
(2000) 02 MP CK 0088
In the Madhya Pradesh High Court

Madhya Pradesh State Road Trans. Corporation	APPELLANT
Vs	
Rajnikant and Others	RESPONDENT

Date of Decision : 22-02-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2002) 2 ACC 668

Hon'ble Judges : V.K. Agarwal, J

Bench : Single Bench

Judgement

V.K. Agarwal, J.—This appeal is directed against the award dated 24.12.1998, in Claim Case No. 13 of 1994 by Addl. Motor Accident Claims Tribunal, Korba.

2. Claimants/respondent Nos. 1 and 2 herein are the parents of deceased Sukhchand Munia. It is not disputed in this appeal that Sukhchand Munia died in a motor accident on 9.2.1994 on the road going from Korba to Balco, by bus No. CPW 6722, owned by the appellant and driven by respondent No. 3, Raju Jha.

3. The claimants/respondent Nos. 1 and 2 filed an application u/s 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"), for award of compensation of Rs. 9,62,000/-. It was averred in the application that their son deceased Sukhchand Munia was going on his Luna from the left side of the road, at about 7.45 p.m. in the evening. The respondent No. 3 driver Raju Jha driving the Bus No. CPW 6722 rashly and negligently dashed the same against the Luna being driven by the deceased. Sukhchand Munia sustained grievous injuries and succumbed, to them on the day of accident itself.

4. The petition for claim as above was resisted by the appellant and respondent No. 3. It was stated that the accident had occurred on account of negligence of the deceased. It was further averred that the amount of compensation as claimed was highly inflated.

5. The learned Tribunal held that the accident occurred on account of rash and negligent driving of the bus by respondent No. 3, driver Raju and the claimants/

respondent Nos. 1 and 2 were accordingly held entitled to compensation of Rs. 70,000/-. The award as above was granted.

6. Learned Counsel for the appellant has submitted that the accident was the result of negligence of the Luna driver and that the amount of award is excessive.

7. As against this, the learned Counsel for the respondents has argued that the evidence on record clearly indicates negligence and rashness on the part of the driver of the bus. The respondent Nos. 1 and 2 have also filed cross-objection under Order 41 Rule 27, CPC for enhancement of the claim amount.

8. The first question that arises for consideration is as to whether the accident occurred on account of negligence of the bus driver, the respondent No. 3?

9. In the above context, Saiwal Gupta, A.W. 2, has categorically stated that the accident occurred on account of negligence of the bus driver. He has stated that the Luna was proceeding from the left side of the road and the bus driver went on to the wrong side of the road and dashed it against the Luna, resulting in grievous injuries to the driver of the Luna as well as to the pillion rider. He has also stated that there was no light in the bus. It is, therefore, clear that at the time of the accident which took place at about 7.45 p.m. in the night, the respondent No. 3 was driving the bus without light. If that be so, his negligence is per se established. Moreover, the statement of Saiwal Gupta, A.W. 2, also clearly shows that he was at fault in taking the bus on the wrong side of the road. It is also to be noticed in the above context that the respondent No. 3 Raju Jha did not enter the witness-box and did not controvert the evidence as above. Therefore, an adverse inference against him has to be drawn. In this connection reliance has been placed by the learned Counsel for appellant on M.P. State Road Transport Corporation Vs. Vijanti and Others, .

10. Therefore, the finding of the learned Tribunal that the accident occurred on account of rash and negligent driving of the bus by its driver, respondent No. 3 Raju Jha is unimpeachable and is confirmed.

11. In view of above finding, it is clear that the appellant was liable to pay compensation. In view of cross-objection filed by claimants/respondent Nos. 1 and 2 it has to be considered as to whether the amount of award is just or deserves to be interfered with on either side. It may be mentioned that under Rule 242(3) of Motor Vehicles Rules, 1994 provision of Order 41, CPC has been made applicable mutatis mutandis to the appeal preferred to the High Court u/s 173 of the Act. Hence, cross-objection can be competently filed.

12. From the pleadings and evidence on record, it is clear that the deceased was aged about 17 years. He was student of Class IX. The father of deceased Rajnikant, A.W. 1, has stated that he was helping him in his electrical work and was earning about Rs. 400-500 per month. In view of above, it is clear that the amount of award is on the lesser side. Learned Counsel for the claimants/respondent Nos. 1 and 2 in the above context has cited a D.B. decision of this

Court in Noharlal Sahu v. Surjeet Singh, 1999 (1) TAC 291 (MP), in which an award of Rs. 1,02,000/- was granted. In the said case, the deceased was a student of Class VIII and was aged 16 years. His notional annual income was taken to be at Rs. 15,000/-. Holding the dependency to be Rs. 10,000/- per annum multiplier of 10 was applied, and Rs. 2,000/- was added as the funeral expenses.

13. The facts and circumstances of the present case are almost identical. Therefore, award of Rs. 1,00,000/- on account of death deserves to be granted in the instant case, keeping in view the award, as above.

14. Accordingly, this appeal is dismissed. The cross-objection of the respondent Nos. 1 and 2 is accepted. The award granted by the learned Trial Court is modified and it is ordered that the appellant shall pay to the respondent Nos. 1 and 2 compensation of Rs. 1,00,000/- (one lakh), with interest thereon at the rate of 12 per cent per annum from the date of petition till payment thereof. Costs of this appeal of claimants/respondent Nos. 1 and 2 shall be paid by the appellant. Counsel's fee of Rs. 500/-, if certified.