

Sama and ors. Vs. Yusuf and ors.

Sama and ors. Vs. Yusuf and ors.

SooperKanoon Citation : sooperkanoon.com/507788

Court : Madhya Pradesh

Decided On : Aug-26-1987

Reported in : II(1987)ACC440

Judge : R.K. Varma, J.

Appellant : Sama and ors.

Respondent : Yusuf and ors.

Judgement :

R.K. Varma, J.

1. This order shall also govern the disposal of Misc. Appeal No. 329/1983 (Iliyas and Anr. v. Smt. Sama and Ors.).

2. This is an appeal filed by the claimant-dependants of the deceased Navla against the award dated 29-7-1983 passed by the Member, Motor Accident Claims Tribunal, Jhabua in Claim Case No. 18/1982 whereby the learned Tribunal has awarded Rs. 9,000/- ai compensation for the death of the deceased by accident.

3. Facts giving rise to this appeal, briefly stated, are as under;--

4. On 8-1-1982, while Navla was going on a cycle, reached the boundary of villages Khejda and Machhlimite at about 2.00 p.m., a truck bearing Registration No. MPN 3040, which was being driven by the driver-respondent No. 1 Yusuf,

dashed against him with the result that the deceased Navla got crushed and died on the spot.

5. On a claim petition having been filed by the appellant-claimants who are dependants of the deceased, the learned Tribunal has, on appreciation of evidence adduced in the case, found that the accident resulting in the death of the deceased Navla occurred due to rash and negligent driving by the driver Yusuf. As regards compensation, the learned Tribunal assessed the loss of dependency as Rs. 600/- per annum and using a multiplier of 15 years, determined the total amount of dependency as Rs. 9,000/-. Accordingly, the learned Tribunal has awarded Rs. 9,000/- as compensation together with interest @ 6 per cent per annum from the date of filing of the claim-petition till realisation.

6. Being not satisfied with the amount of compensation awarded by the learned Tribunal, the claimants-dependants of the deceased Navla have preferred this appeal.

7. The respondent Nos. 1 and 2 Yusuf and Iliyas have filed a cross-appeal (Misc. Appeal No. 329/83 Iliyas and Anr. v. Smt. Sama and Ors.) against the said award disputing their liability to pay the sum awarded as compensation on the ground that on the date of accident, the respondent Prakash Chandra was a registered owner, and therefore, the learned Tribunal has committed an error in absolving him from the liability.

8. Learned Counsel for the claimant-appellants has submitted that Ranchhor (AW-1) who had employed the deceased Navla as a labourer, had stated that he was paying Rs. 15/- per day as wages to the deceased. But the learned Tribunal has unnecessarily assumed his earning to be Rs. 10/-per day and out of this amount, the Tribunal has further wrongly assumed Navla's contribution for the maintenance of his family as Rs, 50/- per month. The deceased had to provide out of his earnings for the family which included his widow, four minor children and a widowed mother, who are claimant-appellants in this appeal. In these circumstances, it would be proper to accept the version of Ranchhor (AW-1) that Navla was earning Rs. 15/- per day and it would be fair to assume that he was contributing out of his personal earnings an amount of Rs. 10/- per day, for the

maintenance of family members. Accordingly, the loss of dependency would work out to be Rs. 300/- per month i.e. Rs. 3,600/- per annum. Applying a multiplier of 15 years, as has been adopted by the learned Tribunal, the deceased's age being only 30 years, the total loss of dependency thus computed would amount to Rs. 54,000/-. Taking into account the uncertainty of life, a lump-sum of Rs. 50,000/-, in our opinion, would be just and fair compensation which ought to have been awarded to the claimants. The award of Rs. 9,000/- is, therefore, liable to be enhanced to an amount of Rs. 50,000/-.

9. Learned Counsel for the appellants has also prayed for enhancement of the rate of interest which has been awarded by the learned Tribunal as 6% per annum. We consider it just and proper to award interest @ 9% per annum instead of 6% per annum.

10. The real controversy is as regards liability of respondents inter se. The main contention of respondent Nos. 1 and 2 Yusuf and Ilyas is that the liability to pay compensation ought to be fixed on respondent No. 3 Prakashchandra who was the registered owner of the truck in question. In support of their appeal (Misc. Appeal No. 329/1983), this has been their main contention. It is, therefore, necessary to refer to the relevant evidence about the ownership and alleged transfer of the truck in question in order to determine the liability of the respondents.

