
(2000) 03 MP CK 0001

In the Madhya Pradesh High Court

Case No : M.A. No's. 1038 and 1090 of 1997

Bhagwan Das Tiwari and Others

APPELLANT

Vs

Ratni Bai and Others

RESPONDENT

Date of Decision : 09-03-2000

Acts Referred:

General Clauses Act, 1897 — Section 6
Motor Vehicles Act, 1988 — Section 173, 2

Citation : (2001) ACJ 289

Hon'ble Judges : Bhawani Singh, C.J.; A.K. Mishra, J

Bench : Division Bench

Advocate : N.K. Patel, for the Appellant; Rakesh Jain, for the Respondent

Final Decision : Allowed

Judgement

Bhawani Singh, C.J.—We propose to dispose of both the appeals (M.A. No. 1038 of 1997--Bhagwan Das Tiwari v. Ratni Bai and M.A. No. 1090 of 1997--Ratni Bai v. Bhagwan Das Tiwari) by this common order, since they arise out of the same accident and award dated 16.5.1997 passed by the Motor Accidents Claims Tribunal, Begumganj, District Raisen, in Claim Case No. 3 of 1989.

2. It may be noted that former appeal is at the instance of the owners and driver of the vehicle in question for setting aside the award and exonerating them from the liability for the payment of compensation while the latter appeal is filed by the legal heirs of the deceased Chandra Kumar for enhancement of the award.

3. The brief facts are that on 5.6.1989 Chandra Kumar (the deceased) was going from Sultanganj to Begumganj on motor cycle No. MKD 3300. A bus No. CPQ 9207 dashed against the motor cycle, as a result of which Chandra Kumar died spontaneously on the spot. The motor cycle was also badly damaged. Consequently, a claim petition for Rs. 28,57,000 along with interest was filed before the Motor Accidents Claims Tribunal, Begumganj. It is stated that Chandra Kumar was a private medical practitioner and was earning Rs. 9,000 per month.

He was 45 years 9 months at the time of accident. He was spending about Rs. 4,000 per month on his family members and in addition to this, Rs. 1,000 was also spent towards religious ceremonies.

4. The allegation is that the bus was driven rashly and negligently by the driver, which caused the accident. The case set up by the non-claimant Nos. 1 to 5 is that Chandra Kumar (deceased), who was driving the motor cycle, was trying to overtake the bus, but he lost balance of his motor cycle and dashed against the bus. Therefore, there is no negligence on the part of the bus driver, rather the same is on the part of the motor-cyclist. The bus was not being driven by Sant Singh (non-claimant No. 5), therefore, non-claimants are not liable for payment of compensation.

5. It is mentioned in the claim petition that the bus was registered in the names of non-claimant Nos. 1, 2 and 3, namely, Bhagwan Das Tiwari, Hanumant Singh and Gandharva Singh. The bus was being plied by non-claimant No. 4 (Tilak Singh), on the basis of hire-purchase agreement between the non-claimant Nos. 1, 2 and 3 and the non-claimant No. 4 and, therefore, the non-claimant No. 4 (Tilak Singh) was owner of the vehicle. This statement has been admitted by the owners in para 3 of the written statement and Tilak Singh has also confirmed this fact in his written statement.

6. On the pleadings of the parties, the Tribunal framed the following issues:

(1) Whether the claimants are the legal heirs of the deceased?

(2) Whether Karodilal was also the name of deceased Chandra Kumar?

(3) Whether, on the date of accident, the non-claimant Nos. 1 to 3 were the owners of Trimurti bus No. CPQ 9207?

(4) Whether on 5.6.1989, the non-claimant No. 4 (Tilak Singh) was owner of the vehicle and plied the bus on the basis of hire-purchase agreement?

(5-A) Whether on the date of accident, motor cycle No. MKD 3300 was being driven by Sadhu alias Laxman Singh?

(5-B) Whether on the date of accident, deceased Chandra Kumar was pillion rider of the motor cycle?

(6-A) Whether the non-claimant No. 5 was plying the vehicle rashly and negligently, as a result of which the vehicle dashed against the motor cycle on public highway near Modakpur Ghati?

(6-B) Whether Chandra Kumar died as a result of accident?

(7-A) Whether the deceased Chandra Kumar was a medical practitioner?

(7-B) Whether age of Chandra Kumar on the date of accident was about 46 years?

(7-C) Whether the income of the deceased Chandra Kumar was Rs. 300 per day?

