

Abhayram Vs. Sumitrabai

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Court : Madhya Pradesh

Decided On : Nov-14-1989

Reported in : II(1991)ACC604

Judge : D.M. Dharmadhikari, J.

Appellant : Abhayram

Respondent : Sumitrabai

Judgement :

ORDER

D.M. Dharmadhikari, J.

1. By the present appeal under Section 173 of the Motor-Vehicles Act, 1988, the owner and driver respectively of Motor Vehicle tractor No. M.P.G. 1342, have challenged the interim award of Rs. 15,000/- passed by the Claims Tribunal, Raipur in favour of the respondents, in exercise of powers under Sections 92A of the Motor Vehicles Act, 1939 (now repealed by the new Act).

2. The impugned award has been challenged by the counsel appearing for the appellants, mainly on the ground that the Tribunal did not care to examine that the motor vehicle in question was not involved in the accident which resulted in the death of Raghunath. The counsel appearing for the appellants urged that in the claim petition itself there is no clear averment that there had been any collision of

the deceased with the tractor and the Claim Tribunal without holding any enquiry and coming to a final conclusion on the same could not have passed the interim award on the basis of no fault liability. The argument of the counsel for the appellants is that the death having not taken place as a result of any collision with the tractor belonging to the appellants, there was no question of fastening any liability on the basis of no fault under Section 92A of the Motor Vehicle Act (repealed).

4. Learned Counsel for the respondents on the other side supported the order by inviting my attention to the contents of the claim petition, particularly paragraph 2(a) to (d) and stated that Raghunath was on a bicycle with his companion when the tractor coming from the opposite direction came in speed and collided against them. The learned Counsel pointed out that sub paragraph (c) of paragraph 2 of the petition there is an inadvertant omission in the third line and the word 'collided' had not been fully typed out, possibly because the typist could not properly understand the word and failed to type it. The averments in the pleadings read as a whole clearly make out that the case of the claimants, that the tractor had collided with Raghunath , who was on a bicycle, resulting in his fall and ultimate death.

5. The learned Counsel for the respondents also urged that the Claim Tribunal is holding that the tractor was involved in the accident took into account the relevant matter, such as the first information report lodged in the police station and the post mortem report of the body of the deceased Raghunath.

6. Having considered the rival submissions of the parties I am of the view that the Claims Tribunals committed no error in making the award in favour of the respondents. For passing an award on no fault liability under Section 92-A substituted as Section 140 of New Act, the Tribunal is expected only to hold summary enquiry and is not expected at that stage to hold the detailed enquiry, which is to be held only at the final stage of evidence in the claim case. Such a view has been taken by this court in two decision (i) by Lahoti J. in *Dwarika v. Bisu and Ors.* : AIR 1990 MP258 . The observations in Dwarika's case (supra) may be seen in paragraph 15(iv) as under:

The only exception appears to be where the factum of accident itself is denied and there the tribunal may be inclined and would rather do well to hold a summary enquiry and then form an opinion as to whether the accident did take place and whether the vehicle in question was involved in the accident or not. If from the evidence collected in such summary enquiry and other material available on record, the tribunal is satisfied prima facie that the accident did take place and the vehicle in question was involved therein, it shall have jurisdiction to make an interim award under Section 92-A fixing joint and several liability on the insurer along with the insured. Of course, after trying claim on merits while expressing a final opinion and passing an award under Section 110B of the Act, the Tribunal would not be bound by the opinion recorded earlier at the time of making the interim award under Section 92A

Same view has also been taken by Seth J. (ii) in National Insurance Company v. Radhalal (M.A. No. 371 of 1989 (J), decided on 15.2.1990). In the instant case, there was material before the tribunal in the shape of first information report and postmortem report to show that the deceased died due to collision with the tractor. The tractor was prima facie involved in the accident and that there was sufficient prima facie material to fasten the liability on the owner and the driver of the vehicle to pay compensation under Section 92A of the Act.

7. In view of the above, the appeal has no force and is hereby dismissed, but without any order as to costs.