(1996) 02 MP CK 0064

In the Madhya Pradesh High Court

New India Assurance Co. Ltd. and Others APPELLANT

Vs

Ramdulari and Others RESPONDENT

Date of Decision : 02-02-1996

Acts Referred:

Citation : (1996) 2 ACC 45

Hon'ble Judges : Fakhruddin, J

Bench : Single Bench

Judgement

Fakhruddin, J.—All these appeals are hereby decided by this common order.

2. These misc. appeals have been preferred against the common award passed by 1st Additional Motor Accident Claims Tribunal, Shivpuri in Claim Case Nos. 10/87, 11/87, 12/87 and 13/87, on 30th September, 1993.

3. The short facts in the case are on 6.5.84 near, Gauraghat at Agra-Bombay Road an accident occurred between a fire brigade jeep, driven by Dhaniram (deceaded), owned by Nagar Palika Parisad, Shivpuri, and Truck No. MPF-8427, belonging to M.P. State Road Transport Corporation, driven by Madanlal. As a result of this accident, Dhaniram, (driver of the fire brigade jeep) and three other persons, namely, Ramkishore, Rafiq. Mohd. and Gausuddin who were travelling in the said fire brigade jeep, died. It is alleged that the accident occurred due to rash and negligent driving of the truck No. MPF-8427. A report in the Police Station Subhashpura was lodged by one Omprakash and a criminal case was registered against Madanlal, driver of M.P.S.R.T.C. Truck.

4. Claimants-legal representatives of the four persons expired in the accident filed respective claims which were registered separately as per numbers given above. The jeep belonging to fire brigade was insured with the New India Insurance Co. Ltd. The driver of the offending vehicle i.e. Madanlal, M.P.S.R.T.C., Nagar Palika Parisad, Shivpuri and the New India Insurance Co. Ltd. were the opposite parties. The claim was denied by the MPSRTC and its driver on the ground that there was no rashness or negligence on the part of the driver. It was

also contended that in the vehicle of firebrigade persons could not travel. It was also contended that it was Dhaniram who himself was rash and negligent and thus Dhaniram was responsible for the accident. The Insurance Company also denied the liability.

5. Learned Claims Tribunal held that Dhaniram, Ramkishore, Rafiq Mohd. and Gausuddin were the employees of the M.P. Nagar Palika Parisad, Shivpuri, they died as a result of accident. This was held that fire brigade jeep was going on with red light on it and the accident occurred due to rash and negligent driving of the offending vehicle (truck) No. MPF 8427 belonging to the respondent MPSRTC and driven by Madanlal. The Claims Tribunal held respondent No. 1 Madanlal responsible for the accident and passed an award jointly not only against Madanlal driver, M.P.S.R.T.C. but against Nagar Palika Parisad, Shivpuri and the New India Insurance Co. Ltd. The Insurance Co. and the Nagar Palika Parisad, Shivpuri have preferred these appeals contending that they have been wrongly held responsible.

6. Learned Counsel for the appellant Nagar Palika Parisad, Mr. K.N. Gupta contended that Dhaniram was the driver of the fire brigade jeep and other persons, namely, Ramkishore, Rafiq Mohd. and Gausuddin were the employees of the Nagar Palika Parisad and pursuant to the employment they were going in a jeep of fire brigade. The jeep was driven with red light and in normal speed and it was the truck belonging to the M.P.S.R.T.C. and driven by Madanlal which was rash and negligent and the accident occurred due to rash and negligent driving of Madanlal.

7. Omprakash is the witness who has lodged the report immediately on 6.5.84 i.e. on the same day at Police Station Subhashpura. Copy of the said report is on record. It shows that the same was lodged within the ten minutes of the accident. Omprakash had appeared into the witness box and testified that respondent Madanlal was driving the truck rashly and negligently and it was truck which dashed the jeep. There is no evidence adduced by the other side. Learned Claims Tribunal also recorded the said finding in para 9 and held that on the basis of evidence of Omprakash and there being no other evidence on record from the opposite party, it is proved that respondent Madanlal was rash and negligent as a result thereof the accident took place. The learned Claims Tribunal in last line in para 9 has used the word that "this issue is decided in favour of the applicants and against the non- applicants", on this basis, learned Counsel for the respondent MPSRTC, Mr. N.P. Mittal, contended that this finding is against the Nagar Palika Parisad, Shivpuri. Having held that, it was respondent Madanlal who was responsible, the Claims Tribunal ought to have specified so clearly. A reading of the entire paragraph 9 would go to show that finding recorded unequivocally holds that Madanlal alone is responsible for rash and negligent driving.

