
(1984) 01 MP CK 0022

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 176 of 1980

Mohan Lal

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 18-01-1984

Acts Referred:

Citation : (1984) ACJ 454

Hon'ble Judges : R.K. Vijayvargiya, J;G.G.Sohani, J

Bench : Division Bench

Advocate : P.K. Sharma, for the Appellant; Gyan Singh Solanki, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Vijayvargiya, J.—This order shall also dispose of Misc. Appeal No. 193 of 1980 Sureshkumar v. State of M.P. and Anr. and Misc. Appeal No. 228 of 1980 State of M.P. v. Sureshkumar and Anr. as all these appeals arise out of the common award dated 19.4.1980 passed by the Motor Accidents Claims Tribunal, Mandsaur in Claim Case Nos. 32 of 1978 and 36 of 1978.

2. The facts giving rise to these appeals briefly stated are as follows:

The claimant Sureshkumar is the son of claimant Mohanlal. On 26th January, 1978, at about 11 a.m. when claimant Sureshkumar was going towards the Court premises at Mandsaur and the claimant Mohanlal was sitting on the pillion of the scooter, a jeep bearing No. MPZ 8713 belonging to the State Government came from the opposite direction and dashed against the scooter of Sureshkumar. Both Sureshkumar and Mohanlal sustained injuries in the accident. They filed separate applications claiming compensation for the injuries sustained by them in the accident against the State Government and the driver of the jeep Dulesingh. According to them the accident was caused on account of the negligence of the driver of the jeep in the course of his employment with the State Government and therefore, the driver as well as the State of Madhya

Pradesh were liable to pay compensation to them. The claims were contested by the non-Applicants. The Tribunal by a common award held that the accident was caused on account of the negligence of both the driver of the jeep as well as of the scooter driver Sureshkumar. The Tribunal apportioned the liability between Sureshkumar and the driver of the jeep as 2/3rd and 1/3rd respectively. The Tribunal determined the damage awardable to Sureshkumar at Rs. 7,050/- and held that 1/3rd thereof i.e. 2,350/- was liable to be paid by the State Government and the driver of the jeep. The Tribunal ascertained the damages payable to claimant Mohanlal at Rs. 5,450/- and held that he is entitled to recover a sum of Rs. 3,633.30 from Sureshkumar and a sum of Rs. 1,816.70 from the State Government and the driver of the jeep. Aggrieved by the award of the Tribunal the claimants Mohanlal and Sureshkumar preferred appeals which are registered as Misc. Appeal No. 176 of 1980 and Misc. Appeal No. 193 of 1980 respectively. Aggrieved by the award of the Tribunal the State also preferred appeal which is registered as Misc. Appeal No. 228 of 1980. All these appeals were heard together.

3. The learned Counsel for the Appellants Mohanlal and Sureshkumar contended that the Tribunal committed an error in holding that the accident was caused on account of the negligence of both the driver of the jeep and Sureshkumar and in holding the liability of Sureshkumar as 2/3rd and that of the jeep driver as 1/3rd. He did not assail the quantum of damages ascertained by the Tribunal but contended that the entire amount of compensation should have been awarded against the State Government and the driver of the jeep. The learned Deputy Government Advocate appearing for the State contended that the Tribunal committed an error in holding that the accident was caused on account of the negligence of the driver of the jeep.

4. The short question which arises in these appeals is whether the accident was caused on account of the negligence of the driver of the jeep and whether the Tribunal committed an error in holding that Sureshkumar was also guilty of contributory negligence. The claimants examined themselves and AW 6 Rajendra Prasad Sharma and AW 7 Gopalkrishna Sharma who had witnessed the accident. The non-Applicants examined the driver of the jeep Dulesingh as DW 1 and DW 2 Navneet Tugnawat. The claimants Mohanlal and Sureshkumar deposed that when they were going on the scooter, the jeep came from the opposite direction and dashed against them. AW 6 Rajendra Prasad and AW 7 Gopalkrishna have supported them. Gopalkrishna also deposed that on the traffic point the jeep took a turn on the wrong side and dashed against the scooter which was being driven by Sureshkumar. As against this evidence the driver of the jeep deposed that the scooter was taking a turn from the wrong side and therefore, he stopped the jeep and the scooter dashed against the standing jeep. DW 2 Navneet also deposed that the driver applied the brakes of the jeep and the scooter which took a turn on the wrong side dashed against the jeep. We are of the opinion that the testimony of the claimants as supported by Gopalkrishna and Rajendra Prasad is more reliable. Gopalkrishna is an independent witness. Nothing has

been brought in his cross-examination to show that he has any interest in the claimants. It is difficult to accept the testimony of the driver of the jeep that he stopped the jeep and the scooter dashed against the standing jeep. We are of the opinion that had the driver of the jeep been careful, the accident would not have been caused. In our opinion, the Tribunal was not justified in holding Sureshkumar guilty of contributory negligence. The jeep on that day was engaged in making arrangement for the programmes of the Chief Minister of the State who had come to Mandsaur on the occasion of Republic day. It seems that the driver of the jeep was not careful in driving the jeep as he must have been in a hurry to reach the venue of the programme of the Chief Minister. The jeep had dashed against the scooter which was coming from the opposite direction and had the driver been careful, the accident would not have been caused. In the circumstances, we are of the opinion that the driver of the jeep was solely responsible for the accident and it was caused on account of his negligence in driving the jeep. The Tribunal has not properly appreciated the evidence on record and the contrary finding recorded by the Tribunal regarding the contributory negligence of Sureshkumar deserves to be set aside.

5. As stated above, the learned Counsel for the claimants did not assail the finding recorded by the Tribunal regarding the quantum of damages payable to the claimants. The learned Deputy Government Advocate appearing for the State was also unable to assail the finding recorded by the Tribunal in that regard. Thus, the claimant Mohanlal is entitled to receive from the N.As. the entire amount of compensation of Rs. 5,450/- as ascertained by the Tribunal. Similarly, the claimant Sureshkumar is entitled to receive from the non-Applicants the entire amount of compensation Rs. 7,050/-.

6. As a result of the discussion aforesaid, Misc. Appeal No. 176 of 1980 and Misc. Appeal No. 193 of 1980 preferred by the claimants Mohanlal and Sureshkumar respectively are allowed. The award of the Tribunal is modified. It is ordered that the non-Applicants, State, of Madhya Pradesh and Dulesingh shall pay a sum of Rs. 5,450/- to the claimant Mohanlal and a sum of Rs. 7,050/- to the claimant Sureshkumar as compensation with interest at 6% per annum from the date of the application till payment. Misc. Appeal No. 228 of 1980, preferred by the State of M.P., is dismissed. In the circumstances, the parties shall bear their own cost in these appeals.