

Shiv Kumar and ors. Vs. Yagyabhan and ors.

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Court : Madhya Pradesh

Decided On : Jan-20-2003

Reported in : 2005ACJ1067

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

Appeal No. : M.A. No. 433 of 1996

Appellant : Shiv Kumar and ors.

Respondent : Yagyabhan and ors.

Advocate for Def. : G.S. Baghel and ;Amrit Ruprah, Advs.

Advocate for Pet/Ap. : Vivek Rusia, Adv.

Disposition : Appeal allowed

Judgement :

Bhawani Singh, C.J.

1. This appeal is directed against the award dated 17.1.1996 passed by the III Additional Motor Accidents Claims Tribunal, Satna, in Claim Case No. 23 of 1995.
2. Accident took place during intervening night of 9/10.2.1995. Ashok Kumar Mishra (deceased) was hit by Yagyabhan (driver) due to rash and negligent driving, as a result, he died on the spot. This accident was reported at the Police

Station, which registered the F.I.R. and investigated the matter. Driver was prosecuted before the trial court, before he died on 7.5.1996.

3. Before the Claims Tribunal, Yagyabhan (the driver) and Ratanlal Kushwaha (owner) filed written statement admitting the accident having been caused by the offending truck. Thereafter, they were proceeded ex parte.

4. The case of Oriental Insurance Co. Ltd., respondent No. 3 is that the death was under suspicious circumstances, it was not caused by the offending truck, therefore, false claim has been filed to obtain compensation. There is no allegation of collusion between the claimants, owner and driver in the written statement, although it has been filed on 31.7.1995 whereas the written statement was filed by the owner and driver on 21.6.1995.

5. The Claims Tribunal framed four issues in this case. However, it came to the conclusion that taking place of accident by rash and negligent driving of the vehicle by the driver and resulting in death of Ashok Kumar Mishra was not proved. As a result of this finding, the claim petition has been rejected.

6. Through the present appeal, award has been assailed. Mr. Vivek Rusia, learned counsel for the claimants, contends that the Claims Tribunal has refused to award compensation because it failed to appreciate the evidence properly, otherwise there is satisfactory evidence pointing out that accident was caused by the offending truck, therefore, the respondents are liable to pay compensation. The conclusions of the Tribunal are based on some bits of evidence here and there, which do not establish that it is not a case of accident.

7. Mr. G.S. Baghel, the learned counsel appearing for respondent No. 2 (owner), submits that the accident was caused by offending truck, fact admitted in the written statement, therefore, the fact admitted does not require proof, as such no evidence was led and proceeding ex parte by the Claims Tribunal against the owner and driver was of no consequence.

8. Mrs. Amrit Ruprah, learned counsel appearing for the respondent No. 3, Oriental Insurance Co. Ltd., contends that there are serious flaws in the evidence,

therefore, liability cannot be fastened on the insurance company. Learned counsel refers to medical report of Dr. R.K. Gupta, which suggests that it was a case of poisoning and nature of injuries as such cannot be caused by the truck moving over the body of the deceased and that S.K. Mishra, AW 2 had displayed conduct, which demonstrates that it was a case of poisoning and not accident. However, Tarun Kumar, AW 4, did not report the matter to the police nor disclosed it to any of the relations and left the place, which means the accident had not taken place.

9. Giving serious consideration to the matter, we find from the report of Dr. R.K. Gupta (not examined) that he has not pointed out any of the symptoms of poison, which are clearly visible on the person of the deceased. Therefore, he gains the impression by the statement of S.K. Mishra. This fact is confirmed by his opinion that he preserved viscera of the deceased on history of such suspected poisoning. On the other hand, the way the injuries to the head has been described, brain matter having bulged out through wound and fracture of occipital bone, frontal bone, parietal bones, maxilla, mandible, obvious indication is that the head was hit by the truck from the side and the statement that the truck ran over the body, cannot be

accepted. The truck was identified some time afterwards. It was impounded and released on the application of the owner, who had admitted involvement of this truck in this accident.

10. The conduct displayed by Tarun Kumar, AW 4, is not unusual because it is normal conduct of people to get away from such scenes so that they are not called upon to visit the police stations very often to record their statements and thereafter in the court. That appears to be the reason, this witness behaved in this way. He also states that when he saw the driver causing accident, he was threatened by him to be run over and his head broken with 'tyre lever'. The insurance company ought to have procured the report of Forensic Science Laboratory, Sagar, for production in the court in case it wanted to prove that it was a case of poisoning and not accident. Since it failed to do so, the theory of deceased being poisoned remains absolutely without any evidence. Therefore, it can be said that accident took place as alleged, owing to rash and negligent driving of the truck by its driver

resulting in death of Ashok Kumar Mishra. Consequently, the findings of Claims Tribunal to the contrary are set aside.

11. The next question for consideration is the determination of compensation. The deceased was working with the contractor and earning Rs. 1,000 per month, annually Rs. 12,000. After deducting 1/3rd towards personal expenses, the annual dependency comes to Rs. 8,000 multiplied by 18 plus Rs. 7,000 towards loss of expectancy of life, Rs. 2,500 for loss to the estate and Rs. 2,000 for funeral expenses, thereby taking total compensation payable in this case to Rs. 1,55,500.

12. Consequently, the appeal is allowed, award is set aside. The claimants are entitled to compensation of Rs. 1,55,500 (rupees one lakh fifty-five thousand five hundred) with interest at the rate of 9 per cent per annum from the date of application till payment jointly and severally by Ratanlal, payable by Oriental Insurance Co. Ltd., with which the offending vehicle was insured. The compensation amount shall be deposited with Claims Tribunal within three months. It shall be paid as follows:

(1) Shiv Kumar, appellant No. 1 12 percent (2) Savitri Devi, appellant No. 2 13 per cent (3) Mahima, appellant No. 3 75 per cent

The share of Mahima (daughter of the deceased), appellant No. 3, shall be invested in FDR with the nationalised bank through Shiv Kumar, appellant No. 1 and Savitri Devi, the appellant No. 2, till she attains majority, whereafter it shall be released on demand with reasons for withdrawal like education, marriage, etc., otherwise it shall be invested again with interest accruing, unless invest release is demanded. The share of Shiv Kumar, appellant No. 1 and Savitri Devi, appellant No. 2, be released to them.

13. The result of the aforesaid finding on issue No. 1 is that the criminal prosecution of Tarun Kumar Singh, AW 4, Shiv Kumar Mishra, appellant No. 1, Savitri Devi, appellant No. 2, Yagyabhan (abated) and Ratanlal Kushwaha, respondent No. 2, owner of offending truck, through Crime No. 214 of 1996 and Criminal Case No. 1217 of 1996 pending before Chief Judicial Magistrate, Satna, is hereby quashed. They be not prosecuted further.

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