

Devisingh Vs. Ashok Kumar and ors.

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Court : Madhya Pradesh

Decided On : Oct-24-2002

Reported in : I(2003)ACC458

Judge : A.K. Gohil, J.

Appellant : Devisingh

Respondent : Ashok Kumar and ors.

Judgement :

ORDER

A.K. Gohil, J.

1. Appellant/claimant has filed this appeal under Section 110-D of the Motor Vehicles Act, 1939, against the award dated 13.3.1989, passed by the Member, Motor Accident Claims Tribunal, Shajapur in Claim Case No. 3/1987, whereby it dismissed the claim petition.

2. Brief facts of the case are that on 30.8.1985, one she-buffalo belonging to the petitioner was sitting on side of the road, when a Mini Bus No. MPD/3606, belonging to respondent No. 1, being driven by respondent No. 2, and insured with respondent No. 3, Insurance Company came and hit the she-buffalo, as a result of the said accident she-buffalo received fracture in her both legs and after 15 days she-buffalo died. On the same day the matter was reported to police, Shajapur

where a case was registered against respondent No. 2 driver under Sections 279 and 429, I.P.C. Thereafter, the owner of she-buffalo filed a claim petition claiming compensation of Rs. 4,000/-. In the claim petition notices were issued. The owner and the Insurance Company have filed separate WS and denied the allegations. Issues were framed and evidence of the parties was recorded. Claimant examined himself as P.W. 1 being the owner of the she-buffalo, P.W. 2 Ratansingh, who used to graze the catties and P.W. 3 Shivsingh who was an eyewitness of the accident. The Tribunal dismissed the claim petition on the ground that the petitioner has failed to prove rash and negligent driving of the offending mini bus by its driver. It was also not found proved that the price of she-buffalo was Rs. 4,000/- against which this appeal has been filed by the appellant claimant.

3. I have heard the learned Counsel for the parties and perused the record.

4. It is not in dispute that respondent Nos. 1 and 2, the owner and driver respectively were ex parte before the Tribunal. The claim petition was contested only by respondent No. 3 Insurance Company but has not produced any evidence in rebuttal. From the perusal of the evidence it is clear that claimant has proved the accident from the mini bus No. MPD-3606 belonging to respondent No. 1. Copy of the FIR is Ex. P/1, which was lodged immediately after the accident. Mini bus registration number was also mentioned in the FIR. Copy of the Panchnama is Ex. P/2 and copy of notice is Ex. P/3. From the aforesaid evidence of P.Ws., it is clear that the driver of the mini bus was driving the vehicle rashly and negligently which hit the she-buffalo, sitting on the roadside and injured the she-buffalo. It is also not in dispute before me that subsequently the she-buffalo died. It has also come in the evidence that no treatment was given to the she-buffalo and the doctor had also not been examined.

5. After appreciating the evidence the Tribunal found that one Ashok Kumar s/o Mishrilal was the owner of the mini bus, respondent No. 2 Babu Khan was the driver of the mini bus on the date of accident and the said mini bus was insured with the respondent No. 3 Insurance Company. From the evidence it also appears that the Tribunal has not properly appreciated the evidence on record, relating to rash and negligent driving of the vehicle as well as about the cost of the deceased

animal. In the absence of any evidence in rebuttal the evidence led by the claimant cannot be disbelieved or discarded. Though there are some discrepancies in the evidence of the witnesses about giving treatment to the she-buffalo but from the above evidence it is clear that the she-buffalo got injured in the accident by the said mini bus and subsequently died. Since the driver of the mini bus has not appeared in the witness box, therefore, the evidence produced on behalf of claimant cannot be brushed aside and the claim was liable to be awarded.

6. After considering the evidence on record, according to this Court, the she-buffalo died on account of rash and negligent driving of the vehicle by respondent No. 2 and the claim of Rs. 4,000/- as cost of the she-buffalo, appears to be reasonable.

7. Accordingly, this appeal is allowed, impugned award is set aside and a sum of Rs. 4,000/- is awarded towards cost of the she-buffalo as compensation to the appellant claimant. The claimant is further awarded a sum of Rs. 1,000/-towards damages for interest during such period. It is directed that the Insurance Company shall pay the aforesaid amount within a period of two months, failing which the Insurance Company shall be liable to pay interest thereon @ 10% per annum from the date of this order. There shall be no order as to costs.