

+ MAC.APP.No.571/2009Date of Decision: 25th November, 2009

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VEERPAL PAWAR & ANR Appellants
Through : Mr. R.K. Bachchan, Adv.

versus

SUSHIL KUMAR & ORS Respondents
Through : Mr. Amit Kumar Pandey,
Adv. for R-3.

CORAM :-**THE HON'BLE MR. JUSTICE J.R. MIDHA**

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| 1. | Whether Reporters of Local papers may be allowed to see the Judgment? | YES |
| 2. | To be referred to the Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

JUDGMENT (Oral)**CM No.16971/2009 (Exemption)**

1. Allowed, subject to just exceptions.
2. CM stands disposed of.

MAC.APP. No.571/2009

1. Issue notice to respondent No.3.
2. Mr. A.K. Pandey, Advocate accepts notice on behalf of respondent No.3.
3. This case involves a very short point and, therefore, the LCR is not required. The matter is heard finally at admission stage.
4. The appellants have challenged the award of the learned Tribunal whereby compensation of Rs.12,36,000/-

has been awarded to the appellants. The appellants seek enhancement of the award amount.

5. The accident dated 27th November, 2006 resulted in the death of Master Sachin Pawar. The deceased was survived by his parents who filed the claim petition before the learned Tribunal. The deceased was aged 16 years at the time of the accident and was a student of 11th standard. The deceased had a brilliant academic record and the learned Tribunal assumed that the deceased would have become a professional and have earned Rs.50,000/- to Rs.60,000/- per month. The learned Tribunal took the income of the deceased as Rs.45,000/- per month, deducted 50% towards the personal expenses and applied the multiplier of 15 according to the age of the parents to compute the loss of dependency at Rs.40,50,000/-. Rs.10,000/- has been awarded towards loss of estate, Rs.10,000/- towards funeral expenses and Rs.50,000/- towards loss of love and affection. The total compensation has been computed at Rs.41,20,000/-.

6. The learned Tribunal has held the deceased to be contributory negligent to the tune of 70% and, therefore, the aforesaid compensation has been reduced by 70% and Rs.12,36,000/- has been awarded by the learned Tribunal.

7. The only ground urged by learned counsel for the appellants at the time of hearing of this appeal is that on 27th November, 2006 at about 7:25 a.m., the deceased was hit by

DTC bus bearing registration No.DL 1PB-2658 near Maujpur bus stop. The deceased was waiting for the bus for going to his school when the DTC bus came from Babarpur water canal side and took a left turn towards Seelampur. As per the site plan placed on record, the accident occurred in the middle of the road. The learned Tribunal presumed that the deceased was contributory negligent because he was in the middle of the road and must have been attempting to board the moving bus. However, the speed of the bus could not be very high because it was a turn. The presumption drawn by the learned Tribunal is not based on the evidence on record. The finding of the learned Tribunal with respect to the contributory negligent is, therefore, set aside and it is held that the driver of the bus was rash and negligent.

8. The next contention of learned counsel for the appellants is that the deduction of 70% of the compensation towards the contributory negligence of the deceased be set aside and the compensation of Rs.41,20,000/- be awarded to the appellants.

9. The amount awarded by the learned Tribunal is just, fair and reasonable and does not call for any interference. The learned Tribunal has presumed the income of the deceased to be Rs.45,000/- per month. It is well settled that the compensation to be awarded in motor accident claim cases has to be uniform and predictable. Principles of uniformity and predictability are very important. There

should be some measure of uniformity in awards, and similar decisions should be taken in similar cases; otherwise there will be dis-satisfaction in the community and much criticism of the administration of justice. Secondly, the parties should be able to predict with some measure of accuracy the sum, which is likely to be awarded in a particular case.

10. The deceased was a student of 11th standard and, therefore, assuming the income of the deceased at Rs.45,000/- per month is not justified. Considering the brilliant academic record of the deceased, the income of the deceased is presumed to be Rs.13,000/- per month, 50% is deducted towards the personal expenses of the deceased and the multiplier of 15 is applied and Rs.66,000/- is added towards compensation for loss of love and affection, compensation for loss of estate and funeral expenses. The total compensation is computed to be Rs.12,36,000/-.

