Kadam Lal Vs. Surendra Kumar and Others

Kadam Lal Vs. Surendra Kumar and Others

SooperKanoon Citation : sooperkanoon.com/508077

Court : Madhya Pradesh

Decided On : Mar-15-2001

Reported in : 2001(4)MPHT186

Judge : Mr. Bhawani Singh, C.J. and ;A.K. Mishra, J.

Acts : Motor Vehicles Act, 1939 - Sections 110-B, 110-CC and 110-D

Appeal No. : Misc. Appeal No. 1079/96

Appellant : Kadam Lal

Respondent : Surendra Kumar and Others

Advocate for Def. : Shri R.K. Thakur, Adv.

Advocate for Pet/Ap. : Shri A.K. Chawla, Adv.

Disposition : Misc. appeal allowed

Judgement :
ORDER

Bhawani Singh, C.J.

1. This appeal is directed against award dated 29-3-1996 of the Additional Motor Accidents Claims Tribunal, Jabalpur in Claim Case No. 105 of 1995.

2. Sanat Kumar (deceased) was Mason earning Rs. 35.00 per day. Accident took place on 6-8-1983 when he was going with Bakridi on cycle from Ghantaghar to his house and was hit by truck bearing registration No. CPK 7714 driven by Driver Harilal, owned by Surendra Kumar and insured with the Oriental Fire and General Insurance Company Limited, Shastri Bridge, Jabal-pur. As a result of accident, deceased Sanat Kumar suffered serious injuries causing his death on the same day in the hospital. Claimants are parents of the deceased. They have claimed compensation of Rs. 2,72,000.00 for the death of their son alleging that the accident took place due to rash and negligent driving of the truck by the driver.

3. Respondent 1 has admitted that he owned the truck in which Harilal was the driver but stated that it was not being driven rashly and negligently since it was passing through congested road. The income of the deceased has been disputed. It is stated that the vehicle was insured, therefore, the compensation would be paid by the Insurance Company. The Insurance Company has stated that registration and driving licence were not produced before it, therefore, it should be taken that the driver did not possess driving licence. Consequently, it is not liable to pay the compensation. Even otherwise, its liability is limited to Rs. 50,000.00.

4. On the basis of evidence, the Claims Tribunal found that accident did not take place due to rash and negligent driving of the vehicle, therefore claimants are not entitled to receive the compensation. Perusal of award shows that this finding has been recorded on the ground that two witnesses of claimants, namely, Makku and Sunderlal have given contradictory statement in this case. Makku states that deceased was sitting on the cycle, while Bakridi was cycling. Sunderlal states in examination-in-Chief that the deceased was cycling and Bakridi was sitting but in cross-examination, he states that the deceased was sitting and Bakridi was cycling. This was also concluded by the Claims Tribunal that in case Bakridi was sitting behind, he should have received injuries in case the cycle was hit by the truck. We have given our consideration to this conclusion of the Claims Tribunal. It is difficult to accept the conclusion drawn by the Claims Tribunal.

5. The accident took place on 5-8-1983. Witnesses were examined in 1994, after eleven years. After such a long lapse of time, it is difficult for the witnesses to

depose about the taking place of the accident and the manner it look place. To answer the question as to who was sitting and who was cycling at the relevant time after eleven years is absolutely difficult. Such contradictions are bound to be there. After all, it is not a criminal case where case has to be proved beyond all reasonable doubts. This is a civil matter, proof of which depends on preponderance of probability. There is no dispute about the taking place of the accident. There is no dispute that deceased met with accident, sustained injuries and died as a result thereof. There is no dispute that for this accident, the truck in question was responsible. The material parts of the case stand proved. Therefore, the conclusion drawn by the Claims Tribunal is liable to be set aside.

6. After coming to the conclusion aforesaid, we turn to assess the compensation in this case. The deceased was 18 years old at the time of accident. He was earning Rs. 35.00 per day which comes to Rs. 1050.00 per month. In the absence of rebuttal, this statement has to be accepted. Afterdeducting 1/3rd towards personal expenses, the dependency comes to Rs. 700.00 per month and Rs. 8400.00 annually. At the age of 18 years, proper multiplier should be 16. Therefore, compensation comes to Rs. 1,34,400.00 (Rs. 700 x 12 x 16). The claimants are also entitled to Rs. 10,000.00 for loss of expectancy of life, Rs. 2000.00 for funeral expenses and Rs. 2500.00 for loss to the estate. Thus calculated, the total compensation payable in this case is Rs. 1,48,900.00 (Rupees One lac forty eight thousand nine hundred) payable with interest at the rate of 9% per annum from the date of application i.e., 15-12-1983 till realisation. The amount be paid within a period of two months.

7. Shri R.K. Thakur, learned counsel for Insurance Company submitted that liability of Insurance Company is limited to Rs. 50,000.00. Except for taking this defence, no effort has been made to prove it. No issue is framed nor evidence led. Policy if any existing with respect to the vehicle has neither been produced nor proved in accordance with law. Therefore, the contention is rejected.

8. Appeal is accordingly allowed. Cost on parties.

9. Misc. Appeal allowed.