

Gendabai Vs. Keshu Ram and ors.

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Court : Madhya Pradesh

Decided On : Jun-26-1996

Reported in : II(1998)ACC414; 1998ACJ191

Judge : R.D. Vyas, J.

Appeal No. : M.A. No. 9 of 1985

Appellant : Gendabai

Respondent : Keshu Ram and ors.

Advocate for Def. : S.S. Swami, Adv.

Advocate for Pet/Ap. : Samvatsar, Adv.

Disposition : Appeal allowed

Judgement :

R.D. Vyas, J.

1. This appeal is directed against the judgment and award by the Motor Accidents Claims Tribunal, Mandsaur dated 29.9.1984 in Claim Case No. 57 of 1980, whereby he was pleased to dismiss the claim with costs.

2. The facts of the case are that the husband of the appellant was hit by a tractor belonging to the respondent No. 1, No. MPU 7123 as also trolley No. MPU 7493

on 15.5.1980 while the deceased Babulal, aged 21 years was standing near a water reservoir near village Budha and he was crushed under the trolley. He sustained severe injuries and while being driven to the hospital died on the way. A criminal case was also registered. The deceased had a infant child aged above 1 year at the time of the accident, who was dependent on him.

3. The appellant for herself and on behalf of her son laid a claim for compensation for an amount of Rs. 1,45,000/-.

4. Upon the evidence the lower court held that the deceased Babulal died of the accident with the tractor and trolley. The lower court held that the deceased was earning about Rs. 300/- per month and would have contributed Rs. 200/- to the appellant and her son. This fact has not been disputed by either party before this Court.

5. Mr. Samvatsar appearing for the appellant argued that the lower court was not justified in not believing that the driver, respondent No. 2, was negligent. He argued that apart from the evidence of Mohammad Yusuf, PW 4, the map of scene of offence and the police papers got produced through the proper custody of the police officers proved that the driver, respondent No. 2, was negligent and because of his negligence only the accident has taken place. He argued that no doubt the appellant's witness Mohammad Yusuf, PW 4, tried to deviate from the true story that he had described to the police under his police statement under Section 161 of the Code of Criminal Procedure. He argued that when that statement was got produced in the court through the police officer that should be taken to be a documentary evidence and not a mere statement under Section 161 of the Code of Criminal Procedure. He argued that looking to the statement of the Investigating Officer, S.S. Purayst, who has been examined as PW 3, the evidence regarding negligence is sufficient. He said, however, the map proves the nature of the accident coupled with the fact that part of the evidence of Mohammad Yusuf, PW 4, with respect to initial occurrence of the evidence would lend support to the case of the appellant that the driver was negligent. He argued that the principle of *res ipsa loquitur* would apply only in this case and the court is left with no option but to presume the negligence on the part of the driver on that

principle. He argued that the respondents have not discharged the burden of disproving or rebutting the presumption that arises from the facts. In that view of the matter, he argued that the lower court was wholly wrong in not believing the story of the appellant that her husband had died of the accident due to the negligence of the respondent No. 2.

6. He next argued that there is no dispute with respect to the income of the deceased, which was taken to be Rs. 300 per month by the lower court. It is argued that even the Minimum Wages Act is made use to arrive at the minimum income of the person, evidence as to whose income is not available, the court would be justified in presuming that the paltry income of Rs. 300/- p.m. was of the deceased. He, therefore, argued that there being three members in the family the deceased, the appellant and their only child, deceased would have used 73rd amount for himself and would have contributed 2/3rd for the benefit of the appellant and her son.

7. Mr. Samvatsar next argued that the deceased was only 21 years of age and it could be safely presumed that he would have lived up to the age of 55 years or more and would have earned for the family much more than Rs. 300/- in the coming years. He, therefore, argued that the claim of Rs. 1,45,000/- was absolutely justifiable on the part of the appellant. However, the appellant has limited her claim to Rs. 1,00,000/- in order to put an end to the controversy about the income. He argued that apart from the income in this case since the deceased was hit very seriously and died of shock while being taken to the hospital, the appellant would be entitled to have some amount for pain, shock and suffering. Thus, the claim is absolutely just and proper.

