

Virendra Kumar Vs. Dasoda Devi and ors.

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Court : Madhya Pradesh

Decided On : Jul-18-2000

Reported in : 2002ACJ340; 2000(3)MPLJ603

Judge : Bhawani Singh, C.J. and ;Arun Mishra, J.

Appeal No. : M.A. No. 361 of 2000

Appellant : Virendra Kumar

Respondent : Dasoda Devi and ors.

Advocate for Pet/Ap. : N.S. Ruprah, Adv.

Disposition : Appeal dismissed

Judgement :

Bhawani Singh, C.J.

1. This appeal challenges the award of Motor Accidents Claims Tribunal, Katni, dated 28.10.1999 whereby the claimant has been awarded Rs. 1,75,000 with 12 per cent interest from the date of application till realisation. This apart, the cost of litigation amounting to Rs. 1,500 has also been awarded.

2. Accident took place on 6.7.1997 on National Highway 7 when jeep No. MP 21-A 3204 hit deceased Ashok Kumar (42). Allegation is that this accident took place due to rash and negligent driving of the jeep by the driver. Deceased received

serious injuries in the accident and he was shifted to hospital for treatment but he died. The matter was reported to the police, case was registered and the challan presented for prosecution. It is stated that deceased was a healthy young man of 42 years. He was an agriculturist and was having a shop also. He was earning Rs. 4,000 per month by which he was maintaining his family. As a result of the accident claimants lost the source of livelihood. They suffered mental pain and have been deprived of the company of the deceased. Due to death of deceased, expenditure had to be incurred for transport of the body and last rites. The claimants claimed a sum of Rs. 7,75,000 with interest at the rate of 18 per cent per annum before the Tribunal.

3. Owner and the driver of the vehicle did not file written statement. They have been proceeded ex parte. The insurance company denied the involvement of the jeep in the accident. Accordingly, it is stated that accident was committed by some unknown vehicle registration number of which was not known. It is also stated that driver of the jeep had gone out on the date of occurrence and on return, information about taking place of the accident was received. Virendra Jain has stated that accident was caused by a Commander jeep whereabouts of which were not known, but his jeep was being involved unnecessarily.

4. The Tribunal found that the accident was caused by jeep No. MP 21-A 3204 due to rash and negligent driving by driver Virendra Kumar as a result of which Ashok Jaiswal sustained injuries on account of which he died. The claimants have been held entitled to compensation assessed at Rs. 1,67,000 to which Rs. 5,000 have been added towards consortium and Rs. 2,500 have been added towards funeral expenses. Joint appeal against the award has been filed by the insurance company, driver and the owner of the vehicle. First question for determination is whether this appeal is maintainable. Mr. Ruprah, learned Counsel for the appellant, submitted that he does not press this appeal on behalf of the insurance company and the appeal on behalf of owner and the driver of the vehicle is maintainable. With a view to buttress this submission, decision of the Apex Court in Narendra Kumar v. Yarenissa 1998 ACJ 244 (SC), has been relied upon. In this case the question involved is whether the owner is a person aggrieved and can file appeal against the award. Answering this question in affirmative the court held that

owner could file the appeal but insurer could not do so jointly with the owner since the grounds for challenge of award available to the insurance company are distinct as set out in Sub-section (2) of Section 96 or in the situation envisaged by Sub-section (2-A) of Section 110-C of the Act [old Act, comparable to Sub-section (2) of Section 149 and Section 170 of the new Act]. This decision has been considered by the court in *Chinnama George v. N.K. Raju* 2000 ACJ 777 (SC). Division Bench decision of High Court of Himachal Pradesh follows this decision in *New India Assurance Co. Ltd. v. Sandhya Jain* 2000 ACJ 426 (HP), holding that appeal of insurance company would stand dismissed and that of the owner of the vehicle permitted to be sustained by amending the cause title of the appeal. In view of the statement of Mr. Ruprah that appeal may be taken to have been withdrawn by the insurance company, we proceed to examine whether the appeal is competent on behalf of the driver and owner of the vehicle. Initially, the appeal was filed by the driver of the vehicle, but the record demonstrates that he did not execute the power of attorney in favour of the counsel and memo of appearance has not been signed by him. That apart, memo of appearance does not legalise filing of the appeal. Appeal has to be accompanied by power of attorney signed by executant in favour of the counsel. Memo of appearance enables the counsel to argue the matter, validity of which expires on the date on which it is presented. The appeal being without power of attorney is not competent. The appeal on behalf of the owner has become time-barred, therefore, for this reason it is liable to be dismissed.

5. Regardless of the above conclusion, we have decided to examine the matter on merits. Emphasis of Mr. Ruprah was that award has been passed without any evidence connecting the jeep No. MP 21-A 3204 with the appellants. In support of this submission the statements of some witnesses have been read. We are not in agreement with the submissions raised by the learned Counsel. The finding of the trial court on this question is absolutely clear. Trial court has found that this jeep was involved in the accident. Dasoda Devi, Sonelal and Mannulal have stated so. Submission of Mr. Ruprah was that evidence recorded by the police under Section 161 of the Criminal Procedure Code should not have been considered for arriving at the conclusion that the jeep No. MP 21-A 3204 was involved in the accident. This submission does not improve the case of the appellants. True it may be, that

evidence recorded in criminal case may not be used for appreciating the proceedings in the Motor Accidents Claims Tribunal but if some of those witnesses support the claimants' case and make statements before Claims Tribunal no provision would prevent the Tribunal from satisfying itself as to the involvement of tortfeasor(s) in the commission of the crime. Even Sub-section (6) of Section 158 of the Motor Vehicles Act, 1988, makes it obligatory on the part of the tortfeasor(s) and the owner of the vehicle involved in the accident to forward a copy of the report of such accident within 30 days from the date of completion of that report to the Claims Tribunal. The police report mentions the involvement of the jeep in the accident in which the deceased died. It is presumed that police officer must have forwarded the copy to the Tribunal mentioning the number of jeep responsible for the accident. Therefore, involvement of tortfeasor(s) in the commission of crime is not required to be proved in the proceedings before the Tribunal beyond reasonable doubt as is required in the criminal trial. What is required is the probability of the involvement of tortfeasor(s) in the accident and the Tribunal can draw the legitimate conclusion with respect to the involvement of the tortfeasor(s) in the accident entitling the claimants to proceed against them for realisation of compensation under the Act. We made serious attempts to discover any flaw in the assessment of compensation by the Tribunal but we found none. Tribunal has fixed the liability of the accident on the driver of the jeep. No other conclusion than the one taken by Motor Accidents Claims Tribunal can be drawn.

For all the reasons stated above we find no merit in the present appeal. The same is accordingly dismissed.