
(2003) 09 MP CK 0037
In the Madhya Pradesh High Court
Case No : M.A. No. 384 of 1998

Chandrabhan Dubey

APPELLANT

Vs

Manoj Kumari and Others

RESPONDENT

Date of Decision : 19-09-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2004) ACJ 1173

Hon'ble Judges : Shahi Kant Kulshreshtha, J;S.S. Kemkar, J

Bench : Division Bench

Advocate : Subodh Pandey, for the Appellant; Anil Lala and Gulab Sohaney, for the Respondent

Final Decision : Dismissed

Judgement

Shantanu Kemkar, J.—This appeal u/s 173 of the Motor Vehicles Act, 1988, is directed against the award dated 27.2.1998, passed by First Additional Motor Accidents Claims Tribunal, Mur-wara (Katni), in Motor Accident Claim Case No. 153 of 1991.

2. Briefly stated the facts are that, on 19.10.1991 one Mangal Prasad Tiwari was travelling along with 50-60 persons in the tractor-trolley owned by the appellant. After "Durga Visarjan" when the tractor was coming back, on way, because of jerk Mangal Prasad fell down and received multiple injuries. He was admitted to the hospital but ultimately he succumbed to the injuries on 30.10.1991. Respondent Nos. 1, 2 and 3 who are wife and two sons of the deceased, filed an application u/s 166 of the Motor Vehicles Act, 1988 claiming compensation to the tune of Rs. 13,47,000 for the death of Mangal Prasad. The appellant/owner and respondent No. 4 insurer of the vehicle involved in the accident contested the application. After recording the evidence the Tribunal vide its award passed on 2.8.1995 exonerated the insurance company and awarded compensation of Rs. 16,000/- for injuries sustained by the deceased to the claimants as compensation to be paid by the appellant/ owner as the Tribunal held that

claimants have failed to establish that the death of Mangal Prasad was due to injuries received by him in accident.

3. Dissatisfied with the award claimants filed a Misc. Appeal No. 1057 of 1995 before this court and this court vide orders dated 20.8.1997 remanded the matter to the Tribunal for affording an opportunity to the claimants to adduce the evidence about "the death of Mangal Prasad being caused due to the injuries received by motor accident". This court while remanding the matter has affirmed the findings of the Tribunal exonerating the insurance company. Thus the finding of the Tribunal exonerating the insurance company has attained finality.

4. In pursuance to the aforesaid order passed by this court the Tribunal recorded the evidence and vide its award dated 27.2.1988 held that the deceased died due to the injuries suffered by him in accident and consequently awarded compensation of Rs. 1,80,000/- in favour of the claimants. The owner has now filed this appeal.

5. We have heard Mr. Subodh Pandey, learned counsel for the appellant, Mr. Anil Lala, learned counsel for respondent Nos. 1, 2 and 3 and Mr. Gulab Sohaney, learned counsel for respondent No. 4 and perused the record.

6. There is sufficient evidence on the record pointing out that on sustaining injuries in the motor accident the deceased Mangal Prasad was admitted in the hospital on 19.10.1991 and was discharged on 26.10.1991 and died on 30.10.1991. The appellant though not pleaded but had come with evidence that the deceased was patient of ulcer and he was hit by buffalo and sustained injury in stomach and died. The Tribunal did not rely upon the evidence led by the owner to suggest the cause of death other than the accident. Dr. Singhai, PW 5, who examined the injuries of Mangal Prasad on 19.10.1991 and had also done post-mortem of the body of the deceased on 31.10.1991, has categorically stated that the cause of death of Mangal Prasad was because of septicaemia, shock and due to internal injuries. The Tribunal on the close scrutiny of the evidence of Dr. Singhai, PW 5, medical certificate, Exh. P-5 and the post-mortem report, Exh. P-7, recorded the finding that Mangal Prasad died immediately after two days of his discharge from the hospital as a result of the injuries sustained by him in the motor accident. The Tribunal has not relied on the afterthought evidence of the appellant and has drawn adverse inference against the appellant because of non-examination of driver in evidence. Thus, the finding of the Tribunal that Mangal Prasad died as a result of injuries sustained by him in the aforesaid accident suffers from no infirmity and is, therefore, confirmed.

7. As regards the question whether the quantum of award is just and proper or is excessive, we find that the learned Tribunal relying upon the un rebutted evidence of Manoj Kumari, PW 1, held the age of the deceased to be 39 years. As regards income, on the basis of evidence on record it held that the deceased was doing the business of selling milk of the buffaloes owned by him. The evidence shows that he was earning Rs. 3,000/- per month. The Tribunal deducted Rs. 2,000/-

per month to be amount of expenses on the buffaloes and towards his personal expenses and calculated the dependency to be Rs. 1,000/-per month. Accordingly, the Tribunal by applying multiplier of 15 calculated compensation as under:

Rs. 12,000/- dependency x 15 multiplier = Rs. 1,68,000 + Rs. 5,000/- consortium + Rs. 5,000/- loss of love and affection to children + Rs. 2,000/- funeral expenses; total compensation calculated to Rs. 1,80,000/- with interest at the rate of 12 per cent per annum from 18.3.1994.

We find that the compensation as awarded is not excessive or unjust and calls for no interference.

8. Accordingly, the appeal stands dismissed with no order as to costs.