

(1995) 04 MP CK 0035
In the Madhya Pradesh High Court
Case No : M.A. No. 25 of 1987

Kamlabai Tiwari and Others

APPELLANT

Vs

Hukumchand and Others

RESPONDENT

Date of Decision : 26-04-1995

Acts Referred:

Citation : (1996) ACJ 291

Hon'ble Judges : R.D. Shukla, J;Deepak Verma, J

Bench : Division Bench

Advocate : Y.I. Mehta, for the Appellant; M.L. Dhupar, for the Respondent

Final Decision : Allowed

Judgement

R.D. Shukla, J.—The appeal is directed against the judgment and award dated 24.12.1986 of 1st M.A.C.T., Indore, passed in Claim Case No. 4 of 1983 whereby the claim petition of appellant widow of the deceased Shiv Prasad Tiwari has been dismissed with a finding that deceased Shiv Prasad who was driving the jeep No. CPO 73 was himself responsible for the accident.

2. This is not in dispute that respondent No. 1 is the owner of truck No. CPO 8012 and respondent No. 2 was the driver of the vehicle on the date of accident, i.e., 16.12.1982. The said vehicle was insured with respondent No. 3. There was a collision between the jeep and the truck on 16.12.1982 and Shiv Prasad died.

3. The claimant's case, in brief, is that deceased Shiv Prasad was working as a driver under the Municipal Corporation, Ujjain. At the time of accident Shiv Prasad was driving the jeep cautiously and keeping it to left side but the truck coming from the opposite direction dashed against it which resulted in injuries to Shiv Prasad. He was taken to M.Y. Hospital, Indore and died of injuries in the hospital itself.

Claimant is the widow of Shiv Prasad. She has two sons, Ajay and Tilak, aged about 15 and 10 years respectively who are residing with her. Shiv Prasad was

aged 40 years at the time of accident. He was earning Rs. 700/- per month. There was every chance of his serving up to the age of 58 years. Looking to the longevity of the members of the family he was expected to live up to the age of 70 years. Claimant, therefore, prayed for compensation of Rs. 3,00,000/- in all.

4. The respondents denied the claim and pleaded that Shiv Prasad himself was drunk. The truck driver was taking the truck slowly by keeping to its side and it was the driver of the jeep (Shiv Prasad) who dashed against the truck which resulted in injuries and ultimate death of Shiv Prasad.

5. The contention of the respondents weighed with learned Tribunal who dismissed the claim petition in toto. Hence, this appeal.

6. The contention of learned counsel for appellant is that the fact of deceased Shiv Prasad, the driver, being drunk at the time of accident has been found not proved and that map prepared by the police officer during the investigation would indicate that jeep was keeping to its left side as the motor truck has covered more than 2/3rd of the road which resulted in collision and accident.

7. As against it learned counsel for the respondents has submitted that the evidence of driver of the truck has been believed and the statements of the witnesses produced for and on behalf of claimant have not been relied upon by the Tribunal and as the Tribunal had an opportunity of watching the demeanour of the witnesses that finding ought not to be disturbed.

8. We were taken to the evidence on record including the documents produced. Nazar Mohd., P.W. 3, has been examined by the claimants to prove the negligence and the fact of accident. This witness was a co-driver. He has stated that he was moving with Shiv Prasad in the jeep which was being driven by Shiv Prasad. The time was at about 4 a.m. and the truck came at a high speed from the opposite direction. The driver of the jeep slowed down the jeep, gave the dippers and blew the horn but despite that the driver of the truck dashed against the jeep and damaged the jeep. The collision caused injuries to Shiv Prasad. He has further stated that he had reported the matter to the police vide Exh. P-3. The copy of the F.I.R. was compared with the original F.I.R. lodged by the witness. The F.I.R. also contains similar assertions. This witness has further stated that police prepared site-map and panchnama, Exh. P-4, in his presence. That the map was proved by producing the original map filed in the Criminal Case No. 61 of 1983.

9. During the cross-examination he admitted that he also sustained injuries but he has not filed any petition for getting the compensation. He has further denied the suggestion that the truck was running with a speed of 15-20 km. and the jeep was running with a speed of 70-80 km. He has also refuted the assertions of Shiv Prasad being drunk and asserted that he was teetotaler. During his cross-examination he has admitted that the road was sufficiently wide so as to accommodate two vehicles coming from opposite directions. Though he has denied the fact of using the jeep without permission but the same has been

found proved by the Tribunal on the basis of the statement of Yadav Kumar Shrivastava, DW 2, who has stated that the jeep was taken without the permission of the municipal authority.

10. Manohar Lal, DW 1, on the other hand, has stated that he was driving his vehicle in a slow speed and the jeep coming from the opposite direction did not stop despite the signal and dipper being given and as the jeep was in an excessive speed it dashed against his truck.

11. What has weighed in the mind of learned Tribunal is that jeep was being used without permission and that at the time of preparation of site-map, Exh. P-4, vehicles were not on the spot.

