
(2005) 08 MP CK 0112
In the Madhya Pradesh High Court
Case No : M.A. No. 993 of 2002

Premlata Shukla and Others	Vs	APPELLANT
Sitaram Rai and Others		RESPONDENT

Date of Decision : 02-08-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 304A, 337

Citation : (2006) ACJ 1081

Hon'ble Judges : U.C Maheshwari, J;A.K. Mishra, J

Bench : Division Bench

Advocate : Pushpendra Yadav, for the Appellant; Rajendra Pandey and N.S. Ruprah, for the Respondent

Judgement

U.C. Maheshwari, J.—Appellants-claimants have preferred this appeal against dismissal of their claim vide award dated 8.2.2002 passed by the Additional Motor Accidents Claims Tribunal, Bhopal in Claim Case No. 5 of 2001.

2. According to claimant on 23.1.2001 deceased Shivnandan Prasad Shukla along with appellants who are his wife and son were travelling from Bhopal to Allahabad in a Tempo Trax bearing the registration No. MP 04-H 5525 driven by Sitaram, the respondent No. 1, in a rash and negligent manner met with an accident near Rahat-garh with the truck which came from the opposite direction in normal speed. Resultantly, appellant No. 1, deceased and other persons sustained injuries and were taken to the hospital at Sagar. During the course of treatment he succumbed to injuries. The jeep was owned by respondent No. 2 while insured with the respondent No. 3. The incident was reported to police Rahatgarh. On registration of the offence by holding investigation, the respondent No. 1 was charge-sheeted under Sections 279, 337 and 304A of Indian Penal Code. The deceased was working as Senior Technician in BHEL and earning Rs. 15,900. All the appellants are dependent on him, due to untimely death they are deprived from livelihood, love and affection. Appellants filed claim application for compensation of Rs. 22,33,000.

3. Respondent Nos. 1 and 2 remained ex pane in the Tribunal.

4. In reply, respondent No. 3 denied the accident. Jeep was not driven by the respondent but by one Patel who lodged the report of incident. The incident took place because of negligence of unknown truck and same was reported to the police. The claim has been unnecessarily filed against insurer and other respondents and prayed for dismissal of the same.

5. After framing the issues, evidence was recorded, on appreciation of it the Tribunal has held that respondent No. 1 has not committed any rash and negligent act and accident took place due to negligence of unknown truck against which report was lodged and dismissed the claim. Hence, this appeal is preferred for allowing the claim application of the appellants.

6. Mr. Pushpendra Yadav, the learned Counsel for appellants has submitted that just after accident injured were taken to hospital and this report was not lodged by them and appellants and deceased were sitting in the jeep they saw the rash and negligent driving of the respondent No. 1. Appellant No. 1 in her deposition categorically stated that the incident took place due to rash and negligent driving of respondent No. 1, her statement further supported by R.K. Sharma, CW 1 but the Tribunal has not appreciated the evidence according to its spirit and on wrong premises by saddling the liability against unknown truck their claim application was dismissed. He prayed for allowing his appeal and in pursuance of it their claim application be allowed and adequate compensation be awarded.

7. In respect of quantum of compensation he submitted that appellants have filed the pay-slip of the deceased, Exh. P3, which shows the salary of deceased was Rs. 15,950.53 p.m. and assessment of loss of dependency may be carried out on the basis of salary to award the adequate compensation.

8. While on the other hand Mr. Rajendra Pandey, learned Counsel for respondent No. 2 has submitted that aforesaid jeep was duly insured with respondent No. 3 and if any liability is found against them, then same be saddled against respondent No. 3.

9. Mr. N.S. Ruprah, learned Counsel for insurer, respondent No. 3, has submitted that in view of papers of criminal case and cross-examination of witnesses the Claims Tribunal has properly appreciated the circumstances and dismissed the claim of appellants. Thus, no interference is required at the stage of appeal to allow the claim of appellants and prayed for dismissal of appeal.

10. Having heard learned Counsel for the parties, on examining the evidence on record it appears from the deposition of R.K. Sharma, CW 1 that Tempo Trax was plied in high speed and caused accident. His statement is further supported by Premlata, CW 2. In her deposition she categorically stated that jeep was driven in a rash and negligent manner and collided with the truck which was plying in normal/slow speed. A person who was sitting in the vehicle may be a good and reliable witness regarding the manner of incident and her statement has not

been controverted by the respondents either by effective cross-examination or by examining driver of the jeep, respondent No. 1, but extend their defence merely on the basis of F.I.R. or investigation documents which have not been duly proved, no inference can be drawn against the case of appellants on the basis of these documents. We find sufficient circumstances on record to draw inference against respondent No. 1. Thus, we hold that the accident was the result of rash and negligent act of the respondent No. 1 and all the respondents are liable to indemnify the claim of the appellants.

11. On considering the question of quantum, the appellants have produced the pay-slip of the deceased, Exh. P3 and the same has been proved. According to it the deceased was working on the post of Senior Technician, BHEL, Bhopal and getting salary Rs. 15,950.53 but in the pay-slip Rs. 1,388 is shown as house rent allowance while Rs. 649 is shown as income tax which cannot be included in assessment for loss of dependency. After deducting this amount monthly income of the deceased comes to Rs. 13,913 which is round off to Rs. 14,000 for assessing the dependency. On 1/3rd deduction for expenses of the deceased which he would have spent on himself had he been alive, then the loss of dependency comes to Rs. 9,333 per month and annually comes to $(Rs. 9,333 \times 12) = Rs. 1,11,996$. As per post-mortem report deceased was aged 52 years, thus as per Second Schedule to the Motor Vehicles Act the multiplier of 11 is applicable. On applying it the total loss of dependency comes to $(Rs. 1,11,996 \times 11) = Rs. 12,31,956$ and the same is awarded. In addition to it Rs. 2,000 for funeral expenses, Rs. 2,500 for loss to estate and Rs. 5,000 for loss of expectancy of life of deceased are also awarded. Total award of Rs. $(12,31,956 + 2,000 + 2,500 + 5,000) = Rs. 12,46,456$ is passed. The awarded amount shall carry interest at the rate of 6 per cent per annum from the date of filing of the claim application. It shall be payable by the respondent Nos. 1, 2 and 3 jointly and severally.

12. Appeal is allowed in part. There shall be no order as to costs.