
(1980) 01 MP CK 0003

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Appeal No. 73 of 1974

Jamnibai and others

APPELLANT

Vs

Chhote Khan Azizikhan and others

RESPONDENT

Date of Decision : 17-01-1980

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A

Citation : (1981) ACJ 90

Hon'ble Judges : R.K. Vijayvargiya, J;G.G.Sohani, J

Bench : Division Bench

Advocate : B.K. Samdani, for the Appellant; S.J. Joshi and Dandwate, for the Respondent

Final Decision : Allowed

Judgement

R.K. Vijayvargiya, J.—This appeal u/s 110-D of the Motor Vehicles Act is directed against the award dated 17-1-1974 passed by the Motor Accidents Claims Tribunal, Mandsaur in Motor Accident Claims Case No. 14 of 1972

2. The facts giving rise to this appeal may briefly be stated as follows : "On 16-6-1972 at about 1.00 p.m. the respondent No. 1 who was employed as driver by the respondent No. 2, was driving a passenger Bus bearing No. R.J.Y. 1613 on the Neemuch-Mandsaur road. The deceased Vishandas was going on a Vickey-moped. He was coming from a side road and after he entered the major-road he was dashed against by the passenger-Bus which was being driven rashly and negligently by the respondent No. 1. As a result of the accident Vishandas died. The appellants submitted an application u/s 110-A of the Motor Vehicles Act claiming compensation from the respondents. The passenger-Bus was insured with the respondent No. 3. The respondents contested the claim. The respondent No. 2 denied that the accident was caused on account of the rash and negligent driving of the respondent No. 1. He pleaded that the accident was caused on account of the negligence of the deceased because he was not careful in entering the major road from a by-road. The Tribunal after appreciating the evidence held

that the accident was not caused on account of the negligence or rashness of the respondent No. 1 in driving the passenger-Bus but it was caused on account of the negligence of the deceased himself. The application filed by the appellants was, therefore, dismissed. The appellants have challenged the award of the Tribunal in this appeal.

3. The first question that arises for consideration is whether the Tribunal has erred in coming to the conclusion that the accident was not caused on account of the negligent and rash driving of the passenger-Bus by the respondent No. 1. The Tribunal has come to this conclusion on the ground that the deceased Vishandas was coming from a by-road and when he entered the major-road he should have been careful and seen whether any motor vehicle was coming on the road or not. The Tribunal considered the statement of Abdul Latif (A. W. 3) and came to the conclusion that from his evidence it is not proved that the passenger Bus was being driven rashly and negligently by the respondent No. 1. The Tribunal also came to the conclusion that the deceased was not run-over by the wheels of the passenger-Bus but the right side of the deceased came in contact and had a impact with the Bus which caused the accident. The Tribunal also did not place reliance upon the statement of Hiralal (R. W. 4) and Dulichand (A. W. 7) on the ground that they are relatives of the deceased and they were not examined by the police or in the criminal Court and their names did not appear in the first information report. On consideration of the evidence produced on record we have come to the conclusion that the findings of the Tribunal that the accident was not caused on account of the negligence of the respondent No. 1 in driving the passenger-Bus is not correct and has to be set aside.

4. The Tribunal did not consider the statement of the driver Chhote Khan (NAW. 1) and Takhatsingh (A. W. 1). Chhotekhan (NAW. 1) admitted in cross examination that the Vicky-moped driver was seen by him when he came on the middle of the road and the road was 30"-35" wide at that place. When he saw the deceased he had come on the patari and when he heard the sound of accident then he applied the brakes. From his statement it is clear that when he saw the deceased on the middle of the road he did not slow-down the Bus or applied its brakes. He also admitted that when he saw the deceased he did not blow horn. He also admitted that the deceased was a fat man and he had to be dragged from under-(sic) the passenger-Bus. The Tribunal was, therefore, not justified in holding that the deceased was not over-run by the Bus and the right side of the deceased only came into contact with the Bus.

