. In support of the claim the appellants examined Riya-juddin Qureshi, who deposed that truck No. HR 46-A 709 dashed the Sunny bike of the deceased Mohinuddin and he died on the spot. Another witness Ishak Qureshi, who is son of the deceased, has deposed that his father had been working as contractor and he was also working on a lathe machine in the workshop which was named as Firm Star Mechanical Workshop, Bahodapur. Monthly income of his father was near about Rs. 15,000. Another witness Firoz Khan deposed that deceased had been working as contractor of Municipal Corporation and PHE Department. Another witness, Sher Khan deposed that he had been working at the shop of the deceased and the deceased used to earn Rs. 8,000 to Rs. 10,000 from the shop. On the basis of the above evidence, the Claims Tribunal has held that the accident occurred due to rash and negligent driving of the truck and the offending truck was insured with the insurance company, respondent No. 1 at the relevant time. Claims Tribunal fixed the income of the deceased at Rs. 4,000 per month and after deducting 1/3rd for personal expenses and applying multiplier of 11 the Tribunal calculated total amount of compensation on account of loss of income to the appellants at Rs. 3,52,000 and by including Rs. 13,000 under other heads, awarded a total compensation of Rs. 3,65,000.

5. Learned Counsel for appellants has submitted that the Claims Tribunal assessed the monthly income of the deceased at a lower side and also did not apply a proper multiplier, hence the claimants are entitled to an enhanced amount of compensation. Contrary to this, learned Counsel for the respondent No. 1, National Insurance Co. Ltd., has submitted that the award of the Claims Tribunal is just and proper and a proper compensation has been awarded to the appellants.

6. From the facts of the case, the findings of Claims Tribunal that the accident occurred due to rash and negligent driving of the offending vehicle which was insured at the relevant time by respondent No. 1, National Insurance Co. Ltd., are just and proper.

7. With regard to the income of the deceased the appellants have filed a number of documents and also adduced oral evidence. From the documentary and oral evidence it is clear that the deceased had been working as contractor. He had also been working on lathe machine. The bank account of the deceased has also been filed. Looking to the above facts of the case, in my opinion, it would be just and proper to hold monthly income

of the deceased Mohinuddin at Rs. 5,000 and annual income at Rs. 60,000. Looking to the age of the deceased, in my opinion, the Tribunal has rightly determined the dependency of the appellants 2/3rd. Hence, after applying 2/3rd dependency the loss of dependency comes to Rs. 40,000 per annum. The appellants mentioned the age of the deceased as 45 years, however, in the post-mortem report the age of the deceased was mentioned as 50 years. The Claims Tribunal has also fixed the age of the deceased as 50 years. As per Second Schedule to the Motor Vehicles Act, 1988, the multiplier for the age group of 45 to 50 years is 13. Hence, in my opinion, in the case of the deceased it would be just and proper to apply multiplier of 13. Hence, the total loss of income to the appellants comes to Rs. 5,20,000. The Claims Tribunal has awarded Rs. 13,000 towards expenses on other heads. Hence, it would be just and proper to award an amount of Rs. 20,000 on other heads.

8. Consequently, in my opinion, the appellants are entitled to get a total compensation of Rs. 5,40,000 (rupees five lakh forty thousand). The Tribunal has already awarded a compensation of Rs. 3,65,000. As such, appellants will get an enhanced compensation of Rs. 1,75,000 (rupees one lakh seventy-five thousand). The appellants will also get interest on the enhanced amount of compensation at the rate of 8 per cent per annum from the date of filing of the claim application before the Claims Tribunal.

9. Consequently, the appeal is partly allowed. Appellants will get an enhanced compensation of Rs. 1,75,000 (rupees one lakh seventy-five thousand) with interest at the rate of 8 per cent per annum from the date of filing of the claim application before the Tribunal. Rest of the terms and conditions will be the same as mentioned in the impugned award. No order as to costs.