
(2004) 04 MP CK 0066
In the Madhya Pradesh High Court
Case No : M.A. No. 415 of 1994

Dudkibai	Vs	APPELLANT
Iqbal Singh and Others		RESPONDENT

Date of Decision : 19-04-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2005) ACJ 1730

Hon'ble Judges : Ashok Kumar Tiwari, J;A.M. Sapre, J

Bench : Division Bench

Advocate : V. Phaye, for the Appellant; Dandwate, for the Respondent

Final Decision : Allowed

Judgement

A.M. Sapre and A.K. Tiwari, JJ.—This is an appeal u/s 173 of Motor Vehicles Act filed by the claimant challenging the dismissal of her claim petition by the Addl. Member of Claims Tribunal, Sendhwa in Claim Case No. 16 of 1994, whereby the learned Member of the Tribunal was pleased to reject the claim petition submitted by claimant (appellant herein) by award dated 22.7.1994.

2. Few facts need to be taken note of to appreciate the controversy involved in the appeal. Claimant is one Dudkibai. She had a son by name Balia. Balia married a girl by name Meera.

3. On 20.10.1993 at about 8.45 in night Balia met with an accident. One truck bearing No. MP-06 A-3745, which was driven by respondent No. 1 dashed against Balia while he was on walking on the roadside resulting in his instantaneous death. Indeed the impact was so violent that Balia died on the spot. He was around 37 years of age at the time of his death. It is not in dispute that offending vehicle, i.e., truck in question was insured with respondent No. 3, i.e., New India Assurance Co. Ltd.

4. This incident led to filing of a claim petition by Dudkibai, i.e., mother of the deceased. It was alleged that accident in question was on account of rash and

negligent driving by the driver of the offending vehicle and, therefore, claimant is entitled to claim compensation for death of her son. Since the vehicle in question was insured with the respondent No. 3, i.e., insurance company, the insurance company is made equally liable to pay the compensation. It was also alleged that Meera, i.e., wife of deceased and daughter-in-law of claimant had left the residence of the claimant and had already remarried during the lifetime of Balia, the claimant is alone entitled to claim the compensation as sole legal representative of the deceased. The claim petition was essentially filed stating therein that Balia was a labourer and engaged in doing labour work, earning Rs. 30 per day. The reply of the respondent No. 1 was essentially that of admission, wherein it has stated that accident did occur with the truck while he was driving the vehicle. It was also admitted that the vehicle in question was insured with respondent No. 3. One of the defences of respondent No. 1 and that of the respondent No. 3 was that application submitted by the mother is not maintainable because the other legal representative Meera, i.e., wife of deceased was not made party either as a claimant or as one of the respondents in terms of proviso to Section 166 of the Motor Vehicles Act. It is on this basis that it was contended that application is not maintainable and, hence, liable to be dismissed for want of necessary parties.

5. Parties led their evidence. The learned Member of the Tribunal dismissed the claim petition. It was, however, held that since deceased had a wife Meera, she was necessary party to the application and since she was not made party and hence, the application is not maintainable for want of necessary parties. On merits finding was recorded that the claimant is entitled to Rs. 75,000 by way of compensation for death of her son. It is this award which is challenged in this appeal by claimant, i.e., mother of the deceased. There is no cross-objection filed by any of the respondents nor any cross-appeal is filed by any of the respondents to challenge the award granting compensation of Rs. 75,000.

6. Heard Mrs. Vinita Phaye, learned Counsel for appellant on the instructions of Mr. Z.A. Khan, Advocate appearing for the claimant and Mr. Dandwate, learned Counsel who was asked by this Court to take notice of this appeal and address the court on behalf of the insurance company because he is the counsel usually appearing for this insurance company in most of the matters before this Court. None for the respondent Nos. 1 and 2.

7. Having heard learned Counsel for the parties and having perused record of the case, we are of the considered opinion that learned Member of the Tribunal committed an error when he held that claim petition deserves to be dismissed for want of necessary parties. In other words, we are inclined to allow the appeal and set aside that part of the finding by which learned Member of the Tribunal was pleased to hold that application is not maintainable for want of necessary parties.

8. In support of the allegations made in the claim petition, the claimant was examined as PW 1. She in her statement in clear terms stated on oath in para 7

that Meera, i.e., wife of deceased had already remarried much prior to the date of accident, i.e., during the lifetime of Balia. She has also stated that Meera had left the house and had started living with her parents and husband. To same effect, PW 2 Kekdiya, who happens to be a real brother of the deceased Balia also stated that Meera had remarried another person much prior to the date of accident. There is no evidence in rebuttal led by any of the respondents.

9. We have no reason to disbelieve the evidence led by the claimants who are none other than the mother and brother of the deceased. There is no reason as to why these witnesses should give false evidence before the trial court on this issue. A categorical statement made by the mother and brother deserves to be accepted for the purpose of holding that Meera, i.e., wife of the deceased, had already remarried during the lifetime of Balia and, therefore, the claimant alone was entitled to have the status of the legal representative of Balia after his death. One cannot dispute this fact that when during lifetime of the deceased his wife had divorced him and remarried another person, she lost all rights to claim any compensation for the death of her first husband as his legal representative. Rather it is not in dispute that Dudkibai, being the mother, was the only legal representative available and survived to claim compensation as sole surviving legal representative of the deceased. Under these circumstances the claim petition submitted by the mother, i.e., Dudkibai was properly filed and had to be entertained on merits for the purpose of granting compensation to the claimant.

10. So far as grant of quantum of compensation is concerned, learned Member of the Tribunal has already given a finding that claimant was entitled to claim a sum of Rs. 75,000 in the event of claim petition being decreed in her favour. We concur with the finding, as in our opinion learned Member had determined just, reasonable and proper compensation. It is based upon proper calculation.

11. Accordingly and in view of the aforesaid discussion, we allow the appeal and set aside the finding recorded by the learned Member of the Tribunal insofar as it relates to the maintainability of claim petition is concerned. We hold that claim petition was rightly filed by the claimant being mother of the deceased and had to be entertained on merits for the purpose of granting decree in her favour.

12. Accordingly the award is passed against the respondents jointly and severally because admittedly the vehicle in question was insured with respondent No. 3, i.e., insurance company. As a result, an award for Rs. 75,000 is passed jointly and severally against the respondents with interest at the rate of 6 per cent per annum from the date of claim application till it is actually paid. No costs.