
(2001) 01 MP CK 0042

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No's. 197 and 182 of 1995

National Insurance Co. Ltd.

APPELLANT

Vs

Shri Chand Ratan and others

RESPONDENT

Date of Decision : 23-01-2001

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2003) ACJ 361 : (2001) 3 MPHT 130 : (2002) 2 MPLJ 299 : (2001) 2 MPLJ 299

Hon'ble Judges : Mr. Shambhu Singh, J; Mr. R.D. Vyas, J

Bench : Division Bench

Advocate : Shri Punekar, for the Appellant; Shri Dandwate, for the Respondent

Final Decision : Partly Allowed

Judgement

Shambhu Singh, J.

This judgment shall govern the disposal of M.A. No. 197/95 filed by National Insurance Co. and M.A. No. 182/95 filed by the claimants for enhancement of compensation amount against the award dated 20-12-94 passed by Addl. M.A.C.T., Dewas in Claim Case No. 85/93.

The claimants' case is that on 19-8-90 their son, the deceased Suresh Kumar was coming in taxi Car No. M.O.D. 6151, belonging to non-applicant No. 1, driven by non-applicant No. 2 from Bhopal and was going to Indore. Near Jetpura village truck No. C.P.J. 6818 belonging to non-applicant No. 4, driven by non-applicant No. 5 and insured with non-applicant No. 6 was parked without parking lights on or any signal. At about 11 p.m. the Car No. M.O.D. 6151 came from Bhopal side and dashed against the back portion of the truck No. C.P.J. 6818, as a result of which Suresh Kumar sustained injuries and died on the spot. The deceased was aged about 20 years. He was proprietor of Barkha Bottle Bhandar and was earning Rs. 10,000/- per month. The claimants filed claim case seeking compensation of Rs. 20,00,000/-. The non-applicant No. 1, the owner and non-

applicant No. 2, the driver of the car and non-applicant No. 5, the driver of the truck absented and were proceeded ex-parte. Non-applicant No. 3 averred that the insurance policy of the car had expired on 17-7-90, therefore, it was not liable to pay compensation. The appellant/non-applicant No. 6 Insurance Co. contested the case. It averred that the accident occurred due to rash and negligent driving of the taxi car. The driver of the truck was not negligent in any way as the truck was parked on the left side of the road with parking lights on. The Tribunal on appreciation of evidence held that the accident occurred due to negligence of the drivers of both vehicles and fixed the responsibility of the car driver at 2/3rd and that of truck driver at 1/3rd and awarded compensation of Rs. 64,000/-. The claimants filed M.A. No. 182/95 for enhancement of compensation and the Insurance Co. filed M.A. No. 197/95 for setting aside the award.

Shri Punegar, learned counsel for the claimants, submitted that the amount of compensation of Rs. 64,000/- is hopelessly low. The deceased was earning Rs. 10,000/- per month, therefore, the amount of compensation should be enhanced. On the other hand in M.A. No. 197/95 Shri Dandwate, learned counsel for the Insurance Co. submitted that the learned Tribunal committed error in holding that the truck driver was negligent and fixing his liability at 1/3rd. In the alternative he submitted that the compensation amount should be apportioned and it should be directed to pay according to its liability.

We considered the arguments advanced by learned counsel for both sides and perused the record. Chand Ratan Biyani (A.W. 3), the father of the deceased Suresh Kumar, stated that his son Suresh was running Barkha Bottle Bhandar and was earning Rs. 10,000 - 12,000/- per month. He filed the documents Ex. P-11 to P-13 of Sales Tax Department. P.L. Vyas (A.W. 1), Sales Tax Inspector, proved Ex. P-1 stating that deceased Suresh Kumar s/o Chand Ratan Biyani, was the proprietor of this firm. He proved certificate Ex. P-2. This witness and Chand Ratan Biyani admitted that this firm is still going on. After the death of Suresh Kumar it has been transferred to Mahesh, the elder son of Chand Ratan Biyani. It is, thus, clear that the firm is running in the same way as it was running by the deceased before his death, therefore, due to death of Suresh Kumar no monetary loss was caused to the parents. It has not been shown that the income of this firm, after the death of Suresh Kumar has decreased. Under such circumstances, the death of Suresh Kumar has caused no monetary loss. But the parents have been deprived of the services rendered by Suresh Kumar to the family. We shall, therefore, assess the value of the services rendered by the deceased. The deceased as proprietor of the firm, was managing the business and running it. According to Chand Ratan his son was earning Rs. 10,000/- per month. But it is common knowledge that generally the claimants exaggerate the earning of the deceased. Keeping in view all the facts & circumstances and material on record, his services are estimated at Rs. 2,000/- per month, yearly Rs. 24,000/-. On deducting 1/3rd of it, for personal living expenses of the deceased, the loss to the appellants comes to Rs. 16,000/-. The multiplier has to be selected keeping in view the age of the deceased as well as of the

dependants, which was higher. According to the Tribunal the age of the mother of the deceased was 48 years, therefore, the multiplier of 13 is selected. On multiplying it with the multiplicand, the amount comes to (Rs. 16,000 x 13) = Rs. 2,08,000/-. The claimants are also entitled to Rs. 5,000/- for loss of love & affection and Rs. 2,000/- for funeral expenses. On addition of this, the amount of compensation comes to Rs. 2,15,000/-.

