
(2017) 08 MP CK 0015
In the Madhya Pradesh High Court
Case No : 590 of 2005

Pratap Singh Pateriya

APPELLANT

Vs

State of M.P. & Anr.

RESPONDENT

Date of Decision : 10-08-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 176](#) - Inquiry by Magistrate into cause of death
[Motor Vehicles Act, 1988](#), [Section 173](#),
[Section 173](#), [Section 173](#)

Citation : (2017) 08 MP CK 0015

Hon'ble Judges : S.K.Awasthi

Bench : Single Bench

Advocate : Kripal Singh, B.N.Malhotra

Final Decision : Dismissed

Judgement

1. This appeal is filed by the appellants under Section 173 of the Motor Vehicles Act, 1988 (for brevity, the "Act") challenging the award dated 11.05.2005 passed by the Additional Motor Accident Claims Tribunal, Sabalgarh, District Morena (for brevity, the "Tribunal") in Claim Case No.27/2003, by which the claim petition was dismissed by the Tribunal.

2. The facts of the case are that on 15.11.2002 deceased Brijendra Singh, husband of the appellant No.1 and father of the appellants No.2 and 3, while driving tractor No.MP06-J/1688 was coming from the hill of Babu Baba, village Bichpuri. On the way to Bichpuri, the tractor overturned on account of mechanical defect in the gear box of the vehicle,
which resulted into the death of Brijendra Singh.

3. The appellants had filed a claim petition under Section 166 of the Act, claiming compensation of Rs.48,64,500/- on account of the death of Brijendra Singh on the ground that at the time of accident, the age of Brijendra Singh was

23 years and he was an agriculturist and also engaged as a driver, by which he was earning Rs.11,500/- per month, but due to the death of Brijendra Singh, they have been deprived of earning of the deceased Brijendra Singh.

4. The Claims Tribunal after framing the issues, recorded the evidence of both the parties, tested the claim and after appreciation of evidence dismissed the claim petition on the ground that there was no evidence to establish the alleged accident and death of the deceased.

5. Being aggrieved by the findings given by the Tribunal, this appeal has been preferred by the appellants.

6. Learned counsel for the appellants submits that the Tribunal had erred in arriving of the conclusion that there was no cogent evidence on record to prove the alleged accident and the death of the deceased in the said accident. He submits that the claimant's witness Kalyan Singh (AW-3) deposed before the Tribunal that two and half years ago, he alongwith Brijendra Singh had gone to the hill of Babu Baba for taking boulders for construction of boundary wall. When they were coming back after loading boulders in tractor trolley, on the way, the tractor overturned due

to failure of break which resulted into death of Brijendra Singh. He, therefore, submits that this being the deposition of the claimant's witness Kalyan Singh (AW-3), the Tribunal could not, under any circumstances, have come to the conclusion that there was no evidence to prove the alleged accident and the death of Brijendra Singh. Hence, learned counsel submits that as the claim petition was dismissed on this fact, the present appeal should be allowed by awarding compensation to the appellants who are dependents of the deceased. He placed reliance on the judgments in the cases of Indra Devi and others v. Naresh and another, 2012 ACJ 2341 (Rajasthan); Yashwant Singh Baghel and another v. Shiv Prasad Vishwakarma and others, 2006 ACJ 2325 (Madhya Pradesh); Shaik Babumiya and others v. General Manager, A.P.S.R.T.C., Hyderabad, 2008(1) T.A.C. 521 (Andhra Pradesh); and Sangpari v. F.Lalremruata and another, 2016 ACJ 416 (Gauhati).

7. Per contra, learned counsel for the respondent No.2 supported the reasoning recorded by the Tribunal and submitted that the same is just and proper and deserves no interference.

8. I have considered the arguments advanced by the learned counsel for the rival parties and perused the record.

9. In order to prove their case, the claimants/appellants have examined four witnesses namely, Ravindra Gautam, Head Constable (AW-1),

Hemlata (AW/2), eye-witness Kalyan Singh (AW-3) and Chowkidar Chironji (AW-4). Hemlata (AW-2) deposed in her statement that Brijendra Singh was her husband and he was working as driver. Two and half years ago, Brijendra Singh had gone to the hill of Babu Baba for taking boulders for the construction of the

boundary wall. On the said hill, the tractor was overturned at about 4:00 PM which was driven by Brijendra Singh due to failure of the gear which resulted into his death. She admitted that the accident has not taken place before her. Chironji (AW-4) stated in his examination-in-chief that the tractor driven by the deceased Brijendra Singh overturned due to failure of the break, as a result whereof Brijendra Singh died then he reported the accident to the Police Station Vijaypur but the police did not write the report. He also admitted that at the time of accident, he was not present on the spot. Kalyan Singh (AW-3) who is claiming himself as eye witness of the said accident, deposed that two and half years ago, he alongwith Brijendra Singh had gone to the hill of Babu Baba for taking boulders for the construction of boundary wall of the field. When they were returning after loading the boulders from the hill of Babu Baba at about 4:00 PM, the tractor overturned due to failure of break which resulted into the death of Brijendra Singh.

10. As per the case of the appellants/claimants, the alleged accident occurred on 15.11.2002 at about 4:00 pm but no document is available on record to show

that the accident was reported to the Police, therefore, the Police has not made any inquiry about the accident. Neither the post-mortem of the deceased Brijendra Singh was conducted nor the Police seized the offending vehicle.

11. From perusal of the statement of Ravindra Gautam, Head Constable (AW-1), it reveals that Mukut Singh made a complaint to the Superintendent of Police, District Sheopur regarding the accident and the Superintendent of Police sent the complaint to the S.D.O.P., Vijaypur for conducting the inquiry regarding the said complaint. The S.D.O.P. conducted the inquiry and recorded the statements of Mukut Singh and other witnesses including eye-witness Kalyan Singh (AW-3) and found that Brijendra Singh died on 15.11.2002 due to overturning the tractor which was driven by deceased himself. This inquiry report Ex.P-1 is also posed by the witnesses but the Police has not collected any material to substantiate the alleged accident. In the inquiry report, it was mentioned that Chowkidar Chironji made entry regarding the death of the deceased Brijendra Singh but copy of such entry was not filed either by the appellants or by Chowkidar Chironji (AW-4). Section 176 of the Code of Criminal Procedure imposes the liabilities on the citizen to inform about any unnatural death to the police but despite that no information regarding the death of the deceased in the motor accident has been given by Kalyan Singh (AW-3) to the police.

12. From the evidence on record, it is clear that the deceased Brijendra Singh himself was driving the tractor which overturned as a result of which he died on the spot. When the deceased Brijendra Singh died on account of his negligence, the claimants are not entitled to get any compensation under the provision of Section 166 of the Act. Therefore, the appellants/claimants are not entitled to get any compensation from the respondents.

13. In the result, the appeal being devoid of merit is hereby dismissed. Award

dated 11.05.2005 passed by the Tribunal is affirmed. In the facts and circumstances of the case, the parties are directed to bear their own costs.