

(1979) 04 MP CK 0010

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 54 of 1974

Mareshwari Transport Company and Another

APPELLANT

Vs

Pritam Kaur and Others

RESPONDENT

Date of Decision : 03-04-1979

Acts Referred:

Motor Vehicles Act, 1939 — Section 110(1), 95

Citation : (1980) ACJ 157

Hon'ble Judges : G.G.Sohani, J;B.R. Dubey, J

Bench : Division Bench

Advocate : A.H. Khan, for the Appellant; Sujan Jain and B.K. Samdani, for the Respondent

Final Decision : Dismissed

Judgement

1. This order shall also govern the disposal of M.A. Nos. 66 and 127, both of 1974.

2. The material facts giving rise to these appeals are as; follows: claimant No. 1 Pritam Kaur and claimant No. 2 Rajendra Singh submitted an application u/s 110(1) of the Motor Vehicles Act, 1939, hereinafter called the Act, before the Motor Accidents Claims Tribunal, Indore claiming a sum of Rs. 75,000/- as compensation from the opponents. The claimants' case was that claimant No. 1 Pritam Kaur was the widow and claimant No. 2 Rajendra Singh was the son of deceased Nathasingh. The claimants averred that on 29th April, 1971, at about 9 p.m. Nathasingh was driving his tempo, bearing registration No. M.P O. 9697, and was going towards Indore when the truck bearing registration No. MPO 9977, owned by opponent No. 1 Maheshwari Transport Co., which was going towards Dewas and was driven by opponent No. 2 Mustafa Khan rashly and negligently at the material time, dashed against the tempo causing instantaneous death of Nathasingh. It was: further averred that Nathasingh was about 45 years old and was earning a sum of Rs. 500/- per month. The claimants, therefore, claimed compensation amounting to Rs. 75,000/- from the

opponents. The claim was resisted by opponents Nos. 1 and 2 inter alia on the ground that Nathasingh, the driver of the tempo, was responsible for the accident as he was at the material time driving the tempo rashly and negligently and attempted to overtake a bullock-cart which was proceeding ahead. The insurance company resisted the claim inter alia on the ground that the maximum liability of the company was limited to the extent of Rs. 20,000/- for the accident. The Tribunal, after analysing the evidence on record, found that Nathasingh died as a result of the injuries caused to him in the accident which took place when the truck driven by opponent No. 2 dashed against the tempo driven by him. The Tribunal, however, held that deceased Nathasingh was also negligent in trying to overtake a bullock-cart, which was going ahead. The Tribunal, therefore, held that the accident took place on account of negligence of both the deceased and the driver of the truck in question. The Tribunal, therefore, apportioned the liability for negligence between the truck-driver and the deceased and held the truck-driver liable to the extent of 75 per cent only. The Tribunal further found that the deceased was fifty years old at the time when the accident took place and the monthly dependency of claimant No. 1 was Rs. 200/-. Taking the multiplier to be 15 and reducing the amount by fifteen per cent for lumpsum payment, the Tribunal held that claimant No. 1 was entitled to receive Rs. 23,000/- along with interest at the rate of six percent per annum, by way of compensation. The Tribunal further found that claimant No. 2 Rajendrasingh had separated from his parents and was entitled to a sum of Rs. 500/- only as compensation for mental agony. The Tribunal held that the responsibility of the insurance company was limited to the extent of Rupees 20,000/- only. The Tribunal accordingly passed an award on 12th March, 1974. Aggrieved by this award, the owner and driver of the truck filed an appeal, which is registered as M.A. No. 54 of 1974. The insurance company also filed an appeal, which is registered as M.A. No. 66 of 1974 and the appeal filed by the claimants is registered as M.A. No. 127 of 1974. All these appeals were heard together.

3. It was not disputed before us that on 29th April, 1971, at about 9 p.m. the truck owned by Maheshwari Transport Co., and driven by Mustafa Khan dashed against the tempo driven by deceased Nathasingh. It was also not disputed that the tempo was coming towards Indore while the truck was going towards Dewas when the accident took place. The first question, therefore, that arises for consideration is whether the accident took place on account of negligence of the truck driver alone, as urged by the claimants, or on account of negligence of both the truck driver as well as the deceased, as found by the Tribunal, or on account of the negligence of the deceased only, as contended by learned Counsel for the non-applicants.