11. This case is squarely covered by Section 167 of the Indian Evidence Act which is reproduced hereunder:-

“Section 167 – No new trial for improper admission or rejection of evidence –

The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.”

12. Improper admission or rejection of evidence is not by itself a ground for reversal of a decision, if there is other evidence to support it. Where admissible evidence has been improperly rejected or inadmissible evidence has been admitted by the Judge, such improper reception or rejection of evidence shall not of itself be a ground for new trial or reversal of any decision in any case, unless substantial wrong or miscarriage of justice has been thereby occasioned; or, in other words, if the Court considers that after leaving aside the evidence that has been improperly admitted, there was enough evidence on the record to justify the decision of the lower court, or that if the rejected evidence were admitted the decision ought not have been affected thereby, no Court of appeal should set it aside.

13. An objection to the proper admission of evidence is material only if it can be shown that the exclusion of evidence improperly admitted is fatal to the decision. A finding will not, therefore, be disturbed if, throwing aside the evidence which ought not to have been admitted, there, still remains sufficient evidence to support the finding. Under Section 167 of the Evidence Act, the improper admission of evidence is not in itself ground for a new trial or reversal of decision, if independently of the evidence of improperly admitted there is sufficient evidence to justify the decision.

14. In **Owners & Parties vs. Fernando Lopez**, AIR **1989 SC 2206**, the Hon'ble Supreme Court held as under:-

“Rules of procedure are not by themselves an end but the means to achieve the ends of justice. Rules of procedure are tools forged to achieve justice and are not hurdles to obstruct the pathway to justice. Construction of a rule of procedure which promotes justice and prevents its miscarriage by enabling the Court to do justice in myriad situations, all of which cannot be envisaged, acting within the limits of the permissible construction, must be preferred to that which is rigid and negatives the cause of justice. The reason is obvious. Procedure is meant to subserve and not rule the cause of justice. Where the outcome and fairness of the procedure adopted is not doubted and the essentials of the prescribed procedure have been followed, there is no reason to discard the result simply because certain details which have not prejudicially affected the result have been inadvertently omitted in a particular case. In our view, this appears to be the pragmatic approach which needs to be adopted while construing a purely procedural provision. Otherwise, rules of procedure will become the mistress instead of remaining the handmaid of justice, contrary to the role attributed to it in our legal system.” (Para 18)

15. In **Emperor vs Ermanali & Ors., AIR 1930 Calcutta**

212, Full Bench of Calcutta High Court held as under:-

“Rules and Regulations are intended to be the handmaid and not the mistress of the law, and that in criminal proceedings it is of the utmost importance that a decision just, and reasonable on the merits should not be disturbed because in the course of the proceedings some flaw can be detected that is not fundamental and which is not proved to have worked injustice to the accused, although it may constitute a breach of the rules of criminal procedure.” (Para 33)

16. In **John vs Sherthali Municipality, AIR 1959 Kerala**

323, the Kerala High Court held as under:-

“It is therefore clear that the learned Magistrate committed a grave error in examining the accused person without his request and against

his protest, to prove a fact which the prosecution should have established by other evidence. That, however, is in my opinion, no ground to quash the entire proceedings, Section 167, Indian Evidence Act, 1872 provides inter alia that improper admission of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision. The question whether the prosecution was sustainable or the conviction was rightly made has therefore to be examined eschewing altogether the evidence furnished by the accused while under examination as a court witness.”

17. Following Section 167 of the Indian Evidence Act, this Court upholds the compensation of Rs.12,36,000/- awarded by the learned Tribunal for the reasons stated above but not for the reasons mentioned in the award.

18. For all the aforesaid reasons, the appeal is dismissed.

19. Copy of this order be given ‘Dasti’ to learned counsel for both the parties under signature of Court Master.

J.R. MIDHA, J

NOVEMBER 25, 2009

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