Now the question is whether the appellant/non-applicant No. 6 Insurance Co., the insurer of offending truck was liable to pay compensation.

Shri Dandwate, learned counsel for the Insurance Co. contended that the truck was stationed on the extreme left part of the road as admitted by Mohan Singh Chouhan, S.I. It is thus clear that the truck driver was not negligent. The argument is not acceptable. From F.I.R. and other documents it is clear that this accident took place in the night. The Sub-Inspector Mohan Singh visited the spot and prepared spot map Ex. P-9. This map shows that some portion of the truck was on the patti and some portion was on the road. It is true that Mohan Singh Chouhan, stated that the truck driver was not negligent. It was the car driver who drove the car negligently and dashed against back portion of the truck. But, admittedly he was not present on the spot at the time of accident. His opinion does not appear to be correct. The spot map prepared by him clearly shows that some portion of the truck was on road. The truck driver did not enter the witness box, he could alone say whether he had switched on the back or parking lights of the truck. It was the duty of the truck driver to have given indication of the parking of the truck. Thus, in our opinion, the truck driver was also responsible for the accident. Had he switched on the parking or back lights, the car driver could have seen the truck and this accident could have been avoided. Both the drivers did not enter the witness box. Under such circumstances, it is presumed that the drivers of both vehicles were negligent.

Shri Dandwate, learned counsel for the Insurance Co. submitted that the apportionment of the liability of both the vehicles should be fixed so that the owners and the Insurance Co. of the respective vehicles may make payment of the compensation amount apportioned to them. On the other hand, Shri Punegar, learned counsel for the claimants, contended that this is a case of composite negligence and, therefore, apportionment cannot be made. Shri Dandwate, learned counsel for the Insurance Co. put reliance on *Manju Rai and Others Vs. M.P. Electricity Board and Others*, . Shri Punegar, learned counsel for the claimants, cited *Kirti and Another Vs. Rajendra and Others*, . A Division Bench of this Court in case of 1997 ACJ 649, *Gujrat State Road Transport Corporation and others Vs. Shardabai and others*, considered this point and relying on the earlier D.B. decision of this Court in case of *Manjula Devi Bhoota Vs. Manju Shri Raha* 1968 ACJ 1 (M.P.) and also on the observation made in law of torts second edition 1992, by Justice G.P. Singh, held that in composite negligence apportionment cannot be made. The damages cannot be apportioned so as to award one sum against one defendant and another against the other defendant

though, they may have been guilty in unequal degree. Under such circumstances, the claimants cannot be asked to recover the amount from each vehicle as apportioned. Both tortfeasors are severally and jointly liable to pay compensation to the claimants. The claimant cannot be asked to proceed against both the tortfeasors. It is the discretion of the claimant to proceed both the tortfeasors or against only one. The remedy for the tortfeasor, who is proceeded, is to recover the amount from the other tortfeasors. However, the liability inter se tortfeasors can be decided to avoid the multiplicity of the proceedings. This Court in case of *Kirti and Another Vs. Rajendra and Others*, , clearly held that in composite negligence amount of compensation cannot be apportioned and the claimants cannot be directed to proceed to recover the apportioned amount from each vehicle. However, the liability of the tortfeasors inter se can be decided. In our opinion, from the material on record, it appears reasonable to hold the negligence of the truck driver at 1/4th and the liability of the car driver at 3/4th. The fault of the truck driver was that he had not switched on the parking lights or back lights nor gave indication of the parking of the truck there.

In the result, the appeal No. 182/95 is partly allowed. The impugned award is modified and it is directed that the Insurance Co., owner and driver of the truck and the owner and driver of the car shall pay Rs. 2,20,000/- severally and jointly to the claimants with interest at the rate of 12% per annum from the date of filing of claim application till realisation (after adjusting the amount already deposited). M.A. No, 197/95 is also partly allowed. The claimants are free to realise the amount of compensation from any of the tortfeasors which they like and the tortfeasor who made the payment of the compensation amount will be free to recover the apportioned amount from the other set of non-applicants. There shall be no order as to costs.

Misc. Appeals partly allowed.