

(1981) 07 MP CK 0011
In the Madhya Pradesh High Court
Case No : M.A. No. 163 of 1980

Oriental Fire and Genl. Ins. Co. Ltd. and Another	APPELLANT
Vs	
Sukmati	RESPONDENT

Date of Decision : 31-07-1981

Acts Referred:

Fatal Accidents Act, 1855 — Section 1A, 2
Motor Vehicles Act, 1939 — Section 110A, 110D

Citation : (1982) ACJ 391

Hon'ble Judges : U.N. Bhachawat, J

Bench : Single Bench

Final Decision : Allowed

Judgement

U.N. Bhachawat, J.—This is an appeal u/s 110-D of the Motor Vehicles Act, 1939 (hereinafter for short referred to as "the Act") against the award dated 30.1.80 of the Motor Accidents Claims Tribunal, Jagdalpur in claim case No. 3 of 1979 whereby a sum of Rs. 30,000/- payable with interest@ 6% pa. has been awarded to the claimant-Respondent herein-Sukmati on account of the death of one Lekhan Panka on 17.4.79 as a consequence of his involvement in the accident which took place on 15.4.79.

2. The short facts essential for the decision of this appeal are : On 15.4.79, while the deceased was going on a bicycle at Gidam Road, Jagdalpur, truck No. 6565 owned and driven by Appellant No. 2 was coming from the opposite direction and the truck collided with the cycle as a result of which the deceased received injuries and on account of those injuries died on 17.4.79.

3. The Respondent preferred a claim petition u/s 110-A of the Act claiming Rs. 1,56,000/- as compensation on account of death of the deceased in the said accident. She had filed this claim petition for her own benefit claiming herself to be the wife of the deceased. It was alleged that the accident was on account of rash and negligent driving by Appellant No. 2. The Tribunal found that there was rash and negligent driving by Appellant No. 2 due to which the accident took

place and the claimant-Respondent was the wife of the deceased and entitled to compensation of Rs. 30,000/- as already stated hereinabove. In the light of the view that I am taking on the contentions raised on behalf of the Appellants challenging the award, it is not necessary to detail further facts of the case.

3-A. The central point that was argued by the learned Counsel was that the claimant-Respondent is not covered under the definition of Section 1A of the Fatal Accidents Act, 1855, thus not entitled to claim the pecuniary loss. His submission was that the finding of the Tribunal that the claimant-Respondent is the wife of the deceased is against the evidence on record. His submission is that the claimant-Respondent though lived with the deceased as his wife, but on her own admission, she was a keep and living as such. In other words, his submission was that she was not a legally married wife of the deceased and the word "wife" in Section 1A of the Fatal Accidents Act contemplates a legally married wife. The argument of the learned Counsel for the claimant-Respondent in counter was that though the claimant-Respondent has admitted that she was a keep of the deceased in her cross-examination, on the totality of her whole statement, the finding of the Tribunal that she was a legally married wife of the deceased should be sustained.

4. I shall first proceed to consider whether the finding of the Tribunal that the claimant-Respondent is a legally married wife of the deceased is against the evidence on record. In paragraph 6 of her statement, the claimant-Respondent has unequivocally admitted that when was not a legally married wife of the deceased and she was a keep of the deceased. To quote: . This is an admission against her own interest and in unequivocal terms. The admission is a substantive evidence as held by the Supreme Court in Narayan Bhagwantrao Gosavi Balajiwale Vs. Gopal Vinayak Gosavi and Others, and Bharat Singh and Another Vs. Bhagirathi, and can be used as evidence against a person making evidence unless there is any explanation. In the instant case, there is not a single question put in the cross-examination to this witness to clarify if she meant something else by the forequoted admission. In fact of this clear admission, it is difficult to sustain the finding of the Tribunal that the claimant-Respondent was legally married to Lekhan (deceased) and fell within the expression "wife" used in Section 1A of the Fatal Accidents Act. It has not been disputed by the learned Counsel for the Respondent and in my view rightly that the expression, "wife" used in Fatal Accidents Act contemplates a legally married wife. The Tribunal has, for its finding relied on various decisions reported in Badri Prasad Vs. Dy. Director of Consolidation and Others, , Maharsai Dani v. Thakuri Lagna 1978 M.P.L.J. 505 and Bahurani v. Girja Bai (1977) 1 M.P.W.N. 106 . All these decisions relate to the drawing of presumption regarding the relationship of husband and wife on account of long living of the parties as husband and wife. There can be no debate as regards the principles laid down in these decisions for drawing of presumption. But in the instant case, there is a positive evidence contained in the forequoted admission of the claimant-Respondent herself and that defaces the presumption. In face of this categorical admission the

presumption cannot be taken benefit of. In the result, the finding of the Tribunal that she was a legally married wife of the deceased cannot be sustained in view of Section 1A of the Fatal Accidents Act, the relevant part whereof reads thus:

Every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused and shall be brought by and in the name of the executor, administrator or representative of the person deceased.

5. The Respondent-claimant is not entitled to maintain this petition. It is not necessary to give detailed reasons for this, in view of the fact that this point is covered by a Division Bench decision reported in *Shankarrao Prahaladrao v. Babulal Fouzdar* 1982 A.C.J. 3381 (M.P.). The relevant observations from this decision are extracted hereinbelow:

Our conclusion, therefore, is that the Appellant who is the brother of the deceased is not a person entitled to claim compensation for pecuniary loss, if any, to him u/s 1A of the Fatal Accidents Act. This being so, further question whether he has suffered any pecuniary loss or not as a result of the death in a fatal accident of deceased Ambadas is of no consequence. Moreover, the Tribunal has also held that he has not suffered any pecuniary loss as a result of the fatal accident and we find conclusion is supported by the evidence. This is, however, not sufficient to dismiss the entire claim, if a claim for economic loss to the estate u/s 2 of the Fatal Accidents Act has been made out. In our opinion such a claim for award of compensation for economic loss to the estate of the deceased is made out in the present case and the Appellant as brother of the deceased being a legal representative, is therefore, entitled to file the application u/s 110-A of the Motor Vehicles Act to recover the same for benefit of the estate.

In view of my conclusion, which goes to the root of the matter, as the matter can be disposed of only on this conclusion, it is not necessary to go into other question.

6. In the result, the appeal is allowed. The impugned award is set aside. In the facts and circumstances of the case, I make no order as to costs. Costs shall be borne by the parties throughout.