

1
THE HIGH COURT OF MADHYA PRADESH
MA No.568/2015

(The Oriental Insurance Co. Ltd. vs. Smt. Maya Singh & Ors.)

Gwalior, Dated : 31.07.2019

Shri Shrinivas Gajendragadkar, Counsel for the appellant.

Shri Dinesh Kumar Sharma, Counsel for the respondents No.1
to 5.

This miscellaneous appeal under Section 173 of Motor Vehicles Act has been filed against the award dated 27.2.2015 passed by First Additional Motor Accident Claims Tribunal, Gwalior in Claim Case No.65/2014 by which the award of Rs.28,66,994/- has been passed in favour of respondents No.1 to 5.

2. Challenging the award passed by the Claims Tribunal, it is submitted by the counsel for the appellant that as held by the Claims Tribunal in paragraph 10 of the award, the deceased was aged about 57-58 years. Since the age of superannuation is 60 years, therefore, it is clear that the deceased would have remained in service for next two years and thereafter had retired from service after attaining the age of superannuation. Although the Claims Tribunal has applied the multiplier of 9 but the same has been applied on the loss of yearly income assessed on the basis of salary of the deceased whereas the Claims Tribunal failed to see that after two years, the deceased would have retired and would have got pension only and thus the Claims Tribunal should have applied the multiplier for 2 years on the loss of

THE HIGH COURT OF MADHYA PRADESH
MA No.568/2015

income assessed on the basis of salary and thereafter the multiplier for 7 years should have been applied on the basis of the pension of the deceased. It is further submitted that the respondents No.1 to 5 are major and they were not dependent on the deceased and thus the Claims Tribunal has wrongly awarded the compensation to respondents No.2 to 5. It is further submitted that in such a case only the widow can be held to be the sole dependent upon the deceased and, therefore, the Claims Tribunal should have assessed the dependency at the rate of 50%. It is further submitted that an amount of Rs.1,25,000/- has been awarded under the head of loss of consortium and funeral expenses which is on higher side in the light of judgment passed by the Supreme Court in the case of **National Insurance Company Limited Vs. Pranay Sethi and others** reported in **(2017) 16 SCC 680**.

3. Per contra, it is submitted by the counsel for the respondents No.1 to 5 that the award passed by the Claims Tribunal is in accordance with law and it does not require any interference.

4. Heard the learned counsel for the parties.

5. So far as the question of number of dependents are concerned, the Division Bench of this Court in the case of **Champabai & Ors. vs. Bajpai Road Lines and others** reported in **2005 ACJ 65** has held that the major sons cannot be treated as a dependent of the deceased.

3
THE HIGH COURT OF MADHYA PRADESH
MA No.568/2015

However, in the present case, the respondent No.5 is a major unmarried daughter of the deceased. Merely because the daughter of the deceased has attained majority would not be sufficient to hold that she is no more dependent on the deceased unless and until it is proved that the major daughter of the deceased is either married or is earning her livelihood independently. In the present case, neither it is the claim of the appellant that the respondent No.5 is married nor it is its claim that the respondent No.5 is earning her livelihood independently. Further the Claims Tribunal has held that appellant no.4 is still studying and was also dependent upon the deceased. Under these circumstances, it is held that the respondents No.1, 4 and 5 are the dependents of the deceased.

6. So far as the question of income is concerned, the income assessed by the Claims Tribunal has not been disputed by the appellant, accordingly, it is held that the monthly income of the deceased was Rs.39,500/-. It is the contention of the counsel for the appellant that since the deceased was in between the age of 57-58 years, therefore, he would have continued in service for next two years and thereafter he would have retired, therefore, out of multiplier of 9, the loss of income for the first two years should have been calculated on the basis of the salary of the deceased and the loss of income for the next seven years should have been calculated on

4
THE HIGH COURT OF MADHYA PRADESH
MA No.568/2015

the basis of the pension.

7. Considered the submissions.

8. The Claims Tribunal in paragraph 10 of the award has held that the age of the deceased was in between 56-60 years. The appellant has filed the copy of the service book of the deceased as Ex.P/15C in which the date of birth of the deceased has been mentioned as 6.7.1956. The accident had taken place on 7.3.2014. Thus it is clear that the deceased was 58 years of age on the date of accident.

9. Under these circumstances as the age of superannuation of the deceased was 60 years, therefore, it is clear that the deceased would have continued in service for next two years and five months only and thereafter would have retired. The loss of income has been assessed by the Claims Tribunal on the basis of the salary drawn by the deceased. However, the Claims Tribunal lost sight of the fact that the deceased would have remained in service only upto the age of 60 years and thereafter would have retired resulting in reduction in his monthly income as only pension would have been paid to the deceased. Accordingly, loss of income would be calculated after applying the multiplier of 9 years but the loss of income for the first two years and five months would be calculated on the basis of last pay drawn by the deceased and thereafter the next 6 years and 7 months would be calculated on the basis of the pension.

5
THE HIGH COURT OF MADHYA PRADESH
MA No.568/2015

10. The Claims Tribunal has awarded Rs.1,00,000/- towards loss of consortium and Rs.25,000/- towards funeral expenses which are on a higher side in the light of the judgment passed by the Supreme Court in the case of **National Insurance Company Limited Vs. Pranay Sethi and others** reported in **(2017) 16 SCC 680**.

11. Accordingly, the compensation under the conventional head is reduced and it is held that the respondents No.1, 4 and 5 would be entitled for an amount of Rs.15,000/- for loss of estate, Rs.40,000/- for loss of consortium and Rs.15,000/- towards funeral expenses.

12. From January, 2016 the recommendations of VIIth Pay Commission have been made applicable and there is nothing on record to assess the actual hike in salary after implementation of recommendations of VIIth Pay Commission. Therefore, by taking the imaginary hike of Rs.3,000/- per month, the compensation is calculated as under:-

Salary (March, 2014 to December, 2015)	Rs.39,500 months	X	22	Rs.8,69,000/-
Salary (January, 2016 to July, 2016)	Rs.42,500 months	X	7	Rs.2,97,500/-
Pension	Rs.21,250 months	X	79	Rs.16,78,750/-
Total				Rs.28,45,250/-
Dependency	1/3 rd			Rs.9,48,416.66/-
Total				Rs.18,96,833.34/-

6
THE HIGH COURT OF MADHYA PRADESH
MA No.568/2015

Conventional heads	Loss of estate, loss of consortium and funeral expenses	Rs.70,000/-
Total		Rs.19,66,833.34/-

13. Thus, in place of amount of Rs.28,66,994/- as awarded by the Claims Tribunal, it is held that the claimants are entitled for Rs.19,66,833.34/- only.

14. By order dated 22/8/2017, the claimants were permitted to withdraw the 50% of the compensation amount.

15. The other terms and conditions of the award shall remain the same.

16. With aforesaid modifications, the award dated 27.2.2015 passed by First Additional Motor Accident Claims Tribunal, Gwalior in Claim Case No.65/2014 is hereby affirmed.

17. The appeal succeeds and is **allowed to the extent mentioned above.**

Arun*

(G.S. Ahluwalia)
Judge



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