

Arun Kumar and ors. Vs. Jeevad Khan and ors.

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Court : Madhya Pradesh

Decided On : Jul-21-2005

Reported in : 2006ACJ411; 2005(4)MPLJ26

Judge : Arun Mishra and ;U.C. Maheshwari, JJ.

Acts : Indian Penal Code (IPC) - 279, 304A and 337; Negligent Act

Appeal No. : M.A. No. 451 of 2001

Appellant : Arun Kumar and ors.

Respondent : Jeevad Khan and ors.

Advocate for Def. : Sanjay Agrawal, Adv.

Advocate for Pet/Ap. : Anil Lala, Adv.

Judgement :

U.C. Maheshwari, J.

1. Being aggrieved by the award dated 18.12.2000 passed by the Additional Motor Accidents Claims Tribunal, Maihar, in M.V.C. No. 50 of 1995, appellants have preferred this appeal for enhancement of the amount awarded by the Claims Tribunal and also prayed for setting aside the findings of contributory negligence regarding vehicular death of Sumanlata, wife of Arun Kumar.

2. The facts giving rise to this appeal are that on 12.9.1995 at about 10.30 p.m., Arun Kumar, appellant No. 1, along with his wife Sumanlata and labourer Kanchhedi Lal was coming from Nadan to Maihar by his Maruti van. On the way when they reached near Tilara and Behda a truck bearing registration No. MP 21-7325 came from opposite direction, driven by Jeevad Khan, the respondent No. 1, collided with Maruti van, which was already standing stationary on left side of the road by appellant No. 1. According to pleadings the accident was caused by the truck by coming to the wrong side. Arun Kumar, appellant No. 1, his wife Sumanlata and Kanchhedi Lal got injuries and Maruti van was also damaged. It is further pleaded that Sumanlata got serious injuries in left leg, left hand and on different parts of body so she was taken to hospital for treatment where she succumbed to injuries. On intimation an offence under Sections 279, 337 and 304A of Indian Penal Code was also registered by P.S., Maihar.

3. According to appellants deceased Sumanlata was looking after agricultural and household work while appellant No. 1 was doing his business and social work at Maihar and by agriculture she was earning and contributing to family Rs. 1,00,000 per annum. With this background claim application for compensation of Rs. 29,50,000 was filed. Hazrat Ali, respondent No. 2, owned said truck while it was insured with respondent No. 3.

4. Respondent Nos. 1 and 2 remained ex parte before the Tribunal.

5. Respondent No. 3 in his reply denied all the allegations made by the appellants and submitted that the accident was the consequence of contributory negligence of both drivers of the vehicles, hence owner, driver and the insurer of both the vehicles are liable for compensation and objection regarding non-joinder of necessary parties of the driver, owner and insurer of Maruti van was also taken. The claim regarding damage to Maruti van was denied and submitted that it could be recovered from the insurer of van. It is further pleaded that driver has violated the terms and conditions of policy, thus respondent No. 3 is not liable for any compensation.

6. On appreciation of evidence, the Tribunal has come to this conclusion that accident took place because of contributory negligence of drivers of both the

vehicles and insurer, respondent No. 3, are liable to compensate 50 per cent liability regarding said accident and by assessing the total compensation to the tune of Rs. 3,79,000, out of this, 50 per cent, i.e., Rs. 1,89,500 along with interest at the rate of 12 percent per annum from 29.9.1995 has been saddled against the respondents. Hence, appellants have preferred this appeal for enhancement.

7. Mr. Anil Lala, learned Counsel for the appellants submitted that in view of the recorded evidence and factum of criminal case registered against the truck and seizure of it during investigation as offending vehicle the Tribunal ought to have saddled the entire liability against the respondents but contrary to this the findings of contributory negligence was given. He also referred statement of witnesses examined on behalf of appellants and submitted that appreciation of evidence was not properly carried out. He also submitted that in the absence of any evidence or rebuttal on behalf of the respondents, sufficient circumstances were available on record to draw adverse inference regarding rash and negligent act of respondent No. 1. Thus, firstly he prayed for setting aside the findings of the Tribunal regarding contributory negligence and for saddling the entire liability against the respondents and secondly he submitted that adequate compensation has not been awarded, according to his submission earnings of the deceased were Rs. 1,00,000 per year from agriculture and the same was not taken into consideration for assessing the dependency and prayed for adequate enhancement.

8. On the other hand, counsel for the insurer, respondent No. 3, supported the impugned award and submitted that the approach of the Tribunal regarding contributory negligence of both the vehicles and its drivers cannot be said to be wrong in any manner, justified the awarded amount of compensation and prayed for dismissal of appeal.

9. On consideration of the aforesaid submission, we have gone through the impugned award, the evidence on record and the documents placed on record before the Tribunal. On perusing the documents of the criminal case specially spot map and the seizure memo of the truck and Maruti van, it appears that the incident was not the consequence of sole negligence of the offending truck although negligence of truck driver was more in comparison to the driver of Maruti van.

According to seizure memo, both the vehicles were damaged not from the driver side but from cleaner side. Although it was not proved before the Tribunal whether both the vehicles were right hand driven or left but as normally, Maruti and other four-wheeler vehicles are right hand driven except some exceptions. Keeping in view this aspect we examine the probability that it appears that both the vehicles were plying on highway in high speed and coming from opposite side to each other and near the place of accident there was a culvert due to that both the drivers under misconception and/or error of judgment have gone to wrong side which is also evident from the spot map and met with accident. The damaged portion of both the vehicles give support to our conclusion but we are of the considered view that truck driver was more negligent in comparison to driver of Maruti van.

10. Thus, on aforesaid discussion, we are of the considered view that in the accident 60 per cent negligence was committed by truck driver, respondent No. 1, while 40 per cent negligence was committed by driver of Maruti van, the appellant No. 1. The finding of the Tribunal of contributory negligence is affirmed but with aforesaid modification and liabilities are also saddled accordingly.

11. However, we do not find any substance in the submission of the counsel for the appellants regarding inadequate assessment of dependency. So, we affirm the dependency at Rs. 20,000 per annum as assessed by the Tribunal. But in view of aforesaid contributory negligence of the respondents we saddle 60 per cent liability against respondent No. 1 and remaining 40 per cent against appellant No. 1. Thus, out of assessed amount Rs. 3,79,000 as assessed by the Tribunal the 60 per cent amount which comes to Rs. 2,27,400 is awarded to appellant and in addition to it, Rs. 2,000 for funeral expenses, Rs. 2,500 for loss to the estate, Rs. 5,000 for expectancy of life and Rs. 5,000 for loss of consortium to the appellant No. 1 are also awarded.

12. Thus, by modifying the award of Claims Tribunal the appellants are awarded $\text{Rs. } 2,27,000 + \text{Rs. } 2,000 + \text{Rs. } 2,500 + \text{Rs. } 5,000 + \text{Rs. } 5,000 = \text{Rs. } 2,41,500$ (rupees two lakh forty-one thousand five hundred) as said above. The enhanced amount shall carry interest at the rate of 6 per cent per annum from the date of

filing claim application and payable by all the respondents jointly and severally. However, there shall be no order as to costs.

13. The appeal is allowed in part as indicated above.

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