8. Mr. S.S. Swami appearing for the respondent No. 3 has argued that so far as the insurance company is concerned, the liability is limited to Rs. 50,000/- and, therefore, even if this Court were to hold that the driver was negligent, the maximum sum that could have been allowed against the insurance company would be Rs. 50,000/- and not more. He said that the evidence on behalf of the appellant has not proved that there was any negligence on the part of the driver. The evidence on behalf of the appellant through the eyewitness Mohammad Yusuf

disproves the case of the negligence as that witness has said that the deceased was trying to climb the vehicle which was in motion and therefore, the deceased was solely responsible for his death. He argued that there is at least a contributory negligence on the part of the deceased, who could have avoided the accident by not trying to climb a running vehicle. He also argued that even this Court were to grant any claim, the multiplier of 15 should be used to arrive at a just compensation as some of the Supreme Court's decisions have taken that view and has been consistently followed by several High Courts.

9. Against this Mr. Samvatsar argued that there are many cases in which the Supreme Court has confirmed the multiplier of more than 30 where the age of the deceased was on the lower side. The multiplier of 15 could be applied to a person aged 40 or so and not for a person aged below 25 years. He argued that insurance company is not entitled to argue on facts more particularly when the driver and the owner do not come forward to dispute or argue against the factum of negligence.

10. Looking to the facts as they emerge from the evidence more particularly of the panchnama of the scene of offence as also the believable part of witness Mohammad Yusuf, PW 4, on behalf of the appellant, one thing is clear that the accident has taken place by the impugned tractor and trolley. The witness Mohammad Yusuf has stated that the deceased was hit by the tractor and was crushed under the trolley, the only controversial part is whether the deceased tried to climb the tractor while it was running and was hit by the front wheel and crushed under the trolley. No doubt the prosecution witness had tried to say something but there is no explanation when he was confronted with his statement before the police. The statement before the police has been brought on record as a document proved through the police officer without entering into the controversy whether the evidence under Section 161, Code of Criminal Procedure which is brought on record through the police officers is admissible or not, the panchnama of the scene of offence proves that the deceased was hit by the tractor and was crushed under the trolley and he was taken out from beneath the trolley under its wheels, it goes to prove that the things are taken to speak for themselves that the driver was negligent, the driver has not chosen to come in the box and rebut the

presumption that arises applying the principle of *res ipsa loquitur*, therefore, the only fact remains that the driver was negligent, the story of the deceased trying to climb the running tractor is simply not believed.

11. Next comes the question of compensation. The deceased was aged 21 years and, therefore, it would be absolutely just to presume that he would have lived beyond 55 years in the conditions in which the deceased was crushed. In that view of the matter, the multiplier could have been somewhere between 34-35. However, in order to strike the balance, I feel that it would be just and proper if the multiplier of 30 is applied in the case of this young boy of 21 years having died. The deceased was earning Rs. 300/- per month out of which for three-member family it could be expected that he could have contributed Rs. 200/- for the family, which would have brought Rs. 2,400/- yearly and if the same amount is multiplied by 30, the amount comes to Rs. 72,000/-. Though the deceased would have suffered a shock as he was hit so badly and in the normal circumstances I would have awarded some amount for the pain, shock and suffering, which would have gone to the deceased and passed on to the survivors,, I think to round up Rs. 72,000/- cannot be said to be unjust by any standards. In that view of the matter, I think the appellant is entitled to a claim of Rs. 72,000/- for the loss of services of the husband of the appellant.

12. Next comes the question of liability of the insurance company. The insurance company has limited its liability up to Rs. 50,000/- but looking to the premium column, it becomes clear that the basic sum for the tractor by a premium was recovered at Rs. 136/- by the insurance company and a separate basic sum of premium for the trolley was recovered at Rs. 81/-, therefore, it is very clear that there was a contract between the insurance company and the insured owner of the tractor and trolley that the liability would be of Rs. 50,000/- for both the vehicles separately. In this case I hold that the deceased was hit by both the vehicles, i.e., tractor and trolley and, therefore, the insurance company would be liable for the compensation because of the wrong done. The judgment of the lower court is set by both the vehicles to the deceased. In that view of the matter, the insurance company would be held liable for the amount that is awardable for the wrong done by the tractor as also the trolley, which cumulatively arrived would be

at the aforesaid figure of Rs. 72,000/-.

13. In that view of the matter, the appeal is allowed with costs throughout. The judgment of the lower is set aside and the appellant is awarded an amount of Rs. 72,000/- by way of just compensation for the loss of her husband, She is also entitled to interest at the rate of 12 per cent per annum from the date of filing the application before the M.A.C. Tribunal.

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