P.W. 2, Kedar, deposed that the accident took place on the Bombay-Agra road in front of his house when he was sitting outside the house. He further deposed that the tempo was being driven by the left side of the road when it was hit by the truck, coming from the opposite direction in the middle of the road at great

speed, which went out of control after hitting the tempo and crashed into the courtyard of the house of one Bhatia. P.W. 8 Ishaq Ali, who was one of the occupants of the tempo, deposed that the tempo was hit by the truck coming from the opposite direction and which was being driven by the wrong side of the road. In cross-examination, he stated that the accident took place after the tempo had overtaken a bullock-cart. D. W. 1 Salim who was cleaner of the truck in question, admitted that the truck had already passed by the bullock-cart when the accident took place. D.W. 2 Mustafa Khan, the driver of the truck, however, deposed that the accident took place when the tempo-driver was trying to overtake the bullock-cart. This statement cannot be relied upon in view of the statement of D.W. 1 Salim that the accident took place after the truck had already passed by the bullock cart. The finding of the Tribunal that the accident took place at a time when the tempo-driver was trying to overtake a bullock-cart is against the weight of evidence on record. The fact that the truck was being driven fast at the time of the accident is further established by the fact, as found by the Tribunal, that after the impact, the driver of the truck was unable to control it. The finding is based on the testimony of P. W. 2 Kedar and P. W. 6 Ishaq Ali. In this state of evidence, the finding given by the Tribunal that the driver of the tempo was guilty of contributory negligence is contrary to the evidence on record and cannot be sustained. The driver of the truck had not slowed down his speed when the tempo was coming in the opposite direction, and the plea taken by the driver of the truck that the accident took place when the tempo was trying to overtake a bullock-cart is found to be false. In these circumstances, it must be held that the accident took place as a result of the negligence of the driver of the truck. It is thus established by the claimants that negligence of the truck-driver resulted in the accident causing death of Nathasingh.

5. That finding of the Tribunal that the deceased was, at the material time, about fifty years old is based on the testimony of P.W. I Premsingh, father of the deceased, who deposed that the year of birth of Nathasingh was Samvat-1977. We see no reason to differ from the finding of the Tribunal in that behalf.

6. Learned Counsel for the claimants contended that the Tribunal erred in holding that the dependency of P.W. 7 Pritam Kaur was Rs. 200/- per month. He referred in this behalf to the testimony of P. W. 7 Pritam Kaur, who deposed that the income of the deceased was Rs. 600/- to Rs. 700/- per month. But she had in her application averred that the income of the deceased was Rs. 500/- per month. Making allowance for the expenses which would have been incurred by the deceased on himself and for the tempo, the Tribunal was, in our opinion, right in holding that the amount of dependancy of claimant No. 1 would be Rs, 200/- per month. Similarly the multiplier taken by the Tribunal at 15 is quite reasonable in the circumstances of the case. The Tribunal was, therefore, right in holding that the amount of compensation would come to Rs. 36,000/-. The Tribunal has reduced that amount by 15 per cent on account of lumpsum payment. Deduction of twenty per cent for lumpsum payment and for uncertainty of life would, in the

circumstances of the case, meet the ends of justice. The amount of compensation payable thus comes to Rs. 23,000/-. Claimant No. 1 alone is entitled to receive this amount as claimant No. 2 had, as admitted by him, separated from his parents. The amount of Rs. 500/- as compensation allowed to him by the Tribunal for mental agony is not assailed before us.

7. The Tribunal had determined the liability of the insurance company to the extent of Rs. 20,000/- only. It is not disputed before us that the accident had occurred subsequent to the amendment of Section 95 of the Act whereby the limit of the liability of the insurer had been raised to Rs. 50,000/- in all. As held by a Full Bench of the Karnataka High Court in *Sanjiva Shetty v. Anantha* 1978 A.C.J. 503 the material date for ascertaining the extent of liability of the insurer is the date of the accrual of the cause of action. On behalf of the insurer, it was stated before us by an application that in cases arising out of the accident, except the instant case, the insurer has paid a sum of Rs. 16,220-90 only by way of compensation. In these circumstances, as a result of the award in this case, the liability of the insurer would not exceed the statutory limit and learned Counsel for the parties agree that the liability of the insurance company cannot be limited to the tune of Rs. 20,000/- only, as held by the Tribunal. The insurer is liable along with non-applicants Nos. 1 and 2 to pay the amount to compensation as awarded.

8. For all these reasons, M. A. No. 66 of 1974 filed by the insurance company is dismissed. M.A. No. 54 of 1974 and M.A. No. 127 of 1974 are partly allowed. The award made by the Tribunal is modified as follows:

Claimant No. 1 is held entitled to receive from non-applicants Nos. 1, 2 and 3 an amount of Rs. 28,800/- by way of compensation along with interest at six percent per annum from the date of the institution of claim till realisation and costs incurred before the Tribunal. Claimant No. 2 is entitled to receive from the non-applicants a sum of Rs. 500/- by way of compensation. The liability of the non-applicants shall be joint and several. The non-applicants shall bear their own costs throughout. Parties shall bear their own costs of the appeals.