11. It appears that before the accident in question which took place on account of rash and negligent driving of the truck bearing Registration No. MPM 3040 on 8-1-1982, the same truck was involved in an earlier accident in respect of which the respondent Prakashchandra was tried for the offence punishable under Section 279 of the Indian Penal Code by the Magistrate First Class, Thandla in Criminal Case No. 108/81 wherein he was acquitted by order (Ex. D/7) dated 5-7-1982. During the pendency of that case, the truck in question was given to Prakash Chandra as owner thereof on Supratnama (Ex. D/6) on 13-2-1981. By the order dated 5-7-1982 (Ex. D/7) aforesaid, the truck No. MPM 3040 was ordered to remain in possession of Prakashchandra after the period of appeal. But during the pendency of that Criminal Case against Prakashchandra, a second accident which

has given rise to the instant Claim Case, took place on 8-1-1982.

12. It appears from the evidence that Prakash Chandra sold the truck No. MPM 3040 to Iliyas-respondent No. 2 while Prakash Chandra was holding the truck as Supratdar. According to the statement of Iliyas (NAW-1), the truck was sold to him on 22-2-1982 i.e. after the accident in question which resulted in the death of the deceased Navla. The truck in question was seized by the Police Thandla on 26-2-1982. On 28-2-1982, Prakash Chandra allegedly got an acknowledgment as led as Ikrarnama (Ex. D/8) executed by Iliyas which states that Prakash Chandra had sold the truck to one Kasam and that Kasam had sold the truck to Iliyas on 7-12-1981 which indicates that the sale in favour of Iliyas was effected prior to the accident in question. In his cross-examination, Iliyas (NAW-1) has denied having executed the document Ex. D/8 with knowledge of its contents and has stated that he did not know Kasam and that he had purchased the truck from Prakash-Chandra and not from Kasam. The alleged witnesses to the document Ex. D/8, namely, Anokhilal and Rafiq have not been examined to prove the document Ex. D/8.

13. It is also an admitted position that Prakash-Chandra continued to be recorded as the owner of the truck in the records of the RTO and neither Prakash Chandra, nor Kasam, nor Iliyas took any steps for getting the transferee's name recorded in the records of the RTO at any time before the accident. Kasam has also given a signed written-document (Ex. D/9) dated 27-2-1982 in favour of Prakash-Chandra which is by way of an acknowledgment and styled as Ikrarnama. This document records that Kasam had purchased the said truck from Prakashchandra on 23-3-1981 and thereafter, he has sold it to Iliyas on 7-12-1981, but the owner's name as per Registration continued to be that of Prakash Chandra. It is strange why and how Kasam has given this gratuitous document (Ex. D/9) to Prakash Chandra. Prakash Chandra (NAW-2) has stated in his cross-examination that in the earlier case of accident involving the truck in question he had taken back the truck on Supratnama (Ex. D/6) on 13-2-1981 and that he had not informed the Court at Thandla that he had sold the truck to Kasambhai.

14. It is clear that Prakashchandra could not have validly transferred the truck in question while it was in the custodia legis and held by Prakash Chandra on Supratnama dated 13-2-1981 (Ex. D/6) until the order of acquittal (Ex. D/7) dated 5-7-1982 in Criminal Case No. 108/81. As such, Prakash Chandra must be regarded to have continued to be the legal owner of the truck in question at the time the second accident which is the one in question, took place on 8-1-1982. It must be assumed in the circumstances that the use of truck by Iliyas on the date of accident was as an agent of Prakashchandra. Unfortunately, there is no insurance in respect of the vehicle involved in the accident. In the circumstances, we find the respondent Nos. 1 to 3, namely, Yusuf, Iliyas and Prakash Chandra jointly and severally liable to pay the amount of compensation as determined herein-above to the claimants.

15. Learned Counsel for the appellants has cited a Division Bench decision of this Court in Geetabai and Ors. v. Hussainkhan and Ors. 1985 ACJ 44 which extends the principle of vicarious liability to the owner who continues to be the registered owner of the vehicle transferred. It is further observed therein as follows:

There is also the possibility of an unscrupulous owner of a vehicle indulging in fake transfer of a vehicle to avoid his liability to pay compensation to the claimants claiming compensation on account of an accident caused by the vehicle. The principle of vicarious liability must be extended in such cases so that effective relief may be given to the claimants. In such cases there is no valid reason why the registered owner should not be held vicariously liable for the negligent act of the transferee or his servant or agent in driving the vehicle.

In view of the aforesaid decision also the owner Prakash Chandra is liable.

16. Consequently, this appeal is partly allowed. The appellants shall be entitled to be paid by the respondent Nos. 1 to 3 jointly and severally a compensation amount of Rs. 50,000/- (Fifty Thousand rupees) instead of Rs. 9,000/- as awarded by the learned Tribunal together with interest @ 9% per annum instead of 6% per annum as ordered by the learned Tribunal from the date of filing of the claim petition till realisation. There shall, however, be no order as to costs.

17. Misc. Appeal No. 329/83 (Iliyas and Anr. v. Stnt. Sama and Ors.) fails and is hereby dismissed with no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com