

Bhanwarlal and ors. Vs. Hariram and ors.

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Court : Madhya Pradesh

Decided On : Apr-27-1993

Reported in : 1994ACJ368; AIR1994MP10

Judge : V.S. Kokje and ;R.D. Shukla, JJ.

Acts : [Motor Vehicles Act, 1939](#) - Sections 95 and 100B

Appeal No. : M.A. 121/84

Appellant : Bhanwarlal and ors.

Respondent : Hariram and ors.

Advocate for Def. : Danwate, Adv.

Advocate for Pet/Ap. : Samvatsar, Adv.

Judgement :

R.D. Shukla, J.

1. This appeal is directed against the judgment and award dated 31st January 1984 in Claim case No, 38/78; 39/78 passed by Motor Accident Claims Tribunal, Mandsaur, whereby a compensation of Rs. 15,000/- (Rs. Fifteen thousand) has been awarded to the claimant appellants against respondent No. 1 and respondent No. 2 holding them negligent to the tune of 1/3rd for the accident and

respondent No. 3 Insurance company and respondent No. 4 Ramchandra C/o Mahadev Trading Co. have been completely exonerated from the liability of payment of compensation.

2. Brief facts of the case is that the claimant appellants are the legal representatives of deceased Rajendra Prasad aged about 22 years, who met with an accidental death on 25/2/78 at about 7/8 a.m. by truck No. R.J.Z. 6385 driven by respondent No. 2.

3. Rajendra was a student of B.Com. final. He was working as binder in Patidar Engineering Works at Neemuch. On the date of accident, at about 7-8 a.m. he was going to that work shop on a cycle. The truck referred above, owned by respondent No. 1 Hariram and driven by respondent No. 2 Ramlal with the load of goats and sheep came from behind. As it was being driven rashly and negligently, it dashed Rajendra from the back side. He was thrown from the Cycle and thereafter crushed by right rear wheel of the truck. He died immediately. The matter was reported to the police. After doing all the formalities of inquest report, the body was sent for Post Mortem Examination. The cycle and the Motor Truck was seized; spot map was prepared and thereafter challan against driver respondent No. 2 was filed in the court.

4. The claimants have asserted that Rajendra was earning Rs. 300/- per month and most of it was being spent on the family. The claimant No. 3 is the widow and claimant No. 4 is the minor son of the deceased. They have been deprived of love and affection of the deceased. The claimants therefore, in all claimed Rs. two lakhs as compensation.

5. Earlier, truck involved in the accident, was owned by respondent No. 4 and was insured with respondent No. 3 i.e. National Insurance Co. Ltd., Respondent No. 4 sold this truck to respondent No. 1 and the registration of the truck was also transferred in the name of respondent No. 1.

6. Respondents Nos. 1 and 2 by way of written statement denied the claim of the applicants and pleaded that the deceased all of a sudden took a turn from a distance of 6 to 7 ft. from the truck. The driver tried to apply the break; but despite

that it dashed against the cycle of the deceased. The accident was inevitable and was wholly due to the negligence of the deceased. They have further pleaded ignorance about the status and the income of the deceased.

7. Respondent No. 3 by separate written statement have submitted that the truck involved in the accident was earlier in the owner ship of respondent No. 4 and was insured with respondent No. 3, the Insurance company. But the fact of transfer to respondent No. 1 was not communicated to them as there was no contract between respondent Nos. 1 and 3. Therefore, they are not liable to pay compensation or to compensate respondent No. 1.

8. Respondent No. 4 by a separate written statement has asserted that the truck was completely transferred in favour of respondent No. 1 in September, 1977 itself and respondent No. 1 was the owner from 4-9-77 onwards. Hence, he is not responsible for the loss caused due to the accident, Hence, he is not liable for payment of compensation.

9. Learned tribunal has held that the deceased contributed to the accident to the tune of 2/3rd and 1/3rd of the responsibility has been placed on respondent No. 2. As such, compensation of Rs. 15,000/- has been awarded in favour of claimants. Hence this appeal by the claimants for enhancement of the same.

10. The contention of the learned counsel for the appellant is that the finding of contribution of the deceased for the accident to the extent of 2/3 is erroneous that the compensation has been assessed on the lower side. The deceased was aged about 22 years at the time of the accident and therefore higher multiplier ought to have been applied.

11. No information as to the transfer was given by respondent No. 4 and therefore all the respondents including the Insurance company (Respondent No. 3) are jointly and severally liable for the payment of compensation to a third party, who died in the accident.

