
(2009) 01 MP CK 0059
In the Madhya Pradesh High Court

Kamini and Others

APPELLANT

Vs

K.P. Sharma and Others

RESPONDENT

Date of Decision : 22-01-2009

Acts Referred:

Citation : (2010) ACJ 2024

Hon'ble Judges : Abhay M. Naik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Abhay M. Naik, J.—Short facts involved herein are that Gajendra Singh, husband of appellant No. 1 and father of the appellant Nos. 2 to 4 was driving truck No. UP 32-Z 7492 on 30.4.2005 when he met with an accident at about 3 a.m. with truck No. MP 17-C 5126 which was being driven by the respondent No. 5. Truck No. UP 32-Z 7492 was insured with United India Insurance Co. Ltd., respondent No. 2, whereas truck No. MP 17-C 5126 was insured with Oriental Insurance Co. Ltd. respondent No. 4. Gajendra Singh died in accident on the spot. Claimants-appellants submitted claim petition which has been allowed vide impugned award dated 29.3.2007 to the tune of Rs. 3,39,400. Learned Claims Tribunal found that the drivers of both the truck contributed in the accident by way of rash and negligent driving. Accordingly, both the insurance companies (i.e., respondent Nos. 2 and 4) were directed to make the payment of compensation to the extent of half each. Aggrieved by the aforesaid, the claimants-appellants have preferred the present appeal for enhancement of amount of compensation.

2. The respondent No. 2 has preferred cross-objections for its exoneration on the ground that deceased Gajendra Singh was found to have contributed in the accident. His truck was insured with the respondent No. 2, however, on account of contributory negligence on the part of the deceased whose truck was insured with respondent No. 2, no compensation is payable by the respondent No. 2 for the accident.

3. Heard learned Counsel for the parties on the merits of the appeal as well as cross-objections preferred by respondent No. 2.

4. Considered the submissions and perused the record.

5. Admittedly, the deceased Gajendra Singh was driver on truck No. UP 32-Z 7492 who died in accident on the spot. His driving licence is on record as Exh. P14. It was valid from 22.2.2005 to 21.2.2008. It reveals that he was having driving licence for transport vehicles from 4.11.1997. According to claim petition, he was in receipt of Rs. 5,000 as monthly salary and Rs. 2,000 as monthly allowances. It has also been so stated by the appellant No. 1 who happens to be the widow of the deceased Rakesh Singh, PW, was cleaner on the said truck who has stated that he used to receive Rs. 3,000 per month as salary. Considering the same, monthly income of the deceased can be safely taken as at least Rs. 3,000, who being a driver with 7-8 years experience, was superior to the cleaner.

6. The Claims Tribunal has held that the deceased was having monthly income of Rs. 2,400 which is found to be unreasonable and incorrect. The Claims Tribunal has further deducted his personal expenditure to the extent of V3rd. This, too, has been considered ignoring the strength of the family of the deceased. Gajendra Singh was having his widow and three children. This apart, he used to receive per day allowance while on truck. Thus, his personal expenditure from the monthly salary may be taken as 1/5th. After deducting his personal expenditure, monthly dependency comes to Rs. 2,400 and yearly dependency comes to Rs. 28,800. In view of his age, multiplier of 17 got attracted. Accordingly, loss of income comes to Rs. 4,89,600.

7. Now coming to the cross-objections, it may be seen that Tribunal has found in the end of para 10 of the impugned award that Gajendra Singh has contributed in the accident causing his death.

Hon'ble Supreme Court of India in the case of Tamil Nadu State Transport Corporation, Tanjore, rep. by its MD Vs. Natarajan and Others, , has held that in case of contributory negligence, the amount of compensation is reduced to the extent of contribution of the deceased. I may also successfully refer to the recent decision of the Hon'ble Supreme Court in the case of T.O. Anthony Vs. Karvaran and Others, , wherein the Apex Court on the facts and circumstances reduced the contributory liability from 50 per cent to 25 per cent and held the other respondents liable for 75 per cent.

8. In the present case, the Claims Tribunal has clearly observed in para 9 that the non-applicants including the cross-objector has not adduced any evidence to establish rashness and negligence in the driving of the deceased at the time of accident. Moreover, the Tribunal has nowhere fixed up the proportion of contribution to the extent of 50 per cent. Cross-objector could have adduced evidence by requisitioning the record pursuant to the spot map showing the position of both the vehicles at the time of accident. This having not been done, it will not be justified to hold the deceased accountable for the accident to the

extent of 50 per cent. Since the accident occurred due to head-on collision, obviously, there must be negligence on the part of the deceased which looking to the facts and circumstances of the case may be taken as 25 per cent in the present case.

9. Thus, the aforesaid amount of compensation may be reduced by 25 per cent which comes to Rs. 3,67,200. Additionally, Rs. 13,000 as awarded by the Claims Tribunal under other heads would also be payable to the claimants-appellants by the respondent No. 4 alone, along with owner and driver of the truck No. MP 17-C 5126 in joint and several manner with interest at the rate of 6 per cent per annum from the date of claim petition.

10. Cross-objection accordingly, stand allowed. Respondent No. 2 stands exonerated from the liability. Appeal stands allowed in the aforesaid manner. Impugned award modified, accordingly. No order as to costs.