

(2016) 11 MP CK 0057

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 789 of 2011

Mamta Bai

APPELLANT

Vs

Surendra

RESPONDENT

Date of Decision : 24-11-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2017) 1 ACC 783 : (2017) 1 MPWN 19 : (2017) 1 TAC 382

Hon'ble Judges : Ms. Vandana Kasrekar, J.

Bench : Single Bench

Advocate : Shri Sanjay Sharma, learned counsel, for the Appellants; Shri Jayant Neekhara, learned counsel, for the Respondent No. 3

Final Decision : Allowed

Judgement

Ms. Vandana Kasrekar, J. - The appellants have filed this appeal under Section 173(1) of the Motor Vehicle Act, 1998.

2. Being aggrieved by the award dated 17.12.2008 passed by Additional Member MACT, Dindori in M.V.C. No.25/2007. The appellants have filed an application under Section 166 of the Motor Vehicle Act claiming compensation on account of death of Monu S/o. Mansukh to the extent of Rs.34,30,000/- under Section 166 of the Motor Vehicle Act. The said application has been filed on 24.3.2007.

3. At about 7.00 p.m. the deceased Monu was going near culvert of Bichiya Mahanadi, at that time, a vehicle bearing registration no. M.P. No.51-M 0875, which was owned by non-applicants no.1 and 2 driven rashly and negligently, dashed the deceased Monu due to which Monu had died on the spot. F.I.R. of the incident was immediately lodged at the concerned Police Station and the case has been registered under Section 304(A) against the non-applicant no.2 Santosh. It has been further stated in the application that at the time of the death, the deceased was 25 years of age and was doing the work of mechanic and was earning Rs.7,500/- per month. Appellants are wife, children and father

of the deceased and they were wholly depended on the income of the deceased, and therefore, on these grounds, the appellants have filed an application claiming compensation to the tune of Rs.34,30,000/-.

4. The non-applicants no.1 and 2 had filed their reply and denied the allegations made in the application. They have further stated that the deceased was driving the vehicle and he die due to his negligence. It has been further stated that the deceased was having a valid license and the vehicle was insured with the non-applicant no.3/Insurance Company. None-applicant no.3 had filed the reply and stated that the driver of the vehicle was not having a valid and effective license and he was driving vehicle contrary to the conditions of the policy.

5. The tribunal after framing the issues and recording the evidence has found that there is no eye witness to prove that the accident was occurred due to rash and negligent driving of the vehicle of the driver and as this application has been filed under Section 166 of the Motor Vehicle Act. It is for the applicants to prove that the driver was driving the vehicle rashly and negligently and as the appellants have failed to proved this fact, the application filed by the appellants have been dismissed. Being aggrieved by the impugned award passed by the MACT, the appellants have filed the present appeal

6. Learned counsel appearing on behalf of the appellants submits that the tribunal has erred in dismissing the application on the ground that the applicants have failed to prove that the driver was driving the vehicle rashly and negligently. He submits that the FIR was lodged by respondent no.1 and 2 and in the said FIR the fact of the accident and the said FIR has been admitted by respondents no.1 and 2 in the written statement before the tribunal. He further submits that on the basis of FIR a case has been registered against respondent no.2 under Section 279 and 304(A) before the JMFC, Dindori and this fact has not been considered by the tribunal while dismissing the application on the ground that the statement of the wife of the deceased cannot be relied on as she was not present on the spot. He further submits that the provisions of motor vehicle Act are beneficial, legislation and therefore, the benefit of the said provisions should be extended towards the appellants i.e. claimants.

7. On the other hand, learned counsel appearing on behalf of the respondents supports the order passed by the tribunal on the relied judgment passed by the Apex Court in the case of Oriental Insurance Co. Ltd v. Premlata Shukla and others reported in 2007(3) MPHT, 225. On the basis of the said judgment, learned counsel appearing for the respondents submits that the proof of rashness and negligence on the part of the driver of the vehicle, is a sine qua non for maintaining an application under Section 166 of M.V. Act, 1988. . In view of the aforesaid judgment, he submits that as in the present case the appellants have failed to prove that the vehicle was driving rashly and negligently, therefore, the tribunal has rightly rejected an application filed by the appellants under Section 166 of the Motor Vehicle Act.

8. I have heard, learned counsel for the parties and perused the record as well as the order passed by the tribunal. From perusal of the order I found that the FIR was lodged by the non-applicants no.1 and 2 before the Police Station Shahpura and on the basis of said FIR the case has been registered against the non-applicants no.1 and 2 under Section 304(A) of the IPC in the Court of JMFC, Dindori and the contents of the said FIR has been admitted by the non-applicants no.1 and 2 in their written statement and as the FIR has been lodged in the case, therefore, the findings of the tribunal that the appellants have failed to prove the accident in the present case cannot be sustained.

9. In view of the aforesaid impugned award passed by the tribunal is set aside and the appeal is allowed. Matter is remanded back to the tribunal to decide the matter afresh on merits. Parties are directed to appear before the tribunal on 11.01.2017.