

Meena Devi and ors. Vs. Laharchand and ors.

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Court : Madhya Pradesh

Decided On : Feb-04-2003

Reported in : I(2004)ACC41; 2005ACJ366

Judge : Deepak Verma and ;N.K. Jain, JJ.

Acts : [Motor Vehicles Act, 1988](#) - Sections 173

Appeal No. : M.A. Nos. 622 of 1998 and 796 of 1999

Appellant : Meena Devi and ors.

Respondent : Laharchand and ors.

Advocate for Def. : S. Mukati, G.A. and ;S.S. Dandwate, Adv.

Advocate for Pet/Ap. : G.K. Neema, Adv.

Disposition : Appeal dismissed

Judgement :

Deepak Verma and N.K. Jain, JJ.

1. Both these appeals under Section 173 of [Motor Vehicles Act, 1988](#), arise from the award dated 13.4.1999, passed by III Addl. Motor Accidents Claims Tribunal, Khargone, in Claim Case No. 10 of 1998.

2. The Appeal No. 622 of 1998 is by the claimants seeking enhancement of the amount of award, while Appeal No. 796 of 1999 is filed by State Government seeking its exoneration from payment of any part of the amount of award.

3. It is no more in dispute that deceased Tarachand aged about 30 years, died in a motor accident who was at the relevant point of time, driving a Maruti car, which dashed against the stationary truck loaded with iron bars. As a result of the said accident, Tarachand sustained serious injuries and later on died in the hospital.

4. The truck in question was insured with New India Assurance Co. Ltd. for third party risk and was in the custody of Police Station, Dhamnod in connection with some criminal case.

5. The Tribunal below, on appreciation of evidence led by the parties, came to the conclusion that deceased Tarachand as also the driver of the truck were equally negligent and responsible for the accident. The State Government was also held liable to the extent of 20 per cent, as the truck in question at the relevant time was in custody of Police Station, Dhamnod. The police after seizure of the truck allowed to park on a national highway for nearly four days, which culminated into the accident in question.

6. The Claims Tribunal assessed the compensation at Rs. 2,56,000, but reduced the same by 50 per cent on account of the negligence on the part of deceased Tarachand. The State Government, as already pointed out above was made liable to pay 20 per cent of the awarded amount. The Tribunal below has found it proved that iron bars kept in the truck were protruding out of the truck and that was the main reason for the death of deceased. At the same time, the Tribunal also held late Tarachand guilty for negligent driving.

7. Even, after accepting the findings of the Tribunal, in our opinion, the amount of award ought not to be reduced to the extent of 50 per cent. A careful analysis of the evidence on record would show that the parking of the truck which was loaded with iron bars was the main factor for causing the death of late Tarachand. Under these circumstances, even if there was some contributory negligence on the part of late Tarachand, it could not be assessed to the extent of 50 per cent. In the

interest of justice it would be just and proper to reduce the same by 25 per cent only.

8. As regards appeal of State Government, learned Government Advocate tried to emphasise that the truck in question was in custody of the owner of the truck and not with the police. This is however, contrary to the evidence on record.. The truck was seized on 24.9.1994 and was returned on supurdgi to its owner on 30.9.1994, i.e., a day after the accident. It cannot be, thus, said that the police was not responsible for wrong parking of the truck. The liability fastened on the State Government is found to be in order, calling for no interference by this court in appeal.

9. As regards assessment of damages, the dependency was arrived at Rs. 16,000 per annum and multiplier of 14 was applied and thus amount of compensation under this head was computed at Rs. 2,24,000. Rs. 5,000 were awarded towards loss of consortium and Rs. 26,500 for the medical expenses. However, a sum of Rs. 10,000 ought to be awarded towards loss of consortium; Rs. 10,000 towards loss of love and affection and Rs. 5,000 for funeral expenses. The amount awarded towards treatment expenses, however, calls for no interference.

10. By reducing the amount of compensation under the first head by 25 per cent the same comes to Rs. 1,68,000. After adding the said amount of medical expenses and the amount awarded under other miscellaneous heads, the total amount of compensation comes to Rs. 2,19,500 which may be rounded off to Rs. 2,20,000.

11. Thus, the Appeal No. 622 of 1999 filed by appellants-claimants succeeds in part and the amount of compensation is raised to Rs. 2,20,000 keeping the liability of the State Government as fixed by the Tribunal below intact. The difference in amount shall carry interest at the rate of 9 per cent per annum from the date of claim petition till it is actually paid.

12. The appeal filed by State Government is, accordingly, hereby dismissed. Parties are directed to bear their own costs.

