

(2003) 01 MP CK 0019
In the Madhya Pradesh High Court

Mohd. Anis and Others

APPELLANT

Vs

Ramesh Chandra Agarwal and Another

RESPONDENT

Date of Decision : 24-01-2003

Acts Referred:

Citation : (2005) 1 ACC 613

Hon'ble Judges : Bhawani Singh, C.J.; Sugandhi Lal Jain, J

Bench : Division Bench

Judgement

Bhawani Singh, C.J.—This appeal is directed against the award of Motor Accident Claims Tribunal, Shadhol, Claim Case No. 27/92, dated 29th March, 1996.

2. Briefly, claimants are legal heirs of driver Mohd. Safi (deceased). They are claiming compensation for the death of Mohd. Safi, driver of truck No. MP-16A/0225, owned by Ramesh Chandra Agarwal, insured with Oriental Insurance Company Limited, which met with accident on 4th/5th September, 1992 at 12 p.m. The deceased was run over by the truck and he died. According to claimants, deceased was earning Rs. 2,000/- per month in addition to Rs. 60/- daily allowance. The claimants were depending on him for subsistence and with the death of the deceased they have lost a bread earner of the family.

3. The respondents submit that the deceased was rash and negligent in driving the truck. Insurance Company states that he did not possess valid driving licence and he could approach to the Commissioner, Workmen's Compensation and Claims Tribunal has no jurisdiction to entertain the claim petition; and that there was no defect in the vehicle; and mechanical report has not been produced which mentions that the brakes of the vehicle were in order.

4. Claims Tribunal framed five issues in the case, sought evidence and dismissed the claim, holding that it was not proved that accident was due to inherent defect in the vehicle, and that the vehicle was being driven rashly and negligently. However, amount of Rs. 25,000/- has been awarded by way of no fault liability. Through this appeal, this award has been assailed by the claimants.

5. Mr. Anand Dardaria, Counsel for claimants submits that award of Claims Tribunal is not based on proper appreciation of evidence, which clearly suggests that it is a case of accident as a sequel to developing of sudden defect in the vehicle otherwise the accident could not have taken place. Therefore, vehicle being driven at the speed of 30/40 kms. per hour could not be said to be driven rashly and negligently. Mr. N.S. Ruprah, learned Counsel for the Oriental Insurance Company, Limited, submits that the way the driver strode and dashed against the property of railways, clearly demonstrates that vehicle was being driven rashly and negligently. Claim that some defect developed all of sudden in the vehicle cannot be accepted because the vehicle was only six months old. The claimants have not produced mechanical report which could prove what went wrong with the vehicle, otherwise the fault is of the driver.

6. Giving consideration to the submissions and examining the evidence carefully on this question, we notice that the eye-witness to the occurrence is cleaner of the vehicle, Chhiddu Ali (A.W. 2). He specifically states that it was raining, a truck was coming from opposite direction, in front, there was a speed breaker, three times brakes were applied but it strode towards the slope and fell into the pit. The driver fell from the vehicle. He sustained injuries to chest, hands, legs and arm. The vehicle was being driven with proper control, with speed of 30/35 kms. per hour. Clearner of the vehicle, being the eye-witness to the occurrence, has stated that vehicle was not being driven rashly and negligently. It was within control. It was being driven with speed of 30/35 kms. per hour. Brakes were applied 3-4 times still the vehicle went out of control, this means, some sudden defect developed in the vehicle. Therefore, the driver cannot be held rash and negligent in driving it. Further, Jeewan Mishra, the Railway Chowkidar has stated in the First Information Report that the driver died as the truck run him over after he jumped from the truck. The evidence, therefore, suggests that the sudden defect in the vehicle was brakes going out of order otherwise the vehicle could stop when the driver wanted to stop it by application of brakes 3-4 times. Claimants cannot be blamed for the non-production of mechanical report and production of Railway Chowkidar, Jeewan Mishra, since it formed part of criminal case and claimants hardly expected to procure it and secure the presence of Railway Chowkidar in the Court; rather the other side which depends on this report could have filed it. Consequently, the conclusion drawn on this report could have filed it. Consequently, the conclusion drawn by the Tribunal on this aspect is not sustainable and the same is set aside.

7. Having come to the aforesaid conclusion, we turn to determine compensation in this case. According to Smt. Mariyam, wife of deceased, the income receivable by the deceased was Rs. 2,500/- per month inclusive of Rs. 60/- daily allowance. The conductor states that the deceased was receiving Rs. 2,000/- per month apart from Rs. 60/- daily allowance. Smt. Mariyam (A.W. 1) also states that the deceased used to earn Rs. 2,500/- per month. Whereas, Mohd. Anis, son of deceased states that the family used to be given Rs. 3,200/- to 3,500/- per month and sometimes less than this. With this kind of evidence it would be

appropriate to settle the monthly income of the deceased at Rs. 2,500/ -, and Rs. 30,000/- per year, making deduction of 1/3rd towards personal expenses, it would come to Rs. 20,000/- per year, multiplied by 16 plus Rs. 7,000/- for loss of expectancy of life, Rs. 5,000/- for loss of consortium. Rs. 2,500/- loss to the estate and Rs. 2,000/- funeral expenses, the compensation comes to Rs. 3,36,500/ - (Rupees three lacs thirty-six thousand five hundred).

8. Mr. Ruprah submits that Insurance Company is liable to pay compensation as per the Workmen's Compensation Act, which is Rs. 1,53,600/-. We do not appreciate this contention. Perusal of insurance policy does not stipulate it, therefore, it cannot be said that the liability of insurance policy is limited to something less than the award being passed in this case, the amount under the Workmen's Compensation Act, 1923.

9. Consequently, the appeal is allowed. Award is set aside. The claimants are held entitled to compensation of Rs. 3,36,500/- (Rupees three lacs thirty-six thousand five hundred) with interest at the rate of 9% (nine per cent) per annum from the date of application till payment. It is distributed as under:

- (1) Smt. Mariyam (wife) : 50% (fifty per cent)
- (2) Children: 40% (forty per cent)
- (3) Smt. Johara and Mohd. Rasheed : 10% (ten per cent) equally

The award shall be paid within two months. Costs on parties.