

Ram Kunwar and ors. Vs. Sampatrao and ors.

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Court : Madhya Pradesh

Decided On : Dec-03-2002

Reported in : 2004ACJ1360

Judge : Bhawani Singh, C.J. and ;S.L. Kochar, J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 149(2)

Appeal No. : Misc. Appeal No. 335 of 2000

Appellant : Ram Kunwar and ors.

Respondent : Sampatrao and ors.

Advocate for Def. : Anil Goyal, Adv.

Advocate for Pet/Ap. : Altaf Khan, Adv.

Disposition : Appeal allowed

Judgement :

Bhawani Singh, C.J.

1. This appeal is directed against the award dated 30.11.99, passed by the Claims Tribunal, in Claim Case No. 178 of 1998.

2. Shortly stated, the accident took place on 17.3.1998 at 9 p.m. on Mahesh-war Road when tractor No. MP-10 9973 attached with a trolley No. MP-12 1526 owned by Sampatrao, driven by Nayan Singh and insured with Oriental Insurance Co. Ltd. hit the deceased, who was coming from opposite direction on motor cycle No. MP-10 6400. Shyamrao (deceased) died in this accident.

3. Allegation is that the accident took place due to rash and negligent driving of the tractor. The deceased was a teacher drawing Rs. 9,451 per month. He was 47 years old at the time of accident. Claimants are his wife and children. They submitted that they were dependent on the deceased and on account of his death, they have been deprived of financial benefits, which were available to them. Compensation of Rs. 25,95,000 is claimed.

4. Owner and driver remained absent, therefore, proceeded ex parte. The insurance company alleges that the accident did not take place due to rash and negligence of tractor driver, rather it happened on account of rash and negligence of the deceased. The deceased did not possess valid driving licence for driving the motor cycle, nor the insurance company with which it was insured is made party to the case.

5. On pleadings of parties, number of issues have been framed and evidence is led. Although the owner and driver are proceeded ex parte, however, Nayan Singh (driver) has appeared in the witness-box in support of the allegation that the tractor driver was not responsible for the accident and it has happened due to negligence of the deceased. Ultimately, the Claims Tribunal has found both vehicles responsible for taking place of accident to the extent of 75 per cent and 25 per cent and apportioned the compensation of Rs. 10,72,200 accordingly. The compensation has been made payable with interest at the rate of 12 per cent per annum. That apart, order with regard to utilisation of compensation amount has also been passed. There is no appeal at the instance of the insurance company. Present appeal is by the claimants for enhancement of compensation.

6. Mr. Altaf Khan, the learned counsel for the appellants assailed the award on two grounds. First ground deals with the finding with regard to responsibility of the deceased for the accident to the extent of 25 per cent and the other with regard to

non-payment of just compensation. There is also submission with regard to damages with respect to motor cycle which has been rejected by the Claims Tribunal.

7. First of all, we deal with the question as to responsibility for taking place of accident. Mr. Altaf Khan submits that tractor driver was wholly responsible for the accident. This is the substance of evidence on record and is the conclusion of the Claims Tribunal.

8. Mr. Goyal, appearing for Oriental Insurance Co. Ltd., submits that Claims Tribunal has rightly appreciated the evidence on this aspect. Therefore, the finding that deceased (motorcyclist) was liable for the accident to the extent of 25 per cent since he did not possess driving licence for driving the vehicle, is proper. Perusal of evidence justifies the finding that tractor driver was responsible for the accident. That being so, it cannot be said that the deceased was responsible for the accident to the extent of 25 per cent. The basis on which this liability has been fixed by the Claims Tribunal are the defences of insurance company under Section 149(2) of the [Motor Vehicles Act, 1988](#), burden to prove the same lies on it, which it has failed to discharge in this case. Therefore, the finding in this regard is untenable and is set aside. We have no hesitation in holding that the tractor driver was wholly responsible for the accident.

9. Having come to the conclusion aforesaid, we come to the question of determination of compensation. The deceased was earning Rs. 9,451 per month by way of salary. After deducting one-third towards personal expenditure, monthly dependency comes to Rs. 6,300 and yearly Rs. 75,600. At the time of accident, the deceased was 47 years of age, therefore, the appropriate multiplier should be 13. Accordingly compensation works out to Rs. 9,82,800 plus Rs. 24,500 [Rs. 10,000 for loss of expectancy of life, Rs. 10,000 towards consortium (wife), Rs. 2,500 for loss to the estate being minimum in the absence of evidence as to savings, and Rs. 2,000 for funeral expenses] totalling to Rs. 10,73,000. (Sic. Rs. 10,07,300).

10. Lastly, the finding of the Claims Tribunal with regard to non-payment of damages for the loss of property (motor cycle) is there, because the documents as

to ownership of motor cycle have not been proved and there may be some other rightful person to come forward to claim compensation for the loss of the motor cycle is unjustified. Ram Kunwar, the wife, has specifically stated that the motor cycle was owned by her husband. This statement seems to be correct because it was in possession of the deceased and he was plying it. In the absence of any pointed evidence to the contrary, it has to be accepted that the deceased was owner, in possession of the motor cycle. Therefore, the claimants are entitled to damages to the extent of Rs. 6,000.

11. Accordingly, the appeal is allowed. Award is modified. The claimants are held entitled to compensation of Rs. 10,73,000 plus Rs. 6,000. The enhanced compensation shall carry interest at the rate of 9 per cent per annum from the date of application till the date of payment. The compensation awarded to the claimants shall be payable to them as under:

To Ram Kunwar (wife) 40 per cent
To Prabha (daughter) 15 per cent
To Bharati (daughter) 15 per cent
To Ravikant (son) 15 per cent
To Sudeep (son) 15 per cent

Bharati and Sudeep are minors. Let the amount falling to their share along with up-to-date interest be invested in F.D.Rs. in their names through mother Ram Kunwar in a nationalised bank till they attain majority. Fifty per cent of the amount payable to Ram Kunwar, Prabha and Ravikant be also invested in nationalised bank for a period of three years and the remaining amount may be released in their favour.