

Paramjit Kaur and anr. Vs. Murarilal Shankya and ors.

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Court : Madhya Pradesh

Decided On : Apr-20-2004

Reported in : I(2005)ACC184; 2005ACJ401

Judge : S.S. Jha and ;A.K. Gohil, JJ.

Acts : Motor Vehicles Act - Sections 165(1) and 166

Appeal No. : M.A. No. 34 of 1995

Appellant : Paramjit Kaur and anr.

Respondent : Murarilal Shankya and ors.

Advocate for Def. : M.P. Agarwal, Adv.

Advocate for Pet/Ap. : N.K. Mody and ;Vijay Sunderam, Adv.

Judgement :

S.S. Jha and A.K. Gohil, JJ.

1. This appeal is filed by claimants against dismissal of their claim by the court of Mr. D.S. Jain, Motor Accidents Claims Tribunal, Morena in Claim Case No. 26 of 1992.

2. Claimants filed a claim petition in the court claiming therein that a truck bearing registration No. MP 07-A 1978 driven by respondent No. 1 Murarilal on 16.3.1992

dashed against deceased Rajvansh Singh at the A.B. Road Sales-Tax Barrier, Morena. Accident occurred at 2.15 p.m. Rajvansh Singh died on the spot after the accident. Appellant No. 1 is widow of the deceased and appellant No. 2 is minor son of the deceased. The truck was owned by respondent No. 2 Harish Babu and was insured with the respondent No. 3 New India Assurance Co. Ltd. The deceased was truck driver. On 16.3.1992 while in service deceased was driving truck bearing registration No. DL-1G 4508, which was travelling from Agra to Nagpur. When his vehicle reached Sales-Tax Barrier near Morena, he stopped the vehicle and parked it by the side of the road and had his meals. After having his meals when he was proceeding towards his truck the offending truck dashed against him, which was coming from the side of Gwalior. The truck was driven by the respondent No. 1 Murarilal in a rash and negligent manner. On account of accident the deceased was crushed under the truck and died on the spot. After accident F.I.R. was lodged with the Civil Lines Police Station, Morena. The claimants have filed a petition for compensation.

3. In reply to claim application, driver of the vehicle denied that the vehicle was driven by him in a rash and negligent manner. On the contrary he has deposed that he was driving the offending vehicle bearing registration No. MP 07-A 1978 on his left side in a slow speed and very cautiously. He was blowing horn and headlights of the truck were on. He was driving from Morena towards Agra. While he was near the Sales-Tax Barrier, deceased suddenly crossed the road which resulted into an accident. Accident occurred on account of negligence of the deceased.

4. The owner of the vehicle has filed his separate written statement and has admitted in his reply that deceased died on account of accident from the offending vehicle driven by respondent No. 1 and he has also pleaded that the deceased himself dashed against the truck. Thus, owner and driver both have admitted that the deceased died on account of accident from the truck which was driven by respondent No. 1 and owned by respondent No. 2.

5. From the pleadings, it is apparent that there was no dispute that the truck bearing registration No. MP 07-A 1978 was not involved in the accident as the

driver and owner of the vehicle have admitted that deceased died from the accident arose by the said truck.

6. Counsel for the appellants submitted that no issue was framed by the Claims Tribunal that the accident has not been caused by the truck driven by respondent No. 1 and owned by the respondent No. 2. Counsel for the appellants submitted that the finding recorded by the Claims Tribunal that the truck was not involved in the accident and the claimants have failed to prove that the truck bearing registration No. MP 07-A 1978 was involved in the accident, is contrary to the pleadings and evidence on record. He submitted that once the driver has admitted that accident is caused by the said truck and the truck was driven by him, burden was on driver to prove that there was no negligence on the part of driver. The learned counsel for the appellants submitted that the Claims Tribunal has committed an error in holding that the burden to prove rash and negligent driving was upon the claimants and nonexamination of eyewitnesses is fatal to the claim. He submitted that Claims Tribunal has decided the petition for compensation requiring the claimants to prove strictly the factum of accident beyond reasonable doubt like criminal cases. The counsel for the appellants further submitted that the findings recorded by the Claims Tribunal are perverse and deserves to be set aside.

