
(2001) 03 MP CK 0005

In the Madhya Pradesh High Court

Case No : M.A. No"s. 301 and 704 of 1997

New India Assurance Co. Ltd. and Another

APPELLANT

Vs

Rajni Bai and Others

RESPONDENT

Date of Decision : 08-03-2001

Acts Referred:

Citation : (2002) 1 ACC 56 : (2002) ACJ 56

Hon'ble Judges : Bhawani Singh, C.J.;Arun Mishra, J

Bench : Division Bench

Advocate : Ashok Lalwani and N.S. Ruprah, for the Appellant; Z.M. Shah, for the Respondent

Final Decision : Dismissed

Judgement

Bhawani Singh, C.J.—We propose to dispose of both these appeals (Misc. Appeal No. 301 of 1997: New India Assurance Co. Ltd. v. Rajni Bai and Misc. Appeal No. 704 of 1997: Surjeet Singh v. Rajni Bai) by this common order, since they arise out of the same accident, award and between the same parties.

2. The claimants are widow, children and parents of deceased Kanhaiya. The allegation is that Kanhaiya was going by truck No. MP-09-K 3260 on 18.12.1994 from Narmada Nagar to Punasa. Sudden application of brakes, the truck was overturned, Kanhaiya sustained fatal injuries resulting in his death. The allegation is also that the deceased Kanhaiya was travelling in the truck along with his goods. The accident took place due to rash and negligent driving, otherwise it would not have taken place nor the occupants of the truck suffered serious injuries. At the time of accident, Kanhaiya was healthy young man of 30-32 age and was driver of heavy vehicle, earning Rs. 3,000 per month. He had three acres of irrigated land, out of which he used to earn Rs. 15,000 annually and he used to pay Rs. 2,000 every month to family. Due to this accident, the family has suffered and has become helpless. The compensation of Rs. 5,40,000 has been claimed under different heads. Criminal case with respect to this accident was registered with the police.

3. Surjeet Singh, owner of the vehicle, has denied the plaintiff's allegations. It is stated that the vehicle was not being driven rashly and negligently. Rather, it was being driven at a slow speed. With a view to allow the opposite vehicle to pass, he took the vehicle to the side and it turned turtle. The matter was reported to the insurance company, which is liable to pay compensation in case it is found that the fault was committed by the vehicle owned by him.

4. The insurance company has also denied the plaintiff's allegations. It alleges that it was not informed about taking place of accident which is necessary under the insurance policy. Kanhaiya was travelling in the vehicle against the conditions of the policy, therefore, it is not liable to pay compensation. It is also stated that Mohd. Rouf Khan (driver) did not possess valid driving licence at the time of accident.

5. The Claims Tribunal accepted the allegation of the claimants against the non-claimants in this case with respect to taking place of accident on 18.12.1994 due to rash and negligent driving of the truck by Mohd. Rouf Khan (driver), as a result of which the truck turned turtle and caused death of Kanhaiya. The claimants have been found to be legal heirs of Kanhaiya, therefore, entitled to compensation of Rs. 4,17,500 with interest at the rate of 12 per cent per annum from the date of application till payment. According to the Claims Tribunal, it has not been proved that the driver did not possess a valid driving licence at the time of accident, rather the driving licence has been produced before the Claims Tribunal. Therefore, the Claims Tribunal has found that the insurance company is liable to pay compensation.

6. We have considered the matter with the assistance rendered by the counsel for both the sides. It is crystal clear that the truck turned turtle, which was not possible in case Mohd. Rouf Khan had taken care to drive it properly and safely. It is because of his rash and negligent driving of the vehicle that accident took place resulting in the death of Kanhaiya. Consequently, finding of the Claims Tribunal as to causing of accident by rash and negligent driving by the driver of the vehicle owned by Surjeet Singh, is based on evidence and, therefore, is confirmed.

7. Next question is about determination and payment of compensation. It is contended by learned Counsel for the opposite side that the assessment of compensation in this case is excessive, therefore, the same may be reduced. However, the counsel for the claimants submits otherwise. The submission is that Kanhaiya was of young age at the time of accident. He was driver of heavy vehicle earning Rs. 3,000 per month, apart from Rs. 15,000 from agriculture. He had been giving Rs. 2,000 to the family every month. The family consists of old parents, widow and four children of very young age. Due to death of Kanhaiya, the breadwinner of the family is lost. The family has suffered and will suffer in future, since it was depending on him. With this background and taking into consideration his annual income from service and agriculture, assessment of compensation by the Tribunal is quite reasonable and justified. It calls for no

interference by this Court on the grounds urged by the learned Counsel for the opposite side. We approve the investment of compensation amount ordered by the Claims Tribunal.

8. Last question with regard to objection of the insurance company is that Kanhaiya was a fare paying passenger in the truck, therefore, it is not liable to pay compensation. This contention has no force. Except for taking this plea, there is no evidence to prove it. Consequently, Kanhaiya was travelling in the vehicle along with his goods. Moreover, six labourers could also travel by this vehicle. Therefore, the matter is covered by the decision of the Apex Court in New India Assurance Company Vs. Shri Satpal Singh and Others, .

9. For all the reasons recorded above, we find no merit in both the appeals and they (M.A. No. 301 of 1997 and M.A. No. 704 of 1997) are dismissed.