12. Respondent Nos. 1, 2 and 4 have not come before this court for contesting the claim. Respondent No. 3 the Insurance company appeared and made its

submissions.

13. The contention of the learned counsel for respondent No. 3 is that the contract was between respondent No. 4 and respondent No. 3 whereby on a premium being paid, respondent No. 3 undertook the liability of payment of compensation. With the transfer of the vehicle, respondent No. 1 became the owner of the vehicle and there was no contract between respondent No. 1 and respondent No. 3, and therefore, Insurance Company is not liable to compensate respondent No. 1.

14. Learned Tribunal has held that the claimants are father, mother, wife and minor child of the deceased Rajendra, who was about 22 years of age at the time of accident. He was student of B.Com. Final and was working in the Engineering works shop as referred above, and was earning Rs. 300 / - per month. There is no dispute on this point. PW 2 Bhanwarlal is a witness for compensation. He has also not seen the accident. PW 3 Ramniwas has stated that site Map Ex. P. 3 was prepared in his presence. The truck was on the left side. The Road was nearly 24ft. wide at the place of the accident. He has admitted that the front and right rear wheel was on the foot path. On perusal of the photographs Ex. P. 2, Ex. P. 3, Ex. P. 4 and Ex. P. 5, it is evident that deceased was crushed from the right rear wheel of the truck P.W. 4 Ramdayal Kushwaahs, Assistant sub-Inspector Mandsaur has stated that he prepared site Map Ex. P. J and the truck was standing on the wrong side of the road.

15. P.W. 5 Nanalal who is the eye-witness of the accident has stated that the deceased was coming from Mhow and was going towards Mandasaur. He was on the left side of the road. But as he tried to cross the road all of a sudden and thereafter swerved on the right side of the lane, immediately. The truck which was coming from behind, was in a high speed, which dashed against the deceased.

16. Respondent No. 2 driver of the vehicle who has the first hand knowledge of the accident, has neither appeared in the witness box nor explained the accident.

Thus taking the statement of P.W. 5 Nanalal, which has been supported by P.W. 3, P.W. 4 and site map Ex. P. 1; as correct, it can reasonably be inferred that the deceased and the driver of the vehicle both contributed to the accident equally.

17. The deceased contributed to the accident by taking a sudden turn towards the right without caring for whether any Motor Vehicle is coming from behind; but he took care of immediately going out of the road.

18. The driver was negligent by taking the vehicle towards the right side instead of taking it to the left. It appears that he was having a load of live stock-sheep and goats; and therefore he did not like to stop the truck all of a sudden or else, it would have caused severe jerk to the live stock, sheep and goats, on the truck. But what the Rule of caution requires is that when the driver is faced with a situation of having option of saving either human being or the live stock, he is required to take caution for saving the human being. In this case, the driver failed to do that and therefore, it cannot be said that the accident was inevitable or not avertable. The driver failed to take the last chance of averting the accident.

19. In our opinion therefore, the driver and the deceased, both were equally responsible and therefore, the responsibility for payment of compensation should be fixed to the tune of 50% i.e. 1/2 rather than 1/3rd fixed by the learned tribunal.

The deceased admittedly was aged about 22 years. There was possibility of living up to the age of 65 to 70 years. He must have supported his son till he attains majority and would have maintained his wife claimant No. 3, for whole of his life. If the earning capacity of the deceased is taken up to the age of 60, then it would be assumed that he would have earned for 30 to 40 years more. In such a case, a multiplier of 20 ought to be applied in this case. The dependency of family being $200 \times 12 = 2400$ per year, which multiplied by 20 would come to Rs. 48,000/-.

20. Claimant Nos. 3 and 4 have been deprived of love and affection of husband and father respectively. There is a loss of consortium as well. In our opinion. Therefore, both of them are entitled to Rs. 6000/- each on each count which comes to Rs. 12,000/- in all.

Claimant Nos. 1 and 2 have lost their young son at a very early age. They must have suffered pain and agony and therefore, they are entitled to compensation of Rs. 20,000/- in all on the head of loss of love, affection and consortium and for the suffering of pain and agony.

21. Thus the loss to the claimant in all is up to Rs. 48,000/- + 20,000 /- i.e. 68,000/- in all. Since the deceased contributed to the accident to the extent of 50% therefore, the claimants would be entitled to half of the amount i.e. 34,000/-.