5. Takhatsingh (A. W. 6) deposed that he saw the Bus from a distance of 100 yards and it was coming at a fast speed. He further stated that the Vicky driver had come on the kachcha patari by the side of the road and he had moved some 10 paces on the road on Mandsaur side and at that time the bus was dashed against the Vicky driver. He also stated that the turning was at a distance of about 15 paces from the place of accident. He also staled that after the accident the Bus moved ahead. One empty drum which was put up by the side of the road

was damaged and the bus stopped near the second-drum from the evidence of Abdul Latif (A. W. 3) and Takhat Singh (AW. 6) and of Chhote Khan driver (NAW. 1) it is clear that the passenger-Bus was being driven by the driver Chhote Khan (NAW. 1) at an excessive speed and he did not slow-down when he was reaching the Mandsaur town and he could not control the Bus and did not blow horn when he saw the deceased going on a Vicky-moped and did not apply brakes when he saw the deceased but applied them only when he heard the sound of the accident. On these facts we are of the opinion that it is proved that the accident was caused on account of the rash and negligent driving of the passenger-Bus by the respondent No. 1 Chhote Khan (NAW. 1) in the course of his employment with the respondent No. 2 Biharilal Verma who is the owner of the vehicle and the respondents are liable to pay compensation for the death of the deceased. The finding of the Tribunal that the accident was not caused by the negligence and rashness of the respondent No. 1 in driving the passenger-Bus is not sustainable and is set aside.

6. As regards the quantum of compensation the Tribunal has given a finding that the claimants are entitled to compensation amounting to Rs. 17,000. The Tribunal assessed Rs. 5,000 on account of mental pain and suffering to appellant No. 2 who is the widow of the deceased, Rs. 2,000 to the mother of the deceased Rs. 5,000 as general damages to the widow of the deceased and Rs. 5,000 to the minor children of the deceased. The Tribunal has given a finding that the deceased was 30 years of age when he died and he was earning Rs. 200 p.m. from milk business. The Tribunal has also taken into account that the claimants have received some amount from the Insurance company as the deceased had insured his life. However, the life insurance policy was not produced and it was stated on behalf of the appellants that the policy has expired and a sum of Rs. 2,000 only was received by the claimants from the Insurance company. There is no evidence on record that the appellants had received from the Insurance company an amount exceeding Rs. 2,000. But on account of non-production of the policy the Tribunal drew inference that the claimants must have received much more amount from the Insurance company. The deceased also has left a house valued at Rs. 35,000, but there is no evidence that the house is fetching any rental income. The house is in the occupation of the claimants and they have been residing in it during the life time of the deceased. It cannot, therefore, be said that they had received an additional advantage on account of the death of the deceased. In our opinion, in the circumstances the amount assessed by the Tribunal is too low considering the circumstances of the case. The deceased was carrying on milk business and was maintaining a family consisting of himself, his wife, his widowed mother and five minor daughters. In the circumstances the income of the deceased must be much much more than Rs. 200 p.m. Even if the income of the deceased is accepted at Rs. 200 p.m. and even if the dependency is considered at a modest figure of Rs. 125 p.m. it would amount to Rs. 1,500 per annum. The Tribunal found that the deceased would have lived upto 60 years of age. Therefore the multiplier is 30 and Rs. 1500

multiplied by 30 the amount of compensation comes to Rs. 45,000. From this amount deducting the benefit received by the claimants on account of the Insurance policy of the deceased as also making reasonable deductions on account of uncertainty of life and lump sum payment as also the fact that the daughters would be married in due course of time we are of the opinion that a sum of Rs. 30,000 would be the adequate recompense to the claimants on account of the death of the deceased. Out of this amount of Rs. 30,000, Rs. 6,000 are awarded to the appellant No. 2 Gyanibai the mother of the deceased. The balance of Rs. 24,000 is awarded to the appellants 1 and 3 to 7. The amount shall be paid to the appellant No. 1 for herself and as the guardian of the appellants 3 to 7. The appellants shall also be entitled to get interest on the said amount from the date of the application till realisation at 6% p.a.

7. As a result of the discussion aforesaid this appeal is allowed with costs. The award of the Tribunal is set aside and it is directed that the respondents shall pay Rs. 6,000 to the appellant No. 2 Gyanibai and Rs. 24,000 to the appellants No. 1 for herself and on behalf of the appellants 3 to 7 with interest at 6% p.a. from the date of the application till realisation. Counsel's fee Rs. 250 if certified.