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MA-2775-2011

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE RAMKUMAR CHOUBEY

ON THE 29th OF SEPTEMBER, 2026MISC. APPEAL No. 2775 of 2011

CNR No.: MPHC010280332011

*RELIANCE GENERAL INS. CO.LTD.**Versus**KU. MAITRI JAIN AND OTHERS*

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Appearance:

Shri T.S.Lamba - Advocate for the appellant.

None for the respondents.
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JUDGMENT

This miscellaneous appeal under Section 173(1) of the Motor Vehicles Act, 1988 (hereinafter referred to as "MV Act") has been preferred by the appellant/Insurance Company being aggrieved by the award dated 30.03.2011 passed by the learned Additional Motor Accident Claims Tribunal, Hoshangabad in Claim Case No.34/2010, whereby compensation of Rs.12,90,000/- has been awarded in favour of the claimants and the appellant along with other non-applicants has been held jointly and severally liable for payment thereof with interest at the rate of 6% per annum from the date of institution of the claim petition till realization.

2. A succinct portrayal of facts is that the claimants are the children, wife and mother of deceased Vaibhav Jain. The accident occurred on 02.01.2009 at about 9:00 p.m. on Hoshangabad-Babai Main Road. The deceased was



travelling in Van bearing registration No.MP-05-AC-0956, which was being driven by him. The Dumper bearing registration No.MP-04-GA-1841 was proceeding ahead of the van and the van dashed against the dumper from behind. In the said accident, Vaibhav Jain sustained fatal injuries and died.

3. The Tribunal, upon appreciation of the material available on record, found that the deceased was aged about 40 years and was earning from his occupation. His monthly income was assessed at Rs.10,000/-. The Tribunal treated applicant Nos.1 to 3, namely the children and wife of the deceased, as his dependants, while the mother was not treated as a dependant. Taking the annual dependency at Rs.84,000/- and applying the multiplier of 15, the Tribunal awarded total compensation of Rs.12,90,000/-.

4. Learned counsel for the appellant has assailed the award principally on the ground that the Tribunal had no sufficient basis for assessing the monthly income of the deceased at Rs.10,000/-. It is also contended that the establishment of Guru Pathology continued to run even after the death of the deceased and, therefore, according to the appellant, there was no corresponding loss of income from the said establishment. Another ground raised is that the deceased himself was driving the van and the van had dashed the dumper from behind and, therefore, the deceased ought to have been held guilty of contributory negligence.

5. Heard learned counsel for the appellant. None appears for the respondents. Record of the Tribunal has been perused.

6. So far as the assessment of income is concerned, the contention of the appellant cannot be accepted. The Tribunal has not assessed the income



of the deceased merely on the basis of an assumption or conjecture. The record discloses that the deceased was associated with Guru Pathology and the evidence relating to his income was considered by the Tribunal. The income-tax advisor had appeared before the Tribunal and deposed regarding the income-tax acknowledgment (Ex.P/16) relating to Guru Pathology for the relevant assessment period. The Tribunal considered the documentary material as well as the evidence available before it and thereafter assessed the monthly income of the deceased at Rs.10,000/-.

7. Merely because the pathology establishment continued to function after the death of Vaibhav Jain, it cannot be concluded that the deceased had no personal income from the said establishment during his lifetime. The fact that the establishment is presently being managed by the brother of the deceased stands on an entirely different footing. The income being earned by the brother from the establishment after the death of the deceased cannot automatically be treated as income available to the widow and children of the deceased.

8. In a claim arising out of the death of an earning member, what is relevant is the pecuniary loss suffered by the dependants on account of the death of that particular earning member. The subsequent continuation of the establishment by another family member cannot, by itself, wipe out the loss of the personal earning capacity of the deceased. The widow and children, who were dependent upon the deceased, cannot be presumed to have continued to receive the income which the deceased personally earned merely because the business or establishment itself continued to exist.



9. The documentary material relied upon by the Tribunal, particularly related to income-tax (Ex.P/16), therefore, assumes significance. The Tribunal had before it material relating to the income of the establishment for the relevant period preceding the death of the deceased. The deceased died on 02.01.2009, whereas the material relating to the financial year in question was also considered by the income-tax advisor. The Tribunal, after considering the said material and the oral evidence, arrived at the figure of Rs.10,000/- per month. The appellant has not been able to demonstrate any such perversity or material illegality in the said finding which would warrant interference by this Court in an appeal under Section 173 of the MV Act.

10. The next contention relates to contributory negligence. It is true that the van being driven by the deceased had collided with the dumper from behind. However, the mere fact that a vehicle proceeding behind another vehicle has collided with it from the rear cannot, in every case and in isolation, be treated as conclusive proof of contributory negligence on the part of the driver of the vehicle coming from behind. The surrounding circumstances and the evidence available on record have to be considered.

11. In the present case, there is no material on record to establish that the deceased was driving the van in such a manner that he failed to maintain a requisite distance from the dumper or that, despite maintaining such distance, the accident could not have been avoided because of any sudden mechanical defect or other circumstance attributable to the dumper. No convincing material has been brought on record to establish that the collision occurred on account of any specific negligent act of the deceased warranting



apportionment of contributory negligence against him.

12. The Tribunal has considered the circumstances in which the accident occurred and has not found any material sufficient to hold the deceased guilty of contributory negligence. The finding of the Tribunal, therefore, does not suffer from any perversity. The mere circumstance that the van had struck the dumper from behind cannot, without supporting evidence regarding the manner in which the accident occurred, be made the sole basis for reducing the compensation on account of contributory negligence.

13. The appellant has also questioned the calculation of compensation. However, the Tribunal has considered the age of the deceased, his income, the number of dependants and the applicable multiplier and, thereafter, assessed the loss of dependency. The assessment of annual dependency at Rs.84,000/- and application of multiplier of 15 have been made after considering the material available on record. No patent error in the said assessment has been demonstrated so as to warrant interference by this Court.

14. It is also significant that the Tribunal has considered the fact that applicant Nos.1 and 2 were the children of the deceased and applicant No.3 was his wife. The mother of the deceased was not treated as a dependant. Thus, the Tribunal has not mechanically treated every applicant as a dependant but has examined the question of dependency separately. The compensation has consequently been determined on the basis of the dependants recognized by the Tribunal.

15. On a cumulative consideration of the evidence available on record,



this Court finds that the Tribunal has considered the relevant oral and documentary evidence before arriving at the assessment of income and compensation. The finding that the deceased was earning Rs.10,000/- per month is supported by the material relating to his occupation and the income-tax document relied upon before the Tribunal. The subsequent fact that the pathology establishment continued under the management of the brother of the deceased does not establish that the deceased had no personal income therefrom during his lifetime, nor does it establish that such subsequent income became available to his widow and children.

16. Likewise, the contention regarding contributory negligence is not supported by sufficient evidence. There is no material demonstrating such negligence on the part of the deceased as would justify reducing the compensation awarded by the Tribunal.

17. This Court, therefore, finds no ground to interfere with the well-considered findings recorded by the learned Tribunal. The compensation of Rs.12,90,000/- awarded in favour of the claimants, along with interest at the rate and from the date directed by the Tribunal, does not call for interference.

18. Accordingly, the appeal fails and is hereby dismissed. The award dated 30.03.2011 passed by the learned Additional Motor Accident Claims Tribunal, Hoshangabad in Claim Case No.34/2010 is hereby affirmed.

(RAMKUMAR CHOUBEY)
JUDGE

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