
(2005) 10 MP CK 0054
In the Madhya Pradesh High Court

Gramin Sahkari Samiti Maryadit and Another	APPELLANT
Vs	
Geetabai and Others	RESPONDENT

Date of Decision : 05-10-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 304A, 337

Citation : (2006) 2 ACC 270 : (2006) 2 MPJR 125

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Judgement

N.K. Mody, J.

Being aggrieved by the award dated 30.10.1998 passed by MACT, Biora Distt. Rajgarh, in Claim Case No. 30/98, whereby a sum of Rs. 82,000 has been awarded along with interest @ 15% per annum, the present appeal has been filed.

Short facts of the case are that the respondent Nos. 1 to 3 are the legal representatives of deceased Sitaram, who was travelling in a tractor bearing registration No. MPD 8681, which was owned by respondent No. 5 and was driven by respondent No. 4. In the intervening night of 6.10.1987 and 7.10.1987 undisputedly the accident took place in which deceased Sitaram died. Thereafter, the claim petition was filed by respondent Nos. 1 to 3 against respondent Nos. 4 and 5 and also against the appellants alleging that the accident has taken place between the tractor No. MPD 8681 and truck bearing registration No. MBH 9406, which was owned by appellant No. 1 and was driven by appellant No. 2.

Appellant submitted the written statement wherein it was not disputed that deceased Sitaram was travelling in Tractor No. MPD 8681. It was also not disputed that the accident has taken place in which Sitaram has died but it was denied that accident has taken place with truck bearing registration No. MBH 9406. Respondent Nos. 4 and 5 submitted the written statement wherein it was alleged that accident occurred on account of rash and negligent driving of

appellant No. 2. It was admitted that in the accident Sitaram died. It was also submitted that in the accident respondent No. 4 also sustained injuries and tractor of respondent No. 5 was damaged for which counter claim was filed.

In the said claim case on the basis of the pleadings of the parties learned Tribunal framed the issues, recorded the evidence and dismissed the counter-claim submitted by respondent No. 5, but allowed the claim petition filed by respondent Nos. 1 to 3 and awarded a sum of Rs. 82,000 along with interest? 15% per annum against which the present appeal has been filed.

Learned Counsel for the appellant submits that right from the beginning stand of the appellant is that no accident has taken place with truck No. MBH 9406 which was driven by appellant No. 2. It is submitted that appellant No. 2 entered into witness box and stated that no accident has taken place with his vehicle. It is submitted that in the circumstances, learned Tribunal committed error in holding the appellants responsible for the accident. It was submitted that appeal be allowed and the findings whereby learned Tribunal has held that appellants are liable for payment of compensation be set-aside.

Mr. Tarun Kushwaha, learned Counsel for respondent Nos. 1 to 3 submits that learned Tribunal has rightly held the appellants are responsible for payment of compensation. It is also submitted that a sum of Rs. 82,000 has been awarded out of which Rs. 72,000 is towards loss of dependency and Rs. 10,000 towards mental pain and agony. It is submitted that amount awarded is at lower side. It is submitted that learned Tribunal has assessed the income of the deceased as Rs. 500 per month and after deducting the personal expenses @ of Rs. 100 per month, assessed the loss of dependency @ Rs. 400 per month and after applying the multiplier of 15 awarded a sum of Rs. 82,000. It is submitted that notional income ought to have been taken into consideration and the amount of loss of dependency ought to have been calculated on that basis. It is also submitted that multiplier of 15 has been adopted which is not correct. Looking to the age of the deceased which was 35 years as per second schedule of Motor Vehicles Act, multiplier of 17 ought to have been applied. It is also submitted that on account of loss of love and affection and also loss of estate, no amount has been awarded.

From perusal of the record it is evident that the accident took place on 7.10.1987 at 3.00 p.m. and report was lodged on that very day at about 4.00 a.m. i.e., after 13 hours of the incident. From perusal of the FIR (Exhibit P-I) it is also evident that distance of the police station was 10 kms. Case was registered as Criminal Case No. 96/87 under Sections 337 and 304A, I.P.C. From the police record it is also evident that upon the information that accident has taken place and a person Sitaram had died, the investigating officer reached to the hospital and took the statement of the owner of the tractor No. MPD 8681, who is respondent No. 5, herein. In the statement he has stated that the accident has taken place with truck No. MBH 9406 which was being driven by appellant No. 2. It is also not disputed that in criminal case the appellant No. 2 is the accused. From the statement of appellant No. 2 which was recorded on 27.10.1998 it

appears that criminal case was pending at that time also at Biyawra. Learned Counsel for the appellants is not in a position to state that what happened in that criminal case. From perusal of the record it is evident that appellant No. 2 was very much present on the spot when accident took place. He has not disputed that accident took place and Sitaram died and it is also not denied that deceased Sitaram was in tractor No. MPD 8681. The only thing which has been denied that accident has taken place with the truck bearing registration No. MBH 9406. Since, the FIR was lodged on that very day and the statement of respondent No. 5 was recorded by the Investigating Officer on that very day in the hospital in which it has come on record that accident has taken place by truck No. MBH 9406, therefore, no illegality has been committed by the learned Tribunal in holding that appellants are responsible for payment of compensation.

So far as the amount awarded by the learned Tribunal is concerned, the income of the deceased has been assessed on lower side. Income of the deceased has been assessed as Rs. 500 per month. This income has been assessed on the basis of the statement of Geetabai, who happens to be wife of the deceased. It appears that income of the deceased has been assessed on lower side as is evident from the statement of Geetabai who has stated that deceased was earning Rs. 1,000 per month. It also appears that multiplier of 15 has been wrongly applied. Looking to the age of the deceased multiplier of 17 ought to have been applied.

After taking into consideration all the evidence on record, the income of the deceased assessed as Rs. 12,000 per year. After deducting 1/3 rd of the personal expenses the loss of dependency of the deceased comes to Rs. 8,000 per year. After applying multiplier of 17 it comes to Rs. 1,36,000. Respondent Nos. 1 to 3 are also entitled for a sum of Rs. 10,000 towards mental agony and Rs. 20,000 towards loss of love and affection, loss of estate and funeral expenses. Thus, total amount for which respondent Nos. 1 to 3 are entitled comes to Rs. 1,66,000 instead of Rs. 82,000. This amount shall carry interest @ 6% per annum from the date of filing of the application.

With the aforesaid modifications in the award, the appeal stands disposed of.