

Onkar and anr. Vs. Mohd. Mukeem and ors.

Onkar and anr. Vs. Mohd. Mukeem and ors.

SooperKanoon Citation : sooperkanoon.com/512866

Court : Madhya Pradesh

Decided On : Jun-23-2003

Reported in : I(2004)ACC349

Judge : A.M. Sapre, J.

Appellant : Onkar and anr.

Respondent : Mohd. Mukeem and ors.

Advocate for Pet/Ap. : Mr. K.C. Kabra

Judgement :

A.M. Sapre, J.

1. Claimants have come up in appeal under Section 173 of Motor Vehicles Act against an award, dated 17.4.1997, passed by learned 1st -Additional Member, Motor Accident Claims Tribunal, Mandleshwar in Claim Case No. 43 of 1993, whereby their claim petition was rejected in its entirety. According to claimants (appellants herein), their claim petition ought not to have been rejected but should have been allowed.

2. Claimants are mother and father of one Vijay, aged 10 years. They are the residents of one Village Palsud in Tehsil Maheshwar.

3. On 6.7.1987, Vijay was going on a cycle with his friend Nahar Singh on a road Palsud to Badwaha at about 4.00 p.m. It is at that time, the offending vehicle (Jeep bearing No. MP 2 1076) belonging to State and driven by respondent No. 1 came from behind and dashed to cycle on which Vijay and Nahar Singh were going. The impact of dash was so violent that Vijay succumbed to injuries and died in hospital the same day. Nahar Singh sustained injuries. One Nathulal lodged an FIR the same day at about 22.45 p.m. mentioning specifically therein even the number of Jeep with whom the accident had taken place.

4. It is this cause that led to filing of claim petition by the appellants (claimants) who are father/mother of late Vijay claiming compensation for his death. The claim petition was founded on aforementioned allegation. It was denied by the non-applicants. Evidences were led. The claims Tribunal rejected the claim petition holding that it was not proved that the accident in question occurred with the vehicle in question. It is against this rejection of claim, the claimants are in appeal to this Court.

5. Heard Mr. K.C. Kabra, learned Counsel for the appellant and Mr. V.P. Khare, learned Government Advocate for respondents.

6. Having heard learned Counsels for the parties and having perused the record of the case, I am inclined to allow the appeal, set aside the impugned award and allow the claim application in part by awarding compensation.

7. In my considered opinion, the Tribunal should have relied upon the FIR (a proved document) for holding that the accident in question had taken place with the offending vehicle. It cannot be disputed that FIR was lodged immediately after the accident had taken place and secondly it had given correct description of the accident including even the Jeep number. This was corroborated by Nahar Singh. What more proof was needed than the one led by claimants to hold that the accident had taken place with the Jeep belonging to State and driven by the respondent No. 1. In my view, some minor contradiction in the evidence of Nahar Singh - a young boy could not otherwise be taken to be the basis to reject his testimony in its entirety. The fact remains that it was amply proved with the documentary as also oral evidence that the accident in question was the result of

negligent driving of respondent No. 1 and the same should have been averted by the respondent No. 1.

8. Once I hold that the accident in question had taken place with the offending vehicle and the same was due to rash and negligent driving of the respondent No. 1- an employee of State, the respondent No. 2 - State becomes vicariously liable for the action of their employees.

9. So far as the payment of compensation is concerned, it has come on the record that deceased Vijay was 10 years of age and was school-going in village. In the facts and circumstances, the family background of deceased (farmers) and looking to his age, a sum of Rs. 50,000/- would meet ends of justice. The awarded sum will carry interest at the rate of 9% from the date of application till realisation. Since, the claimants were not awarded no-fault compensation, there is no question of it being adjusted in final payment.

10. Accordingly and in view of aforesaid, the appeal succeeds and is allowed. Impugned award is set aside and instead a claim of Rs. 50,000/- together with interest at the rate of 9% from the date of application till realisation is passed against the respondents jointly and severally.

Cost Rs. 1,500/- payable by respondents to appellant.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com