

Sanno Devi Vs. Balram and ors.

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Court : Madhya Pradesh

Decided On : Mar-10-2005

Reported in : 2007ACJ1881; 2005(3)MPLJ164

Judge : S.S. Jha and ;A.K. Gohil, JJ.

Appellant : Sanno Devi

Respondent : Balram and ors.

Disposition : Appeal allowed

Judgement :

S.S. Jha, J.

1. This appeal is filed by the appellant for enhancement of compensation and challenging the order of the Claims Tribunal, whereby amount of compensation has been apportioned.

2. Preliminary objection has been raised by respondent No. 3 that this petition is not maintainable because accident has occurred on account of involvement of railway train and truck, therefore, Claims Tribunal has no jurisdiction to decide the dispute.

3. Facts of the case are as under:

Suresh Chand Pande and Kailash Narayan were working as driver and cleaner in Balram Roadlines Transport Company. On 13.2.1993 Suresh Chand Pande was driving MP 015-DO 0698 from Lalitpur to Indore. Engine of Bina-Kota Passenger dashed against the vehicle on level crossing near village Shadhora on the Bina-Rutheyai section. Accident resulted into death of Suresh Chand Pande and Kailash Narayan suffered injuries. This petition is filed by widow of Suresh Chand Pande. It is specifically pleaded that when the vehicle was crossing railway crossing No. 47, railway train dashed against the said vehicle, which resulted into death of Suresh Chand Pande. Vehicle was dragged by the engine of train. It is clearly mentioned in the application that gate on the level crossing was not closed.

4. First question which is required to be examined is, whether claim before Motor Accidents Claims Tribunal is maintainable? It may be mentioned that it is the duty of Railways under Section 18 of the Railways Act, 1989 to erect suitable gates, chains, bars, stiles or hand-rails by the railway administration at level crossings. Section 18(c) provides that persons be employed by railway administration to open and shut gates, chains or bars. Thus, it is the duty of Railways to employ a person, who will open and close the railway gate as and when trains come.

5. The case of Union of India v. United India Insurance Co. Ltd. : (1997)8SCC683 , is held to be no longer good law by the Supreme Court in the case of Union of India v. Bhagwati Prasad : [2002]2SCR290 , wherein it has been held that the jurisdiction of the Tribunal to entertain the application for claim of compensation in respect of an accident arising out of the use of a motor vehicle depends essentially on the fact whether there had been any use of motor vehicle and once that is established the Tribunal's jurisdiction cannot be held to be ousted on a finding being arrived at a later point of time that it is negligence of the other joint tortfeasor and not negligence of the motor vehicle in question. Therefore, in the light of the aforesaid judgment we hold that the Tribunal had jurisdiction to entertain the dispute.

6. Next objection raised by Railways is that claim against Railways has not been filed properly. Claim ought to have been filed in name of Central Railway, through its General Manager, but claim petition has been filed against the General

Manager. General Manager is not personally responsible to indemnify the claim, as such claim petition against the General Manager is not maintainable.

7. Under Sections 79 and 80 of Civil Procedure Code, Railways can be sued through Union of India through General Manager of Railways. However, General Manager of Railways cannot be sued in personal capacity.

8. Question pertaining to maintainability of claim against the General Manager is examined by the court. Under the law no claim is maintainable against the General Manager, as General Manager is also an employee of Union of India. Therefore, under general law, claim against Railways must be filed in the name of Union of India through General Manager of the Railways. Section 79 provides that in a suit by or against the government, the authority to be named as plaintiff or defendant, shall be: (a) in the case of a suit by or against the Central Government, the Union of India, and (b) in the case of a suit by or against a State Government, the State. Section 80 further provides that in the case of a suit against the Central Government where it relates to a railway, the General Manager of that Railways. Therefore, claim as filed will not be maintainable.