(7-D) Whether Chandra Kumar was spending Rs. 4,000 per month on his family?

(8-A) Whether the claimants are entitled for compensation?

(8-B) If so, from whom and to what, extent?

(9) Relief and cost.

7. The parties led evidence in the case and the Claims Tribunal came to the conclusion that the claimants were entitled to compensation. On issue No. 3, the finding is that on the date of accident, the non-claimant Nos. 1 to 3 were owners of the bus and it was being plied by non-claimant No. 4 (Tilak Singh) in the capacity of owner on account of hire-purchase agreement. The accident has taken place and it was the result of rash and negligent driving by the bus driver.

8. On the date of accident, the age of the deceased Chandra Kumar was 46 years and he was a medical practitioner. With respect to payment to the family, the finding is that the exact amount has not been proved, but the income of the deceased has been fixed at Rs. 2,500 p.m. and the dependency has been worked out to Rs. 1,000 per month. The total amount of compensation is Rs. 1,80,000 and the liability for paying the same has been fixed on the non-claimant Nos. 1 to 5 jointly and severally. The amount of compensation has been ordered to be paid with interest at the rate of 12 per cent per annum from the date of application till date of payment. Out of this award, these two appeals arise, since the parties do not feel satisfied with the same.

9. The first question that arises for consideration is whether Misc. Appeal No. 1038 of 1997 (Bhagwan Das Tiwari v. Ratni Bai) is maintainable. It is contended by Mr. Rakesh Jain, learned counsel for the claimants that this appeal is not maintainable, since the non-claimants have not complied with the requirement of Section 173 of the Motor Vehicles Act, 1988, particularly, the first proviso thereto making it mandatory for appellants (non-claimants) to deposit Rs. 25,000 or fifty per cent of the amount so awarded, whichever is less, before the appeal is entertained. Mr. N.K. Patel, the learned counsel for the non-claimants (appellants in M.A. No. 1038 of 1997), contends that this requirement does not apply to the present case. With a view to rebut this submission, the learned counsel placed reliance on Section 6 of the General Clauses Act, 1897 (10 of 1897), which says the legal proceeding pending on the date of commencement of the Act, meaning thereby the legal proceedings, which stand initiated before the commencement of the Act, can be carried on in accordance with the provisions of the existing Act, learned counsel contends. Reliance is placed on the Supreme Court decision in Ramesh Singh v. Cinta Devi 1996 ACJ 730 (SC). We find substance in this contention. In this case, the accident took place on 5.6.89. The Motor Vehicles Act, 1988 came into force on 1.7.1989. In our considered opinion, the position would be governed by the law which existed on 5.6.1989, the right existed to the party on the date of accident with respect to lodging and continuing the action,

could not. be defeated by the new Act coming into force at this stage. That being the position, the first proviso to Section 173 of the Motor Vehicles Act, 1988, would be inapplicable in this case and the requirement of making deposit of amount specified therein would not apply in this appeal. Accordingly, we hold that this appeal (M.A. No. 1038 of 1997) is maintainable.

10. In other appeal (M.A. No. 1090 of 1997--Ranti Bai v. Bhagwan Das Tiwari), the non-claimant Nos. 2 to 5 have filed cross-objection. Since we have found that the appeal at their instance is maintainable, these objections lose importance since both the appeals are to be considered on merits.

11. The case has two aspects--the first is with respect to the liability to pay the compensation and the second, the reasonableness of the amount of compensation awarded by the Tribunal. We take second aspect first for consideration. It may be true that from the evidence adduced by the claimants before the Tribunal, it is not satisfactorily established that the income of the deceased Chandra Kumar, on the date of accident, was Rs. 300 per day. But the Tribunal has fixed the income of the deceased at Rs. 2,500 per month. In absence of any other satisfactory evidence, it is difficult to dislodge the findings of the Tribunal. Even if it is taken to be true, in that case, after deducting 1/3rd of this amount towards personal expenses of the deceased, it would come to Rs. 1,666 per month and the yearly dependency comes to Rs. $1,666 \times 12 =$ Rs. 19,992, with multiplier of 13, the amount payable to the claimants would be Rs. $19,992 \times 13 =$ Rs. 2,59,896, and in addition to this, an amount of Rs. 10,000 should be added towards consortium and Rs. 5,000 towards funeral expenses, taking the total amount of compensation to Rs. 2,74,896. Accordingly, we hold that the claimants shall be entitled to the payment of Rs. 2,74,896 by way of compensation for the death of Chandra Kumar and in case, interim award has been made in this case, the amount so paid shall be deducted from this amount. The amount shall be paid with interest awarded by the Tribunal.

