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Court : Madhya Pradesh

Decided On : Jul-05-1984

Reported in : II(1984)ACC205

Judge : P.D. Mulye and ;V.D. Gyani, JJ.

Appellant : Sheikh Munavvar and Kulsum

Respondent : State of M.P. and ors.

Judgement :

P.D. Mulye, J.

1. The claim petition, filed by the claimant-appellants for compensation, having been dismissed by the Member, Motor Accidents Claims Tribunal, Jhabua, in Claim Case No. 7 of 81, they have filed this appeal Under Section 110-D of the Motor Vehicles Act.

2. Facts giving rise to this appeal, may be stated, in brief, thus: The appellan are the parents of the deceased Sheikh Usuf, who died as a result of the accident that occurred to the tractor on 31-12-80, in which as a result of the injuries sustained by him he died on 7-1-81. The deceased Sheikh Usuf at the time of his death was aged about 20 years and was working at the of per month as emoluments though he was engaged on a daily basis. Further according to the claimants the deceased was working as a dtivet on the said tractor for which he had a driving licence.

3. Construction of a Government tank was going on at Bahadurpada under the jurisdiction of Sub-Engineer, Irrigation Department, Thandla at the relevant time in which connection the deceased ' as the driver of the said tractor was carrying material to the site in the said tractor, As there was no pucca road from Thandla to Bahadurpada, where the work was going on, he used to take the tractor to the site by driving the same on a kutchra road.

4. On 31-12-80 while he was driving the tractor number MPZ-7617 along with the trolley loaded with material for being taken to the tank site, at about 1 p.m., on the way the tractor over-turned on the mendi as the owner of the field through which the tractor was passing to the site refused to pass it through his field as his gram crop was standing thereon. As a result of the said accident the deceased Usuf came under the tractor and received several injuries as also some other labourers. Injured Usuf was taken to the Government Hospital Thandla wherefrom he was shifted to District Hospital, Jhabua as his physical condition had become serious, but he succumbed to his injuries on 7-1-1981.

5. The claimant-appellants, as parents of the deceased, therefore, filed the claim petition against the respondent claiming Rs. 70,000/ as compensation as according to them the deceased would ordinarily have lived for a further period of fifteen years and would have earned much more, at least Rs. per month, as a driver he having bright prospects.

6. The respondents contested the claimant's claim mainly on the ground that the deceased was not employed as a driver on the tractor, but was employed as a helper, that he was temporarily appointed as daily wages at the rate of Rs. 4.50 per day; that the authorised driver on the said tractor was Sheikh Anwar, the elder brother of the deceased; that on the date of the accident the deceased was driving the said tractor voluntarily of his own though he was not authorised and the accident in fact occurred on account of his carelessness and negligence. They, therefore, denied their liability to pay any compensation.

7. The claimants in support of their case examined appellant No. 1 Sheikh Munavvar as A.W. 1, who is the father of the deceased and A.W. 2 Mansingh, a labourer who was sitting in the tractor on the relevant date and had witnessed the

same. On the other hand the respondents examined D.W. 1 Kamleshnarayan Gupta, the Deputy Engineer, Irrigation Department Thandla.

8. The learned Member of the Tribunal after considering the the evidence and material on record came to the conclusion that the deceased was not a driver; was not authorised to drive the tractor by the respondents; that the accident occurred on account of the negligence of the deceased who took the said while driving it at the place where the ground was uneven and not on a plain level. He also found that the claimants have failed to prove that to what extent they were dependent on the earnings of the deceased because there is no evidence to indicate that out of Rs. 140/- per month which he was earning how much he was spending on himself and how much on his parents. He, therefore, dismissed the petition for failure of the appellants to prove their case. Hence this appeal.

9. The learned Counsel for the appellants contended that it is not in dispute that the deceased was an employee of the respondents; that it is not further in dispute that the accident occurred while he was carrying the material to the tank in the said tractor: that even assuming that he was a helper in the said tractor, the respondents have not examined the driver who was engaged on the said tractor to drive the same nor have they examined any responsible official to prove that the deceased was not authorised to drive the said tractor though he had a license. He further submitted that from the evidence and Material on record it has been clearly established that the respondents or their officials never objected the deceased to drive the said tractor for taking the material to the site of the tank and, therefore, in absence of evidence adduced on behalf of the respondent, with the admitted facts, it has been clearly established that the accident occurred not on account of the carelessness or negligence of the deceased but as the place through which he was driving was uneven and not a regular road, the tractor overturned for which he could not be said to be responsible. Thus, according to the learned Counsel the accident occurred during the course of employment and, therefore, the respondents are liable to pay the compensation.

10. On the other hand the learned Counsel for the respondents contended that according to A.W. 2 Mansingh it is clear that in fact Sheikh Anwar, the brother of

the deceased, was the driver of the said tractor and Sheikh Anwar having not stepped into the witness box, from this evidence itself it has been established that the deceased was only working as a cleaner and consequently the respondents could not be held liable as he was not authorised to drive the same. He further submitted that the appellants have failed to prove about their dependency on the deceased and that considering the old age of the parents, at best, they are entitled for a meagre compensation for the loss of their son.

11. After hearing the learned Counsel and after going through the record it is apparent that even though the deceased was working as a helper on the said tractor, and even prior to the accident the deceased was driving the said tractor as a driver, to which no objection or protest was ever raised on behalf of the respondents or their officials; at least there is no evidence to that effect. It is also clear that even on the date of the accident the deceased was doing the department's work and as the owner of the tank had objected on the ground that the gram crop was standing thereon the deceased had to drive the tractor on a portion of the land which was uneven. There is no evidence on record that there was any other road or way through which the tractor on that date could be taken to the tank site. Consequently it cannot be assumed that the accident occurred on account of the carelessness or negligence of the deceased because there is no such evidence adduced by the respondents. Normally the respondents, in such a case, should not have raised such technical objections especially when the deceased died while working in the course of his employment.

12. In these circumstances, considering all these facts, we are of opinion that it would meet the ends of justice if a sum of Rs. 7500/- (seven thousand five hundred) is awarded to the appellants by way of compensation on account of the untimely death of their son, which occurred on account of the said accident.

13. In the result this appeal succeeds partly. The award given by the learned Member of the Tribunal is set aside and it is ordered that the respondents shall pay a sum of Rs. 7500/- (seven thousand five hundred) to the appellants by way of compensation. The respondents shall deposit the aforesaid amount before the Tribunal within a period of 3 (three) months from to-day day and the amount so

deposited shall be paid to the claimant-appellants personally. Considering the facts and circumstances of the case, the parties are directed to bear their respective costs throughout.

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