
(1997) 07 MP CK 0080
In the Madhya Pradesh High Court
Case No : M.A. No. 887 of 1994

Beni Bai and Others

APPELLANT

Vs

A. Salim and Another

RESPONDENT

Date of Decision : 07-07-1997

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (1998) ACJ 1348

Hon'ble Judges : S.K. Dubey, J;Rajeev Gupta, J

Bench : Division Bench

Advocate : V.S. Shrouti, for the Appellant; A.G. Dhande, for the Respondent

Final Decision : Allowed

Judgement

S.K. Dubey, J.

This is an appeal u/s 173 of the Motor Vehicles Act, 1988 against the award dated 13.7.1994 passed in M.C.C. No. 122 of 1993 by the VI Additional Motor Accidents Claims Tribunal, Bhopal.

2. Facts giving rise to this appeal are thus: The legal representatives of the deceased Kailash Narayan Soni, aged about 32 years, claimed compensation of Rs. 6,16,200/- for the death of Kailash Narayan caused in the motor accident occurred on 6.8.1990 when he was crushed by city bus No. MBH 927 owned by respondent No. 2, M.P. State Road Trans. Corpn. and driven by respondent No. 1. It was averred that the accident took place due to negligence of the driver as the deceased was alighting from the bus, he was on the footboard and the driver without seeing that the passengers have alighted or not started the bus as a result of which deceased fell down and was run over. He received multiple injuries resulting in his death.

3. The respondents denied the claim and stated that the respondent No. 1 was not driving the bus rashly and negligently. It was the deceased, who to alight jumped from the bus which had not stopped. He received injuries due to his own

act for that the respondents cannot be held responsible.

4. The appellant examined Atmaram, AW 1, who stated that when the bus stopped at Lily Cinema, the passengers were alighting from the bus. In that process, the bus started and one boy came under the wheel. People cried, thereafter the bus was stopped. The respondent did not lead any evidence in defence. Not only this, neither the driver of the bus, nor the conductor was examined. The Tribunal after appreciating the evidence disbelieved the evidence of Atmaram, AW 1 and dismissed the claim holding that it is possible that when the bus did not stop, the deceased might have tried to get down from the bus.

5. Having heard Mr. V.S. Shrouti, the learned Counsel for the appellants and Mr. Dhande for the respondents and on going through the evidence on record, we are of the view that the finding of the Tribunal is conjectural and based on surmises. The death of Kailash Narayan Soni by the offending vehicle is not denied. On the other hand, a plea has been raised by the respondents that it was the deceased himself who jumped from the bus while it was in motion, as a result of which, he came under the wheel. To establish this plea, the respondent neither examined the driver nor examined any of the passengers or the conductor who could have stated the manner in which the accident had occurred.

6. In the circumstances, for the non-examination of the material witnesses particularly the driver and the conductor, who had the first hand knowledge of the manner in which the accident occurred, necessarily an adverse inference has to be drawn against the respondents. For want of evidence on behalf of the respondents, the plea raised in defence cannot be said to be established. On the other hand, the appellants have examined Atmaram, AW 1 who was at the spot, who stated that at the bus stop when the passengers were getting down from the bus, the driver without seeing that the passengers have got down or not, started the bus and there one boy came under the wheel of the bus. From the circumstances, it cannot be inferred that the deceased might have jumped from the running bus. Hence it was the duty of the driver and conductor to have taken care to see whether passengers have got down from the bus or not, then only the driver could have started the bus. As the driver and conductor have failed in their duties to take care, we hold that the accident occurred due to negligence of the driver of the city bus. This Court in similar circumstances where the same type of defence was taken, has observed that it is the driver of the passenger bus who has to take care that the passengers who wish to get down from the bus have got down and then to start the bus. But that care was not taken. Therefore, it was held that the accident was caused because of negligence of the driver and conductor. [See M.P. State Road Trans. Corpn. v. Shakuntala Shrivastava, M.A. No. 512 of 1995; decided on 31.3.1997].

7. Coming to compensation, the deceased was earning about Rs. 2,000/- per month by working in Sahara India and as agent of the Life Insurance Corporation. From Sahara India, he was drawing Rs. 1,500/- and from the Life Insurance Corporation, Rs. 500/- which is well established by the documentary

evidence and the statement of the mother Beni Bai, AW 2. He was a bachelor and was maintaining his mother, younger brother and unmarried sister. In the circumstances, it would be proper to deduct one-third amount out of the earnings on personal living expenses of the deceased, the dependency would come to Rs. 1,200/-. Looking to the age of the mother who was aged 65 years and brother aged 25 years and sister aged 24 years and the age of the deceased, multiplier of 8 is applied, the amount would work out to Rs. 1,15,200/-, in that Rs. 2,000/- is added as funeral expenses, the amount would come to Rs. 1,17,200/- which the appellants would be entitled with interest thereon at the rate of 12 per cent per annum from the date of application, i.e., 4.2.1991 till realisation. The respondent Corporation shall deposit the said amount within a period of two months from the date of supply of certified copy.

8. In the result, the appeal is allowed with costs. The award of the Tribunal is set aside and the same is substituted as indicated hereinabove. Counsel's fee Rs. 1,000/- if pre-certified.