22. Now, so far as the responsibility of payment of compensation by Insurance company Respondent No. 3 is concerned, learned counsel for the appellant has submitted that the facts of transfer of the vehicle by respondent No. 4 to respondent No. 1 has been intimated to the Insurance company and that assertion has not been dispelled by clear and cogent proof, and therefore, the Insurance company should be held liable for payment of compensation.

23. As against this, learned counsel for respondent No. 3 has submitted that the Insurance company has received no intimation about the transfer, and further respondent Nos. 1 and 4 have not entered the witness box, and therefore, the assertion of intimation having been given to the Insurance company, and the same has been tacitly accepted, has rightly been disbelieved by the tribunal.

24. The claimants have examined Ram dayal Kushwaha, Assistant Sub Inspector, who has investigated the case. The claimants have also filed Ex. P. 7. That shows that the truck was seized from respondent No. 1 Hariram. The respondents have relied on document D-1 which is a copy of order sheet of JMFC. That shows that the truck was given in supratnama of Hariram. They have filed a copy of agreement, whereby payment of money by Hariram respondent No. 4 has been shown, though the same has not been legally proved. Neither Hariram nor Ramchandra has entered the witness box stating about the transfer of the payment of money in lieu thereof. It appears that original document has also not been filed, but formal proof of documents are not insisted upon in claim cases.

25. One document, which has been marked as C-1 allegedly shows transfer of registration of vehicle from the name of Ramchandra Respondent No. 4 to Hariram, Respondent No. 1. A copy of document of sale of vehicle shows that the sale was effected on 3-12-77 and registration of the vehicle in the name of respondent has been made on 24-12-77. It has been signed by the authority concerned. That appears to be a public document. Therefore, it has rightly been accepted that on the date of accident i.e. on 25-2-78, the registration of vehicle

stood in the name of respondent No. 1. This has also specifically been pleaded by respondent No. 4 and also by respondent No. 1.

In our opinion, therefore, it has rightly been accepted that respondent No. 1 was the owner and was in possession of the vehicle on the date of the accident.

26. The vehicle was insured with respondent No. 3 the Insurance company; but that contract was between respondent No. 4 and respondent No. 3. After the transfer of the vehicle it was now the duty of the transferee to have intimated about the transfer of the vehicle to the Insurance company. He could have paid an additional premium for the continuation of the insurance. In the absence of intimation and fresh contract between respondent No. 1 and respondent No. 3 the Insurance company (respondent No. 3) cannot be made liable to pay the compensation.

27. Respondent No. 3 has examined one D.W.I P.C. Bhandari, Officer in-charge, National Insurance Company, Branch Ratlam. He has stated that no intimation about the transfer was given to the company.

He has admitted in cross-examination that complete information about intimation and fresh contract of insurance, if any, would be available in the Divisional Office at Ajmer, but there is no rebuttal on behalf of Res. No. 1. He has not appeared in the witness box for stating as to whether any intimation of transfer was given.

28. Though counsel for respondent No. 1 replying to an interlocutory application has stated that intimation of transfer was given to Insurance company, but in the absence of any document of intimation being given or having been received by the Insurance company, that assertion. That too in a reply to an Interlocutory Application cannot be accepted.

29. If respondent Nos. 1 and 4 jointly or individually have given any information of transfer, they could have stated On oath and have produced the document showing that the intimation was so sent.

30. In our opinion, therefore, it has rightly been accepted that intimation of transfer was not given and the insurance came to an end after the transfer of the vehicle

by respondent No. 4 to respondent No. 1. In such a situation, respondent No. 3 and respondent No. 4 cannot be made liable to pay the compensation.

31. So far as respondents Nos. 1 and 2 are concerned, they are vicariously responsible for the payment of compensation.

32. As a result, the appeal partly succeeds and the amount of compensation is enhanced to Rs. 34000/-.

33. Respondents Nos. 1 and 2 shall jointly and severally be responsible for the payment of compensation.

33-A. claimants shall further be entitled to an interest of 12% per annum from the date of application till the realisation of the same.

34. The amount of compensation if realised, Rs. 10000/- shall be deposited on fixed deposit with Nationalised Bank in favour of claimant No. 4.

35. Claimants Nos. 1 & 2 shall be paid Rs. 5000/- (Rs. five thousand) each with interest.

36. Rest of the amount including interest shall be paid to claimant No. 3 for herself and for the maintenance of the child i.e. claimant appellant No. 4.