

Dr. Doma Alias Devendra Kumar Vs. Sheikh Hasan Alias Shabboo Master and ors.

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Court : Madhya Pradesh

Decided On : Jul-19-1996

Reported in : 1997ACJ893

Judge : S.K. Dubey and ;Usha Shukla, JJ.

Appeal No. : M.A. Nos. 224 of 1989 and 159 of 1990

Appellant : Dr. Doma Alias Devendra Kumar

Respondent : Sheikh Hasan Alias Shabboo Master and ors.

Advocate for Def. : H.S. Ruprah and ; Ruprah, Adv.

Advocate for Pet/Ap. : G.S. Baghel, Adv.

Disposition : Appeal allowed

Judgement :

S.K. Dubey, J.

1. M.A. No. 159 of 1990 has been filed by the injured claimant whose application for compensation filed in Claim Case No. 16 of 1988 has been dismissed by award dated 15.3.1989 by the Motor Accidents Claims Tribunal, Chhindwara. M.A. No.

224 of 1989 has been filed by the legal representatives of deceased Amar Lal who were awarded only Rs. 15,000/- on the principle of 'no fault liability' in their application filed in Claim Case No. 15 of 1988 by common award dated 15.3.1989 passed by Motor Accidents Claims Tribunal, Chhindwara.

2. Facts giving rise to these two appeals are thus: On 19.11.1987 at about 9.00 a.m. one jeep No. MKJ 8881 owned by respondent No. 1, driven by respondent No. 2 and insured by respondent No. 3 was going from Parasia towards Chhindwara. From the opposite direction near Kulbahra river the appellant Dr. Doma was coming on his motor cycle on which the deceased Amar Lal was sitting as a pillion rider, both vehicles collided as a result of which the motor cyclist and the pillion rider sustained severe multiple injuries. Both were shifted to the hospital where on 23.11.1987 Amar Lal, the pillion rider, succumbed to injuries. The legal representatives of the deceased, viz., his widow, aged 24 years and the minor son aged 11 months, filed an application under Section 110-A of the Motor Vehicles Act, 1939 (for short 'the Act') and claimed compensation of Rs. 5,20,000/-, while injured, the motor-cyclist in Claim Case No. 16 of 1988 claimed compensation of Rs. 4,36,000/- for the injuries suffered, i.e., fracture in the right ankle, tibia and fibula. The applications were contested. The stand of the respondents was that it was the motor-cyclist who dashed with the stationary jeep as a result of which motorcyclist as well as the pillion rider fell down and received multiple injuries, there was no rash and negligent driving on the part of the jeep driver.

3. The Tribunal recorded a finding that the accident did not occur for any rash and negligent act of the jeep driver. The motor-cyclist dashed with the jeep, hence, rejected the claim application filed by the injured while awarded Rs. 15,000/- on the principle of 'no fault liability' to the legal representatives of the deceased Amar Lal. Aggrieved of the common award the appellants have filed these appeals.

4. Mr. G.S. Baghel, learned Counsel for the appellants and Mr. H.S. Ruprah and Mrs. Ruprah, learned Counsel for the insurance company heard.

5. The defence set up for the accident is the rash and negligent driving of the motor cycle. According to the defence, a tractor was standing on the left side of the road. The jeep was to overtake the tractor but seeing another jeep coming

from the opposite direction, the jeep driver slowed down the jeep and was stationary behind the tractor so as to allow the other jeep to pass which was coming from the opposite direction. When the jeep coming from the opposite direction passed the driver of the offending jeep started his jeep and increased the speed so as to overtake the stationary tractor but the motor-cyclist who was coming from the opposite direction following the other jeep in a high speed struck against the right front portion of the jeep as a result of which the motorcyclist and the pillion rider fell down and received injuries. Hence, there was no fault on the part of the jeep driver.