12. The next question is who should suffer the liability to pay the amount assessed hereinabove. Learned counsel for the parties extensively made submissions on this question. Mr. N.K. Patel, learned counsel for the non-claimants contended that the non-claimant Nos. 1 to 3 (original owners) cannot be fastened with the liability to pay this compensation, since they had parted with the possession of the vehicle in favour of the non-claimant No. 4 (Tilak Singh) on the basis of hire-purchase agreement. The contention of the learned counsel precisely is that this liability should be suffered by Tilak Singh (non-claimant No. 4), who was owner of the vehicle on the basis of hire-purchase agreement and was in possession of the same and plying it on the relevant day through his driver. In support of this contention, the learned counsel has placed reliance on the decision of the Apex Court in Rajasthan State Road Trans. Corporation v. Kailash Nath Kothari 1997 ACJ 1148 (SC). Mr. Rakesh Jain, the learned counsel for the claimants, submits that the hire-purchase agreement has not been produced by the non-claimants. Therefore, the vehicle has to be taken

to be of the non-claimant Nos. 1 to 3. Further, even if, it was being plied by the non-claimant No. 4 (Tilak Singh), in addition, it is also contended that the driver of the vehicle was of the non-claimant Nos. 1 to 3. Consequently, the non-claimant Nos. 1 to 3 are liable to pay the compensation. We have given serious consideration to the contention so raised. The evidence has been considered in the context of the submission advanced by the learned counsel for both the sides.

It may be true that the registered owners of the vehicle, on the date of accident, were non-claimant Nos. 1 to 3, but the possession of the vehicle had gone over to the non-claimant No. 4 (Tilak Singh) on the basis of hire-purchase agreement. The contention that the hire-purchase agreement has not been filed in the court, is misconceived. Since it is a case of claimants that on the basis of hire-purchase agreement, the vehicle was being plied by the non-claimant No. 4 (Tilak Singh), who was the owner of the vehicle. In view of this position, it was not necessary to produce the hire-purchase agreement and to prove the same in this case.

13. When we proceed further, we find that the non-claimant No. 4 (Tilak Singh) was in possession of the vehicle and was plying the same. Obviously, in absence of evidence to the contrary, he was charging the fare from all the passengers and was utilising the same. Legitimately, it can be concluded that the bus was being plied by him through driver and conductors working under his command. Therefore, he has to be taken as owner of the vehicle within the meaning of Section 2(19) of the Motor Vehicles Act 1939, corresponding to section 2(30) of the new Act of 1988. It defines "owner" as under:

Section 2(30): "owner" means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase agreement or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement.

This question has been answered in Rajasthan State Road Transport Corporation v. Kailash Nath Kothari 1997 ACJ 1148 (SC).

14. Turning to the facts of the case, it can be stated that the claimants have said that the vehicle was being driven by Sant Singh (non-claimant No. 5), driver of the non-claimant Nos. 1 to 3. But, this fact has not been satisfactorily established since there is evidence on record to suggest that it was being driven by Shivraj Singh. The non-claimant No. 4 (Tilak Singh) has said that the vehicle was being driven by his driver and on being asked, who was his driver, he stated that his driver was Shivraj Singh and Sant Singh alias Santu Singh (non-claimant No. 5) is his nephew. With respect to hire-purchase agreement, Hanumant Singh (non-claimant No. 2) has not been subjected to cross-examination on the line the case is sought to be put by the claimants. Therefore, in view of our conclusion, the most important factor is to be seen in such a case, who is in possession of the vehicle and who had the power to control the movement of the same and utilise the income.

15. No other questions arise for our consideration nor pressed by the learned counsel for both the sides.

16. Consequently, M.A. No. 1038 of 1997 (Bhagwan Das Tiwari v. Ratni Bai) is allowed to the extent that the liability to pay compensation would be of the non-claimant No. 4 (Tilak Singh) and not of non-claimant Nos. 1 to 3.

17. Misc. Appeal No. 1090 of 1997 (Ratni Bai v. Bhagwan Das Tiwari) is also allowed and the amount of compensation is enhanced to the extent mentioned in the preceding paras of this order. The cost of the petition shall be borne by the parties.