

Dularibai and ors. Vs. Brij Mohan Khandelwal and ors.

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Court : Madhya Pradesh

Decided On : Jan-28-1986

Reported in : 2(1986)ACC208

Judge : P.C. Pathak, J.

Appellant : Dularibai and ors.

Respondent : Brij Mohan Khandelwal and ors.

Judgement :

P.C. Pathak, J.

1. This is an appeal by the claimants against the award dt. 20-11-80 passed by the Motor Accident Claims Tribunal, Hoshangabad, in claim case No. 16 of 79, whereby their claims was dismissed on the ground of limitation and on merits both.

2. The case set out in the claim petition was that on 22-3-79, deceased Gajraj Singh met with an accident, while sitting in tractor CPB 3098 when it turned turtle on the slope. He died on the spot. The tractor is owned by respondents No. 1 and 5 and was driven by respondent No. 2 rashly and negligently. The deceased was aged 42 years at the time of accident and used to earn Rs. 800/- per month. Therefore, a claim of Rs. 50,000/- was made as compensation. The claim was lodged on 10-10-79, when the limitation expired on 22-9-79. An Application Under Section 5 of the Limitation Act for condonation of delay was also made by

claimants.

3. In their reply, the respondents submitted that the tractor is owned by respondent No. 5. They further submitted that the tractor was driven by respondent No. 3. According to them, the accident took place due to mechanical failure. They denied the rest of the allegations.

4. Respondent No. 4, the Insurance company denied its liability on the plea that the respondent No. 2 nor respondent No. 3 had a valid driving licence during the time of alleged accident.

5. The Tribunal held that the delay in filing the claim could not be condoned. It further found that Gajraj died in an accident which took place due to rash and negligent driving of the vehicle by respondent No. 2. However, appellants 1 to 4 were not entitled to the compensation since appellants 1 to 3 are not proved the legally married wife and sons of deceased Gajraj Singh. The Tribunal also held that the amount of compensation could not be determined since the claimants have not pleaded what was the deceased's contribution to the family. All these findings are assailed in the present appeal.

6. The first question to be seen is whether the Tribunal rightly refused to condone the delay. In the present case, the claimants-appellants 2 to 4 are minors, while appellant No. 1 claims to be a widow. Since the claimants 2 to 4 are minors and have independent right to claim the claim made on their behalf cannot be held to be barred by limitation. The reason is that the claimant-widow cannot give a valid discharge Under Section 7 of the Limitation Act. It is well settled that Section 6 of the Limitation Act is applicable to proceeding Under Section 110-A of the M.V. Act. See *Amalgamated Coal Fields Ltd. v. Mst. Chhotibai* 1973 ACJ 365 (MP) and *Hayat Khan v. Mangilal* 1970 ACJ 331. Appellant No. 1 stated that according to the caste custom, after the death of Gajraj Singh, she could not come out of her house until 7-9-79 and thereafter, she was confined to bed till 9-10-79. The delay is said to be from 23-9-79 to 9-10-79 only. Considering the facts and circumstances of the present case, the delay, if any deserves to be condoned.

7. The next question to be seen is whether the accident took place as a result of rash and negligent driving of the tractor by respondent No. 2. This is amply established by evidence of Abdul Rehman (PW 3). Nothing has been brought out in cross examination which may show falsity in his statement. Even the claim Tribunal recorded a finding in para 10-A of the impugned award that Gajraj Singh died as a result of rash and negligent driving of the tractor. The plea in defence that the accident took place on account of mechanical defect, has not been substantiated by any reliable evidence. This part, the mechanical defect has to be shown that despite a reasonable care, the defect could not be discovered. Mere plea in the written statement is of no consequence. I, therefore, agreeing with the Tribunal, hold that Gajraj Singh died as a result of rash and negligent driving of tractor.

8. Another question to be seen is whether the appellants could file the claim in respect of death of Gajraj Singh. Section 110-A of the Motor Vehicles Act provides that an application for compensation may be made, where death has resulted from the accident by all or any of the legal representatives of the deceased. The Motor Vehicles Act does not clarify as to who is to be treated a legal representatives of the deceased. Therefore, guidance can be taken from the personal law of the parties as also Fatal Accidents Act, if the claimants can demonstrate that they were dependent of the deceased. In this connection, my attention was drawn to *Shanker Rao v. Babulal Fouzdar* : AIR 1980 MP154 wherein it was held that a brother of a person met fatal accident could claim Under Section 2 of the Fatal Accidents Act, if he is not in the category of persons Under Section 1A of the said Act.

9. Dulari Bai (PW 1) stated that she is the widow of Gajraj Singh. In cross examination, she admitted that Gajraj Singh was a Thakur and that she is Gond by caste. Gajraj Singh dissolved his marriage with his first wife. She also admitted that she was married to one Phoolchand Gond who died long ago. She lived with Gajraj Singh as his wife. She further stated that appellant No. 2 Ramesh is the son of her previous husband Phoolchand while appellants 3 and 4 are son and daughter born through Gajraj Singh. Her statement is corroborated by Sarvanlal (PW 3).