6. From the evidence adduced, i.e., the statement of injured Dr. Doma, AW 2, Bhuwan Lal, AW 3 and Mohd. Ali, NAW 1, the driver of the jeep, it is apparent that the accident occurred when the jeep driver stalled his vehicle to overtake the standing tractor and came in the middle of the road, the motor-cyclist who was coming from the opposite direction following the jeep which passed away, struck the right front portion of the jeep. That shows that both the drivers, i.e., the jeep driver and motorcyclist, did not take care for the approaching traffic so as to avoid the accident.

7. Rule 5 of Driving Regulations of the Tenth Schedule framed under Sections 77 and 78 of the 1939 Act provides that the driver of a motor vehicle shall not, when being overtaken or being passed by another vehicle, increase speed or do anything in any way to prevent the other vehicle from passing him. On the evidence adduced, it is clear that the jeep driver while overtaking the stationary tractor when increased the speed did not take any step to prevent from colliding with the other vehicle passing him. The jeep driver though allowed the jeep coming from opposite direction but could not see the motor-cyclist who was following the jeep, but started the jeep and increased the speed to overtake the tractor. The motor-cyclist also did not take any care nor blew any horn to alarm the traffic coming from opposite direction. The accident occurred in the middle of the road that shows that the motor-cyclist was not on the left side of the road. In view of the circumstances which speak for themselves, we are of the view that both drivers of the offending vehicles contributed to the accident. Therefore, we hold that the two drivers were equally responsible for the accident.

8. It is well settled that in case of a composite negligence the injured or the legal representatives of the deceased can claim compensation from the owners, drivers or insurers of the two vehicles as the owners, drivers and insurers of the two offending vehicles are jointly and severally responsible for the accident. Therefore, in case of compensation for the death compensation cannot be apportioned. However, in case of the injured the liability has to be apportioned equally.

9. As to the compensation in case of death of Amar Lal, he was aged 30 years who left behind his widow aged 24 years and a minor son aged 11 months. According to applicants he was earning Rs. 2,000 per month by sale of cloth on ferry and was giving Rs. 1,000/- to meet the household expenses. Out of the said amount one-third is to be deducted towards the personal living expenses of the deceased, the dependency in round figure would come to Rs. 670/- per month and yearly Rs. 8,040/- making it in round figure of Rs. 8,000/- wherein a multiplier of 16 is applied the compensation would come to Rs. 1,28,000/-. The deceased remained under treatment for four days and suffered pain and suffering, for that an amount of Rs. 5,000/- would be proper to which the applicants would be entitled as the estate of the deceased. Besides, the applicant widow would also be entitled to a conventional figure of Rs. 10,000/- under the head of consortium. Thus, the legal representatives of the deceased would be entitled to Rs. 1,43,000/- with interest at the rate of 12 per cent per annum from the date of application till payment.

10. Coming to the appeal of injured, he suffered the fracture of right ankle, tibia and fibula. He is an ayurvedic medical practitioner and was earning about Rs. 2,000 a month as his average income. Because of his injuries he remained under plaster for a period of four months and was plastered twice. Dr. S.K. Dubey, AW 5, the Radiologist has proved the fracture but has not stated anything about permanent disability. In the circumstances, we are of the opinion that the appellant is entitled to compensation under the head of pecuniary damages for the expenses incurred in treatment a lump sum amount of Rs. 4,000/-. The applicant would also be entitled to Rs. 8,000/- for the loss of his practice for a period of four months. Under the head of general damages for pain and suffering the applicant would be entitled to compensation of Rs. 10,000/-. Thus, the applicant would be entitled to Rs. 22,000/- which has to be apportioned to 50 per cent, the claimant

would get Rs. 11,000/- with interest at the rate of 12 per cent per annum from the date of application till payment.

11. In result, the appeals are allowed with costs. The common award passed shall stand modified as indicated herein-above. The respondent company shall deposit the amount within a period of two months from the date of receipt of certified copy failing which the amount so awarded shall carry interest at 15 per cent per annum. In Claim Case No. 15 of 1988 the amount shall be disbursed to the legal representatives of the deceased keeping in mind the guidelines laid down by the Supreme Court in General Manager, Kerala State Road Trans. Corporation v. Susamma Thomas 1994 ACJ 1 (SC). Counsel's fee Rs. 500/- in each case, if pre-certified.

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