9. However, in this case when claim was filed against the General Manager, Central Railway, Victoria Terminus, Bombay through Union of India, no objection was raised by the Union of India before the Claims Tribunal that claim against General Manager is not maintainable. Even power has been filed before Claims Tribunal by the Railways' advocate and he contested the claim on behalf of Railways and even the amount of compensation has been deposited by the Union of India, which shows that this case was contested by Union of India through its General Manager. Written statement has also been filed on behalf of Railways by Deepak Kumar Verma, Dy. Chief Claims Officer, Central Railway, Victoria Terminus, Bombay. Thus, entire claim was contested by the Railways. As such on this technicality claimant cannot be non-suited. No objection was raised by the Railways before Claims Tribunal that they have not been impleaded properly. As such claimants cannot be non-suited on the technical ground.

10. However, the question involved in the case is, whether insurance company, respondent No. 2, is liable to indemnify the damages? The fact remains that

vehicle was driven by Suresh Chand Pande. There is nothing on record that vehicle was driven in a rash and negligent manner by the driver Suresh Chand. It is contended by counsel for the respondent that place where accident has occurred one can see 100 yards from both the sides from the railway crossing. He may be able to see 100 yards from both the sides of the railway track but fact remains that gate of level crossing was open. The person posted at level crossing has not closed the gate. As and when level crossing gate is kept open people pass through the track with full confidence that no train is coming as level crossing gate is not closed. Therefore it cannot be said that there was negligence on the part of the driver of the vehicle.

11. Counsel for the Railways submitted that last opportunity rule should be followed. Therefore, the driver of the vehicle had the last opportunity to see the train coming on the railway track. This argument has no force. As a prudent man nobody would like to cross the level crossing if the crossing is closed but when the gate of level crossing is open it is presumed that train is not coming on the said railway track. It is the duty of railway administration for the safety of passengers to close the gate. In the evidence it is deposed that the gateman posted on the level crossing was sleeping and he has not closed the gate. Therefore, it is a case of negligence on the part of the gateman of Railways. We hold that there is no negligence on the part of the driver of the vehicle. When the accident occurred, railway engine had dashed against the vehicle which resulted into death of the driver. Accident has occurred solely on account of negligence on the part of gateman posted at the railway crossing. For the negligence of gateman, the employer Central Railway will also be vicariously liable.

12. Since we have found that the accident occurred on account of negligence of the gateman of the Railways, the gateman and the Union of India will be jointly and severally liable to indemnify the claim.

13. As regards enhancement of compensation is concerned, Sanno Devi, widow of deceased has deposed that her husband used to give her Rs. 1,500 per month for her maintenance and he was also getting Rs. 25 per day for his daily allowance. Her husband was living at Lalitpur and he has hired a room at the rate of Rs. 400

per month. Her husband used to take his meals in the hotel and as and when she used to visit Lalitpur, she used to cook food for her husband. Thus, in the circumstances of the case considering the income of the husband, who was getting Rs. 1,500 p.m. and was getting allowance of Rs. 25 per day when he was travelling on the truck as stated by her wife, income of husband is determined at Rs. 1,500 per month. Daily allowance of Rs. 25 was spent by the deceased upon himself. Considering his further expenses of stay at Lalitpur it can safely be presumed that income of the deceased was Rs. 1,500 per month out of which he was spending about Rs. 500 upon himself and remaining Rs. 1,000 were spent upon his family. Deceased was aged about 25 years. Dependency is determined at Rs. 12,000 p.a. and multiplier of 18 will be applicable and compensation is determined at Rs. 2,16,000. Over and above this amount the claimant will also be entitled for a further sum of Rs. 14,000 towards damages under various heads, such as loss to the estate, loss of consortium, funeral expenses, etc. Total compensation is determined at Rs. 2,30,000. Over and above this amount the claimant will also be entitled for interest at the rate of 6 per cent per annum on the enhanced amount of compensation from the date of filing of appeal.

14. Appeal is allowed and the cross-objection filed by respondent No. 2 is also allowed.