
(2008) 11 CHH CK 0029
In the Chhattisgarh High Court

Karmajeet Kaur and Others

APPELLANT

Vs

Sardar Ajitsingh and Another

RESPONDENT

Date of Decision : 11-11-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166, 173

Citation : (2009) 1 MPHT 1 : (2009) 2 MPJR 26

Hon'ble Judges : Rajeev Gupta, C.J.;Sunil Kumar Sinha, J

Bench : Full Bench

Judgement

Sunil Kumar Sinha, J.—The appellants/claimants have filed this appeal u/s 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") against the award dated 11-4-2000 passed by the Third Additional Motor Accident Claims Tribunal, Bastar, Jagdalpur in Claim Case No. 20/99, whereby, the Claim Petition filed by the appellants/claimants u/s 166 of the Act has been dismissed by the Tribunal.

2. The appellants are the wife and children of deceased-Tajinder Singh, who died in the motor accident on 14-8-1995. The deceased was the driver in Truck No. MP-25-2569. The truck was owned by respondent No. 1. On 14-8-95, the deceased was driving this truck and was carrying iron from Beladilla to Bhilai. On the way, in Bastarnar Valley, due to overloading, the vehicle could not over run the ups of the Valley and it started coming down. The deceased applied the brake but there was mechanical failure of brake and steering, due to which, the vehicle could not be controlled by deceased-Tajinder Singh and it tilted towards right and he came under the vehicle and died on the spot. The appellants pleaded that all this happened on account of mechanical failure in the vehicle for which the owner of the vehicle was responsible as he was not keeping the vehicle in good running condition, therefore, they be awarded compensation of Rs. 11,15,000/- on account of death of the deceased in the motor accident.

3. The respondent No. 1 (owner) filed his written statement denying the contentions of the appellants. He pleaded that the vehicle was in a good running

condition and the accident occurred on account of negligence of the driver himself. Since the driver could not keep the motion of the vehicle properly, when it was running over the ups of the valley, the vehicle started coming backwards, which he further could not control and the accident took place.

4. The respondent No. 2 also opposed the claim petition. While supporting the stand taken by the respondent No. 1, it pleaded that since the deceased himself was the driver, the claimants should have filed a petition under the Workmen Compensation Act.

5. The appellants examined Smt. Karmajeet Kaur (A.W. 1) and Meher Singh (A.W. 2) in support of their claim petition. The respondent No. 1 examined himself as N.A.W. 1, whereas, the Insurance Company did not examine any witness in rebuttal.

6. The Tribunal recorded a finding that the accident occurred on account of negligence of the deceased himself; therefore, the appellants were not entitled to receive any amount of compensation from the respondents. While rejecting their claim petition, the Tribunal also directed that the amount of interim compensation paid to the appellants u/s 140 of the Act be refunded to the concerned respondent.

7. Smt. Anju Ahuja, learned Counsel for the appellants argued that the Tribunal erred in law in holding that the accident occurred on account of negligence of the deceased himself. She vehemently argued that, in fact, the owner of the vehicle was not keeping the vehicle in good condition, due to which, the accident occurred and the respondents were liable to pay compensation in this matter.

8. On the other hand, Shri B.N. Nande, learned Counsel for respondent No. 2, opposed these arguments and supported the award passed by the Claims Tribunal.

9. We have heard learned Counsel for the parties at length and have also perused the records of the claim case.

10. Meher Singh (A.W. 2) deposed that he was working as a Mechanic in Baba Motor Mechanic Works, Jagdalpur and the vehicle bearing Registration No. MP 25/2569 was being brought to him for repairs. There was some defect in the engine of the vehicle and the steering was also loose. He deposed that the accident occurred as the vehicle could not over run the high ups of the valley and when it started coming backwards, the brakes also failed and the accident took place. In the cross-examination, he admitted that he was not present at the time of the accident, therefore, he cannot tell as to how the accident occurred. When he was asked to show the documents regarding the repairs of the vehicle, he could show any such document; even he could not show the documents regarding the repairs claimed to be done by him after the accident.

11. Ajit Singh (N.A.W. 1) deposed that his vehicle was in a good condition at the time of the accident. It was a national permit vehicle and the national permit is

granted when the condition of the vehicle is good. He deposed that prior to the accident, his vehicle was checked and there was no mechanical fault in it.

12. Besides the above, the Dehati Nalishi (Exh. P-2), filed by the appellants, would show that it was observed by the concerned Police Officer at the spot that since the vehicle could not over run the high ups of the Valley, the driver of the vehicle could not control it, even he could not apply the brakes, due to which, the vehicle tilted towards the right side and the driver got pressed from the right window portion of the vehicle and died on the spot.

13. In appreciation of the above evidence on record, we do not find present to be a case of mechanical failure. It is also not a case in which we may record a finding that the vehicle was not being kept in good condition by the owner and the accident occurred on account of such factors.

14. Even if we apply the doctrine of *ray ipsa loquitur*, the scenario which appears, supports the finding of the Tribunal that in the high ups of the Valley, the driver, who was driving the vehicle, could not maintain the high motion of the engine of the vehicle, due to which, the vehicle started crawling down and ultimately, it tilted towards right and the driver got pressed from the window side of the vehicle, which shows nothing, but the negligent driving of the vehicle by its driver. Therefore, we do not find any infirmity in such finding recorded by the Claims Tribunal.

15. So far as the refund of the amount paid under no fault liability u/s 140 of the Act is concerned, that has to be set aside. No fault liability u/s 140 is distinguishable from the strict liability. In Section 140, the compensation amount is fixed and it is a statutory liability.

16. It is an amount, which can be deducted from the final amount awarded by the Tribunal. Since, the amount is a fixed amount/crystallized amount, the same has to be considered as a part of the estate of the deceased. Please see: *Smt. Kaushnuma Begum and Others Vs. The New India Assurance Co. Ltd. and Others*, and *Smt. Manjuri Bera v. Oriental Insurance Co. Ltd.* 2007 AIR SCW 1962.

17. In the present case, admittedly, the appellants are the legal representatives of the deceased, being the widow and minor children, who were entitled to inherit the estate of the deceased. It is not a case where either the accident is disputed or the death of the deceased resulting from the accident arising out of the use of motor vehicle is disputed.

18. Therefore, the amount paid to the appellants/legal representatives of the deceased, who have inherited the estate of the deceased, would not have been directed to be refunded by them and to this extent, the award deserves to be modified.

19. Accordingly, the appeal is partly allowed.

20. The dismissal of the claim petition of the appellants on merits, by the Tribunal, is hereby confirmed. However, the direction of the Tribunal to refund the amount of interim compensation by the appellants is set aside.

21. In the facts and circumstances of this case, there shall be no order as to costs.