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Court : Madhya Pradesh

Decided On : Jan-31-2003

Reported in : III(2004)ACC860; 2004ACJ634

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

Acts : Indian Penal Code (IPC) - Sections 279, 304A and 337

Appeal No. : M.A. No. 388 of 1997

Appellant : Chanda Devi

Respondent : Rajendra Singh and ors.

Advocate for Def. : Amrit Ruprah and ; T.K. Modh, Advs.

Advocate for Pet/Ap. : Ashok Lalwani, Adv.

Disposition : Appeal allowed

Judgement :

Bhawani Singh, C.J.

1. This appeal is directed against the award of Motor Accidents Claims Tribunal, Katni in Claim Case No. 17 of 1989 dated 31.10.1996.

2. Shortly stated, Pramod Kumar (the deceased) was going from Katni Chowk towards Mission Chowk at 18.10 hours on 15.10.1988 on scooter No. CIJ 8641. Vehicle bearing registration No. MBK 7252 driven rashly and negligently by Rajendra Singh hit the scooter resulting in serious injuries to the deceased who fell unconscious. He was shifted to hospital at Katni where he died on 25.10.1988. The matter was reported to the police and case registered under Sections 279, 337 and 304A of the Indian Penal Code. The vehicle was impounded and given on supratnama to Premlal Jar, owner of the same. Claimants are parents of the deceased. At the time of accident, the deceased was 25 years old working with Bhagwati Agencies as store keeper earning Rs. 500 per month and also painting hoardings and boards earning Rs. 400 per month. He wanted to join the Army or Police Department but he died in the accident. Compensation of Rs. 5,12,500 is claimed with interest at the rate of 18 per cent per annum.

3. Respondents have opposed the claim stating that accident occurred due to negligence of the deceased. Claim has been projected on imaginary facts. The insurance company alleges that the claimants have not produced evidence to the effect that they are legal heirs of the deceased. The Claims Tribunal has rejected the claim on the ground that negligence of the driver of the truck has not been established. However, a sum of Rs. 50,000 has been awarded by way of 'no fault liability'. It is also not proved that the deceased was driving the scooter rashly and negligently and lost control of it. However, finding with regard to income is that the deceased was 25 years old earning Rs. 900 per month. Allegation that he was driving the scooter without the driving licence has not been proved. Through this appeal, the award has been assailed by surviving claimant Chanda Devi, father of deceased seems to have died.

4. The fundamental question for determination in this case is whether the accident has taken place and if so, who is liable for the same. The Claims Tribunal comes to the conclusion that the accident has taken place but it is not proved that it was result of rash and negligent driving of truck driver. There is no dispute about the taking place of the accident but actually how it has taken place is not clearly mentioned by the claimants in their evidence nor by the respondents. Where there is no dispute about the taking place of accident, claimant cannot prove how it has

taken place, the principle of *res ipsa loquitur* is attracted. When claimant is not expected to know the circumstances how the accident took place nor the fact of negligence, the burden to prove the negligence is shifted to the other side. The driver of the vehicle is the best person to know and state how the accident took place and who was negligent for that. Driver has not appeared in the witness-box to substantiate the pleadings. Therefore, we have no difficulty in holding that the driver of the truck was rash and negligent and caused the accident. Against him, police registered case under Sections 279, 337 and 304A, Indian Penal Code (Crime No. 754 of 1988 in the court of Additional Chief Judicial Magistrate in Case No. 1514 of 1988--vehicle impounded and released in favour of the owner). Even otherwise, drivers driving heavy vehicles on highway have bigger responsibility to avoid accident. In this case, he could do so when he had seen the deceased coming from opposite direction.

5. Having come to the aforesaid conclusion, we turn to determine compensation in this case. The deceased was earning Rs. 900 per month from two sources, i.e., Bhagwati Agencies and by painting work, Rs. 500 and Rs. 400 respectively. Out of the same, he must be spending one-third on himself leaving Rs. 600 to the family. The annual dependency therefore comes to Rs. 7,200. At the time of accident the deceased was 25 years old. Using multiplier of 17, the amount of compensation comes to Rs. 1,22,400. In addition, the claimant is also entitled to Rs. 6,000 for medical expenditure, special diet and attendant for 10 days during which the deceased remained in the hospital before death, Rs. 5,000 for loss of expectancy of life, Rs. 2,000 for funeral expenses and Rs. 2,500 for loss to the estate, taking the total amount of compensation to Rs. 1,37,900 (rupees one lakh thirty-seven thousand nine hundred).

6. Accordingly, the appeal is allowed. The award of Claims Tribunal is set aside. The claimant is awarded compensation of Rs. 1,37,900 (rupees one lakh thirty-seven thousand nine hundred) with interest at the rate of 6 per cent per annum from the date of claim application till December, 1996 and thereafter at the rate of 9 per cent per annum till payment, to be made within a period of two months.

Costs on parties.

