

Surendra and anr. Vs. Ramsuchit Kushwaha and 3 ors.

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Court : Madhya Pradesh

Decided On : Aug-02-1995

Reported in : 1(1996)ACC165

Judge : U.L. Bhat, C.J.

Appellant : Surendra and anr.

Respondent : Ramsuchit Kushwaha and 3 ors.

Judgement :

U.L. Bhat, C.J.

1. Common people approach legally trained personnel for legal advice and help in securing their legal rights and justice at the hands of Competent Courts and Tribunals. They trust their lawyers to do the needful since lawyers are literate in law and bound to help their clients. The present is a glaring example of a case where two illiterate minors were let down by their legal advisers.

2. The case arose out of death of a person by name Lav Kush, in a motor vehicle accident. Third respondent Shyamwati alongwith her minor daughter Pushpa filed a claim petition seeking compensation from first respondent owner and driver of the vehicle, second respondent (Insurer) alleging that the accident was the result of rash and negligent driving of the vehicle. The first respondent contended that Shyamwati was not a legally wedded wife and Pushpa was not daughter of Lav Kush. The insurer denied the legal status of both the claimants. While the claim

petition was pending, the two appellants aged 12 and 14 years respectively then, filed an application seeking to implead themselves as children of Lav Kush by his legally wedded wife and as such entitled to compensation. They were impleaded as respondents. Subsequently, they filed an application seeking to transpose themselves as claimants. That was rejected, but with an observation that their contention will be considered when the claim petition is disposed of. In the final award, the Tribunal held that the death of Lav Kush was on account of rash and negligent driving of vehicle, that first claimant Shyamwati was the wife and second claimant was the daughter of Ramlal and Shyamwati was merely living with Lav Kush and neither of the claimants had legal status to get compensation. The claim was rejected without any consideration of claim of present appellants. This award is now challenged by them.

3. I am not prepared to blame the Tribunal wholly since the appellants got themselves impleaded as respondents in the claim petition. They could have filed claim petition on their own, or, at rate, file written statement pleading their status and claiming compensation from respondents 1 & 2. They did not also do so. The Tribunal cannot also be held faulted for not transposing the present appellants as claimants contrary to the wishes of claimants who preferred the claim petition. At the same time, one has to bear in mind the fact that while disposing of their application seeking transposition as claimants, the Tribunal stated that it will consider contention of the newly added parties while disposing the claim petition. In the circumstances, I am of opinion that the action of Tribunal resulted in failure of justice in so far as the appellants are concerned and, therefore, the matter has to go back for consideration of claim of the appellants as if they are also claimants in the case, but without re-opening the findings recorded by it as they have not been challenged either by the owner-driver or insurer of the vehicle.

4. In the result, the award/order dismissing claim application is set aside, while retaining all the findings recorded by the Tribunal, the case is remitted to the Tribunal for fresh disposal after giving a brief opportunity to the present appellants (who have since then become major and will be shown as such in the claim petition) to put forward their contention and adduce evidence in support of their claim. Respondents 1 and 2 will be given opportunity to rebut the claim, if they

choose to do so. The appeal is allowed in this manner, but without any order as to costs.

5. Parties shall appear before the Tribunal on 1.9.1995.

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