10. The respondents examined Dhruv Kumar (2 & 5 RS2) whose statement does not advance their case. He admitted that he does not know as to who is wife of Gajraj Singh. Net Singh (1 to 3 and 5 RW 3) stated that Gajraj Singh married wife is alive and she has no children through him. In cross examination, he could not identify appellant No. 1. He also could not specifically tell as to where Gajraj Singh's alleged first wife lives. The witness also could not deny whether appellants 3 and 4 were both through Gajraj Singh. Learned Counsel for the appellants referred to the statement of Bansidhar Mehar (L to 3 and 5 RW 1) who produced a certified copy regarding Mahesh. On scrutiny of the record, I find at page 57 a true copy of the Admission Register of Govt. Higher Basic School, Babai with a covering letter. This document is kept alongwith other documents which were not proved during the trial. Banshidhar's statement does not fix the identity of Mahesh referred to in his statement with appellant No. 3 Mahesh. 1, therefore, hold that appellants 3 and 4 are son and daughter of Gajraj Singh born as a result of his wedlock with appellant No. 1 Dularibai and they can file the claim for compensation in respect of Gajraj Singh's death.

11. Now the question arises as what should be the compensation to which the appellants are entitled. The learned Tribunal found that Gajraj Singh had a monthly income of Rs. 800/-. Although there is no specific statement as to how much he used to spend on himself and how much he used to contribute to the appellants, yet on a reasonable estimate, I hold that he must have been contributing at least Rs. 200/- per month. This makes the annual dependency of Rs. 2,400/-. At the time of accident Gajraj Singh was aged 42 years. His life span could reasonably be expected upto 65 years. Considering the facts and circumstances of the case, figure 18 could be adopted as a multiplier in the present case which makes the lose to Rs. 43,200/-. On account of lump sum payment, I propose to deduct 20% of the aforesaid amount. Thus, the net amount comes to Rs. 34,560/- which is payable to the claimants appellants 1, 3 and 4 This amount shall carry interest at the rate of 6% per annum from the date of award, i.e. 20-11-1980.

12. Learned Counsel for the appellants also cited comparable cases, namely, Isli Devi v. Kamlesh Chandra Gupta 1985 ACJ 19, wherein the deceased was aged

45 years and was drawing Rs. 700/- per month. The claimants, namely, widow and others were allowed compensation of Rs. 35,000/- on a finding that the monthly dependency was Rs. 300/- per month. Out of that total amount 25 per cent was deducted on account of lump sum payment. Another case is *Malan Hanumant Meher v. Balkrishna Vishnu Jadhav* 1985 ACJ 141. In this case, the deceased was aged 40 years and was drawing Rs. 790.40. The compensation was assessed at Rs. 80,000/-. It was reduced to Rs. 40,000/- on account of contributory negligence. Adding 5,000/- for non pecuniary loss such as loss of consortium, namely, loss of love and affection, a sum of Rs. 45,000/- was awarded to the claimants. Last case was, *New India Assurance Co Ltd. v. Samundri Roadways Co. (P) Ltd.* 1985 ACJ 239 of a teacher aged 45 years who was drawing Rs. 640/- P.M. The Tribunal awarded Rs. 62,400/-. In appeal annual dependency was assessed at Rs. 4,800/-. Multiplying the said amount by 16, the award was enhanced to Rs. 76,800/-.

13. The next question to be seen as to who is liable to pay the compensation. Respondent No. 5 is the owner. While respondent No. 2 was the driver of the tractor at the relevant time. The insurance policy filed in the case shows that the tractor was insured with respondent No. 4. Apart from the plea in the written statement, there is no evidence to show that respondent No. 2 did not hold a driving licence on the material date. The burden to establish that the driver held no valid licence lay on the insurance company. See *Narcinve V. Kamat v. Alfrado Antonio Doe Martine* (: [1985]3SCR951 .

14. In view of the foregoing discussions, the appeal succeeds in part. The award of the Tribunal is set aside and instead, the claimants 1, 3 and 4 are awarded compensation of Rs. 34,560/- which shall carry interest at the rate of 6% per annum from the date of award, i.e. 20-11-1980, till realisation. This amount shall be paid by the respondents 2, 4 and 5 jointly and severally to appellants 1, 3 and 4. On realisation of the said amount, the Claims Tribunal, Hoshangabad, shall pay Rs. 5,000/- to appellant No. 1 and deposit the rest in any nationalised bank in a fixed deposit in the name of the claimants 1, 3 and 4 payable on orders of the Claims Tribunal, Hoshangabad and the interest accruing thereto be paid to the claimants every six months. The duration and renewal of the deposit shall be in the discretion of the Claims Tribunal, Hoshangabad. However in case the

claimants are not satisfied with the payments, they may approach the Tribunal and the Tribunal, on being satisfied as to the genuineness of their needs, shall be free to direct the bank to release payment of such amount to the claimants as it may deem proper, keeping in view the interests of the claimants. There shall be no order as to costs of this appeal.

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