But the fact that police officer, during the investigation, found a case against the truck driver and has filed challan which is pending in the court of J.M.F.C. has not at all been considered. The fact of suggestion of using the jeep without permission has been denied by Nazar Mohd. and even if this statement is taken to be correct the statement of witness, P.W. 2, cannot be rejected in toto. Exh. P 4, the site-map, has not been seriously challenged by the defendants during the cross-examination. The bare perusal of Exh. P-4 would indicate that the motor truck has covered major part of the road and thereafter, there was a collision.

12. In our opinion, therefore, even if truck and jeep were not present at the spot at the time of preparation of the site-map, the facts indicated therein can be used as a corroborative evidence in favour of Nazar Mohd., P.W. 3.

13. In such cases evidence has to be appreciated as the same is required to be done in civil cases. The preponderance of probability will have to be taken sufficient in such cases, the proof beyond reasonable doubt is not required.

14. Since Nazar Mohd., P.W. 3, stands corroborated from F.I.R., Exh. P-3 and site-map, Exh. P-4, his statement cannot be wholly rejected. In our opinion, learned Tribunal committed error in wholly disbelieving the statement of Nazar Mohd.

15. It may also be observed here that heavier the vehicle greater is the responsibility on the driver to keep control over it. Where drivers of both the vehicles are found responsible for the accident the major responsibility would be attributed to the driver driving heavy vehicle.

16. The defence of the respondents was that Shiv Prasad was drunk at the time of accident has not been found proved and, therefore, the substratum of defence stands cracked.

17. This may not be out of place to mention here that respondent No. 2 was driving the truck. He was entrusted to do that and, therefore, despite the fact that he is one of the important witnesses of the incident he could not be taken to be wholly reliable witness. Though this witness has stated that 4-5 persons were in occupation of the jeep and all of them were drunk but that fact has not been found proved from the F.I.R. and medical report. Manohar Lal has not made any

report about the occupants of jeep being drunk and, therefore, it cannot be expected that the driver of the jeep (deceased Shiv Prasad) was wholly responsible for the accident. Taking into consideration the evidence of Nazar Mohd., P.W. 3, F.I.R., medical report and site-map including "the statement of Manohar Lal, N.A. No. 1, we hold that both the drivers were responsible for the accident and as respondent No. 2 was driving a heavy vehicle he is held responsible for the accident to the extent of 60 per cent and 40 per cent liability of the accident is adjudged against deceased Shiv Prasad as both the drivers did not try to avoid the accident by taking the last opportunity.

18. Om Prakash Sharma has proved the fact that the pay of Shiv Prasad was Rs. 731.30. He has further stated that in the year 1982 the pay of Shiv Prasad for 16 days was assessed to Rs. 383.14. This goes to show that his income was nearly Rs. 800/- per month.

Rameshchand Nigam, P.W. 2, has stated about the initial pay of Shiv Prasad at the time of accident as Rs. 383.14 p.m.

19. Kamlabai has also stated that her husband was getting Rs. 700/- per month. In such a situation we assess the income of Shiv Prasad to Rs. 750/- per month which goes to Rs. 9,000/- per year. If 1/3rd is deducted for the personal expenses of Shiv Prasad the dependency of the family, i.e., of Kamlabai and her two sons, Ajay and Tilak, would come to Rs. 6,000/- per year. Kamlabai is stated to be aged about 30 years. However, the doctor while conducting the post-mortem examination has estimated the age of deceased Shiv Prasad as 40 years. We, therefore, accept that Shiv Prasad was aged about 40 years at the time of accident. In such a situation a multiplier of 12 has to be applied. Thus, the total compensation payable as general damages would come to Rs. 72,000/-. Since Shiv Prasad has been held to be responsible to the extent of 40 per cent for the accident, a deduction of Rs. 29,000/- is required to be made. Thus, the compensation payable for general damages would come to Rs. 43,000/-.

20. The claimant is further entitled for the loss of consortium and the sons of deceased Shiv Prasad are entitled to the loss of love and affection. Rs. 5,000/- on each count, i.e., Rs. 5,000/- to Kamlabai and Rs. 5,000/- to her children would be sufficient for the loss of consortium and love and affection; specially in view of the fact that Shiv Prasad was himself partly responsible for the accident. Thus, compensation payable comes to Rs. 53,000/-. The claimant is also entitled to interest at the rate of 12 per cent per annum from the date of application till realisation.

21. As a result, the appeal succeeds. The judgment and award of the Tribunal is reversed and it is directed that the claimant is entitled to a compensation of Rs. 53,000/- plus interest at the rate of 12 per cent per annum from the date of application till realisation of the same. The non-applicants are jointly and severally held liable for the payment on the basis of vicarious liability and the liability of insurer.

Since the vehicle was insured with non-applicant No. 3 it would be liable to make payment of whole of the compensation amount. The appellant shall get costs from the respondents which is assessed to Rs. 1,500/-.

22. Fifty per cent of the amount, after realisation, shall be kept in an interest paying fixed deposit separately and equally in the name of claimant and her two sons. The initial deposit be made for a period of 10 years. The claimants should not be entitled for withdrawing the amount excepting the quarterly interest after the expiry of five years. No loan on this amount shall be granted. Rest of the amount shall be paid to Kamlabai, widow of Shiv Prasad and her two sons through Kamlabai in cash.