
(1980) 08 MP CK 0033

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 78 of 1979

Mehandi Hassankhan and Another

APPELLANT

Vs

M.P.S.R.T.C. and Others

RESPONDENT

Date of Decision : 19-08-1980

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A, 110D

Citation : (1982) ACJ 83

Hon'ble Judges : R.K. Vijayvargiya, J

Bench : Single Bench

Advocate : R.S. Garg, for the Appellant; B.K. Samdani, for the Respondent

Final Decision : Allowed

Judgement

R.K. Vijayvargiya, J.—This appeal u/s 110-D of the Motor Vehicles Act by the Appellant is directed against the award dated 31.1.79 passed by the 1st Add. Member, Motor Accidents Claims Tribunal, Indore in claim case No. 136 of 1977.

2. The facts giving rise to this appeal briefly stated are as follows : According to the claimants their minor son Mohd. Aslam Was travelling in a city bus No. M.P.F. 8621 from Musakhedi to Ajadnagar. He fell down from the moving bus, sustained severe injuries and died on account of the accident. According to the claimants their son died on account of the negligent driving by the Respondent No. 2 who was in the employment of the Respondent No. 1 as the driver of the bus. The Respondent No. 3 was the conductor of the bus. According to the claimants when Mohd. Aslam alongwith his two companions boarded the bus he was asked to go ahead and when the bus started he fell down from the front gate which had no door. The claimants claimed Rs. 50,000/- as compensation for the death of the deceased. The Respondents contested the claim of the claimants. According to them when the deceased was boarding the bus the conductor asked him about the ticket and thereupon he jumped from the moving bus and sustained injuries on account of his own negligence and the Respondents are not liable for the same. The Tribunal has dismissed the claim on the ground that it has not been

proved that Mohd. Aslam sustained injuries on account of the negligence of the Respondent Nos. 2 and 3. It is further held by the Tribunal that the claim put forth by the claimants has not arisen from the use of a motor vehicle and therefore was not entertainable by the Tribunal. The claimants have assailed the award of Tribunal in this appeal.

3. Having heard learned Counsel for the parties I have come to the conclusion that this appeal deserves to be allowed. The Tribunal committed an error in holding that the claim put forth by the claimants was not entertainable by the Tribunal. Apparently on the facts as alleged the accident was caused on account of the use of the motor vehicle and therefore, was triable by the Tribunal under the provisions of Section 110-A of the Motor Vehicles Act.

4. As regards the second question the claimants examined Mohd. Kadir (A.W. 4) who was the companion of the deceased. He stated that when they boarded the bus conductor asked them to move ahead. When the deceased went there he fell down from the front gate of the bus. It is admitted by the Respondent No. 2 that the bus had no door on the front gate. N.A.W. 3 Viththal the conductor of the bus stated in the examination-in-chief that the deceased was standing on the foot-rest and when he asked him for the ticket he jumped from the moving bus and sustained injuries. However, in the cross-examination he admitted that the boys were sitting in the bus and that when the bus moved for about half-a-furlong the boy fell down. It is clear that the stand taken by the Respondents that the deceased jumped down from the foot-rest when he was asked for the ticket is not correct. The Respondent No. 2 has also stated in his evidence that when the bus moved for a short distance the conductor gave signal to him to stop the bus and stated that the boy has fallen down. This was the first version of the conductor. Had the boy jumped from the foot-rest he would have stated so to the driver. In the circumstances I am of the opinion that the stand taken by the Respondents that the deceased jumped down from foot-rest when he was asked for the ticket and he sustained injuries on account of his act is not correct. In the circumstances I am of the opinion that the deceased fell down from the bus on account of the negligence of the Respondent Nos. 2 and 3 and the Respondents are liable to pay compensation to the claimants for the death of their son Mohd. Aslam.

5. The Tribunal has not recorded any finding regarding the compensation payable by the Respondents to the claimants. The Tribunal should have done so. However, considering the fact that the deceased Mohd. Aslam was about 12-13 years of age and was reading in class V, I am of the opinion that a sum of Rs. 12,000/- (twelve thousand) would be the adequate recompense to the claimants for the death of the deceased. This Court in several cases has awarded Rs. 12,000/- as compensation for the death of a boy ranging between 10-15 years of age.

6. As a result of the discussion aforesaid this appeal is allowed. The award of the Tribunal is set aside. It is directed that the Respondents shall pay Rs. 12,000/-

(twelve thousand) to the claimants, with interest at the rate of 6% p.a. from the date of application till payment. The Respondents shall also pay costs of this appeal to the claimants. Counsel's fee Rs. 200/-, if certified.