
(2001) 01 MP CK 0045

In the Madhya Pradesh High Court

Case No : M.A. No. 598 of 1991 & Miscellaneous Appeal No. 598/91

Lalmani Pandey and Others

APPELLANT

Vs

Ugratara Bus Service and Others

RESPONDENT

Date of Decision : 02-01-2001

Acts Referred:

Motor Vehicles Act, 1939 — Section 95

Citation : (2003) ACJ 833

Hon'ble Judges : Bhawani Singh, C.J.;A.K. Mishra, J

Bench : Division Bench

Advocate : Sanjeev Saxena, for the Appellant; A. Ruprah, for the Respondent

Final Decision : Allowed

Judgement

Bhawani Singh, C.J.—This appeal is directed against the award of Motor Accidents Claims Tribunal, Shahdol, Camp Beohari, in Claim Case No. 7 of 1989, dated 26.8.1991.

2. The deceased Rajkeshar Pandey (22) was conductor in Ugratara Bus Service, Rewa. He died in accident, that took place on 9.3.1989. The claim has been dismissed by the Claims Tribunal, Shahdol, on 26.8.1991, on the ground that it was not proved that the accident had taken place due to rash and negligent act of the driver of bus No. MPL 4001, as alleged.

3. On 9.3.1989 the deceased was travelling by bus No. MPL 4001 owned by Ugratara Bus Service, Rewa. This bus was owned by Dharendra Kumar Gupta, driven by Lalmani Sen and insured with the New India Assurance Co. Ltd. It reached a place where bus No. MPG 6939 owned by the M.P. State Road Transport Corporation was standing. The allegation is that on instructions of the driver of Ugratara Bus Service, the deceased was helping the driver to clear side by the other bus and while doing so, the driver of Ugratara Bus Service drove the bus in such a rash and negligent manner that the deceased came in between two buses and was squeezed to death.

4. The defence of the respondents is that the deceased was not conductor of the said bus on that day. He jumped from the bus and died in the accident. The Claims Tribunal came to the conclusion that it was not proved that the driver of bus No. MPL 4001 drove the bus rashly and negligently, which resulted in death of Rajkeshar Pandey. Therefore, the claimants are not entitled to compensation. The claimants are not satisfied with the award, hence this appeal.

5. We have heard the learned Counsel for the parties and perused the record. Mrs. A. Ruprah, learned Counsel for the insurance company, made two submissions- first is that the finding of the Claims Tribunal that the driver of bus No. MPL 4001 owned by Ugratara Bus Service, Rewa, was not driving in a rash and negligent manner, therefore, the accident or death was not attributable to him, is sustainable on evidence. The second is that, in case this court comes to the conclusion that the finding is not sustainable and the driver is found rash and negligent in driving the bus and causing death of the deceased, in that event, the liability of insurance company does not exceed to Rs. 50,000 u/s 95 of the Motor Vehicles Act, 1939. With a view to appreciate the first submission, evidence has been perused with a view to understand whether the accident took place in the manner suggested by the learned Counsel for the insurance company or it could take place as alleged by the learned Counsel for the appellants. With a view to support this contention, Mrs. A. Ruprah referred to the evidence of Lalmani Sen, DW 1. It may be true that the driver has tried to say that the deceased was not called upon to guide the bus and he jumped from the bus, but it is extremely difficult to accept this version. It is undeniable that the deceased was conductor of the said bus. It may be that on the date of accident, he was on leave and was not the conductor on that day and Dharampal Singh was conductor for the day. However, the evidence clearly and distinctively points out that it was Rajkeshar Pandey, who was asked to guide the bus at that point of time and not Dharampal Singh. It cannot be accepted that the deceased jumped from the bus, as alleged. He would get down from the bus in a normal way and guide the bus towards side of M.P. State Road Transport Corporation's bus, which was opposite to the side of the driver of Ugratara Bus Service, the driver of which did not bother to see that the bus was driven in such a way that it left space in between the two buses. In case, such a care had been taken, reasonable space could have been left in between two buses and the deceased would not have lost his life by being squeezed in between the two buses. This set of facts have been clearly mentioned by Ravi Shankar Pandey, PW 3, and Ram Gopal, PW 4. These statements appear to be legitimate, in case the situation how the buses crossed each other and how the deceased was squeezed in between the two, is rightly considered, analysed and appreciated. Rashness and negligence on the part of Lalmani Sen, driver of Ugratara Bus Service is clearly established and the defence taken by the respondent is completely shorn of credibility and has been set up to dislodge the genuine and justified claim. The finding recorded by Claims Tribunal is thoroughly unsustainable since the Claims Tribunal has not appreciated the evidence in a proper manner.

6. After recording this finding, we proceed to decide the question which relates to the assessment of compensation and liability for payment. The deceased was earning Rs. 1,000 per month. Out of it, he was giving Rs. 500 to the family. This way, yearly dependency comes to Rs. 6,000. The deceased was 22 years old at the time of accident. The multiplier applicable in this case is 17. Therefore, the compensation comes to Rs. 6,000 x 17 = Rs. 1,02,000, apart from Rs. 10,000 for loss of expectancy of life, Rs. 2,000 for funeral expenses, Rs. 2,500 for loss to estate and Rs. 5,000 for loss of consortium. Thus, the total amount of compensation is Rs. 1,21,500. The enhanced amount would carry interest at the rate of 12 per cent per annum from the date of application till payment. The insurance company has taken the defence of limited liability, but did not take care to prove it. Therefore, the liability to pay compensation shall rest on it.

7. Consequently, the appeal is allowed in terms aforesaid. The parties shall bear their own costs.