8. This Court has also gone through the evidence on record alongwith the respective Counsel for the parties and finds that it has been proved beyond reasonable doubt that accident occurred due to rash and negligent driving of

respondent Madanlal, as such the driver of the alleged truck, MPSRTC is held to be liable.

9. Mr. Mittal, learned Counsel relied on 1995 MPLJ 103, Vimla Gangotia (Smt.) and Anr. v. National Insurance Co. and Ors. It was a case where two drivers of the different two vehicles were found negligent whereas in the case in hand only the driver of MPSRTC has been found negligent. The driver absconded from the place of accident. The above referred cited case is not applicable in this case. Mr. Mittal also placed reliance on 1995 MPLJ 167 United India Insurance Co. Ltd. v. Smt. Pratibha Rathi and Ors. and 1995 MPLJ 297 National Insurance Co. Ltd. v. Kamarajhan and Ors. and contended that Insurer cannot maintain an appeal on the ground of quantum of compensation alone. He contended that insurer appeals are not maintainable. It is not only the insurer but Nagar Palika Parisad, Shivpuri also preferred the appeals, therefore, this ground is not available.

10. Mr. B.N. Malhotra, learned Counsel for the Insurance Co. placed reliance on New India Assurance Co. Ltd. Vs. Ayesha Begum and Others, and contended that the present case is squarely covered by the aforesaid decision. This Court finds great force in the contention. The facts and circumstances are similar as in Ayesha Begum''s case (supra).

11. Learned Counsel for the MPSRTC further contended that claim is higher side. No doubt the multiplier applied is slightly higher. But, all the deceased were the employees of the Nagar Palika Parisad, their chances of promotions have not been considered. In all the claims claimants include widow, sons, daughters, but no amount towards consortium has been a warded. Taking all these factors, compensation awarded to the legal heirs claimants Ramkishore in Appeal No. 10/87 Rs. 90,000/- legal heirs of Dhaniram in Appeal No. 11/87 Rs. 77,000/-, legal heirs of Rafiq Mohd. in Misc. Appeal No. 12/87 Rs. 90,000/- and legal heirs of Gausuddin in Misc. Appeal No. 13/87 Rs. 90,000/- is just and fair, this Court does not find any ground to interfere.

12. The Claims Tribunal did not consider the fact that it is not a case of joint liability nor that of contributory negligence, it is a case where the driver of the MPSRTC vehicle was rash and negligent and the accident occurred due to rash and negligent driving of the driver Madanlal. Therefore only Madanlal (driver) and MPSRTC are liable for compensation. The Tribunal was not at all justified by passing award against Nagar Palika Parisad, Shivpuri. Since Nagar Palika Parisad, Shivpuri is not responsible, the New India Assurance Co. Ltd. is also not liable to pay any amount. The appeals preferred by the Nagar Palika Parisad, Shivpuri are allowed. Consequent to the appeals preferred by the Nagar Palika Parisad, Shivpuri being allowed, the appeals preferred by the New India Assurance Co. Ltd. are also allowed. The MPSRTC and the driver Madanlal are liable to pay the amount. It is directed that MPSRTC and the driver Madanlal jointly and severally shall deposit the amount as awarded by the learned Claims Tribunal within three months from the date of order with interest at the rate of 12% per annum from the date of claim petition. If the amount is not paid within three months of the

passing of this order, it will carry interest at the rate of 18%. It is pointed out by Mr. B.N. Malhotra, learned Counsel for the Insurance Co. that in terms of the order made by the learned Claims Tribunal, Insurance Co. has deposited the amount. The Claims Tribunal is directed to refund the amount to the Insurance Co. after the same is realised. Costs of this appeal as incurred.