7. Learned counsel for the appellants further submitted that PW 1 Paramjit Kaur, widow of the deceased, has categorically deposed in her evidence that her husband is earning Rs. 2,500 per month from driving and Rs. 20,000 from agriculture. In the absence of any cross-examination about the income of deceased, Claims Tribunal ought to have accepted the evidence of claimant and compensation should have been awarded on income of the deceased. The multiplier of 17 ought to have been applied, as the deceased was 33 years of age.

8. Counsel for the respondent insurance company submitted that the award of the Claims Tribunal is just and proper. As regards income of deceased, he submitted that PW 1 Paramjit Kaur in para 6 of her cross-examination has admitted that the deceased was driving the truck 8 months in a year and used to spend four months on agriculture. He, therefore, submitted that income of driver is not proved and the

claimant is not entitled for any compensation. Counsel for the respondent submitted that the deceased was not having any valid licence to drive the vehicle. He submitted that Claims Tribunal has rightly recorded a finding that the deceased was not having valid driving licence. He, therefore, submitted that the appeal be dismissed.

9. We have considered the evidence on record. We have gone through the pleadings. Driver and owner have admitted that truck No. MP 07-A 1978 was involved in the accident. In view of categorical admission, we hold that the finding of Claims Tribunal is perverse that the truck driven by respondent No. 1 was not involved in the accident. Once driver of the truck has admitted in his written statement that his truck dashed against the deceased, finding of the Claims Tribunal that truck was not involved in the accident is perverse and is set aside.

10. As regards the rash and negligent driving is concerned, burden was upon the driver of the offending vehicle to prove that there was no negligence on his part. Driver has not entered the witness-box. Even otherwise, under Section 166 of the new Motor Vehicles Act it is sufficient to prove that there was an accident and question of rash and negligent driving is not essential. Section 166 of the Motor Vehicles Act provides that the application for compensation arising out of an accident of the nature specified in sub-section (1) of Section 165 shall be filed. Section 165(1) provides that the State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both. Thus, if the accident has arisen out of use of motor vehicle then the claimants are entitled for compensation. It is not necessary to prove rash and negligent driving. Since it is admitted by the owner and driver that the accident has arisen out of use of offending truck driven by the respondent No. 1, we hold that the claimants are entitled for compensation.

11. We may further mention that the Claims Tribunal has committed an error in recording a finding about manipulation of the driving licence of the deceased. It is

not a case where the accident occurred while deceased was driving a truck, which collided with any another truck. This is a third party claim. As such, the finding regarding validity of licence held by the deceased is unwarranted in the present case.

12. As regards compensation is concerned, it is admitted that the claimant has categorically deposed in her deposition that deceased was earning Rs. 2,500 per month and in the cross-examination she admitted that the deceased was driving the truck 8 months in a year and for remaining four months he was earning Rs. 20,000 from agriculture. There is no challenge to the evidence regarding the income of the deceased. Considering the evidence on the record, we hold that the income of the deceased was Rs. 2,500 per month and dependency is determined at Rs. 1,600 per month. As he was driving the truck for eight months, dependency is determined at Rs. 12,800 and for four months he was earning from the agriculture. The income from agriculture is not proved. However, we hold that the deceased was having a notional income during four months when he was not driving the vehicle. Therefore, on overall consideration we determine the dependency at Rs. 15,000 per year. The deceased was 33 years of age at the time of accident, therefore, multiplier of 17 is applied in the case and compensation is determined at Rs. 2,55,000. In addition to this sum, further sum of Rs. 35,000 is awarded under various heads such as loss to estate, funeral expenses, consortium, etc. and the total compensation is determined at Rs. 2,90,000. Over and above the claimants will be entitled for interest at the rate of 7 per cent per annum from the date of application. Out of the said amount, Rs. 1,00,000 shall be kept in fixed deposit in the name of appellant No. 1 and remaining amount shall be kept in fixed deposit in the name of appellant No. 2. However, 50 per cent amount of interest shall be paid in cash to the claimants for their maintenance. Remaining amount shall be kept in fixed deposit in a nationalised bank. The claimants will be entitled for half yearly interest on the said fixed deposit. The amount of compensation paid to claimants shall be adjusted from the compensation already paid to the claimants.

13. As regards costs, it is found that the claimants have to spend Rs. 4,800 towards publication charge for service upon respondent Nos. 1 and 2. The

claimants will be entitled to costs of Rs. 5,000 and the counsel's fee as per schedule.

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