
(2005) 08 MP CK 0006
In the Madhya Pradesh High Court

Ramkanyabai and Others

APPELLANT

Vs

Unav Transport Co. (P) Ltd. and Others

RESPONDENT

Date of Decision : 24-08-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 166, 173

Citation : (2005) 4 ACC 302 : (2007) ACJ 2003

Hon'ble Judges : Ashok Kumar Tiwari, J;A.M. Sapre, J

Bench : Division Bench

Final Decision : Allowed

Judgement

A.M. Sapre and A.K. Tiwari, JJ.—This is an appeal filed by the claimants u/s 173 of the Motor Vehicles Act against an award dated 16.4.2002 passed in Claim Case No. 4 of 2001 by the Third M.A.C.T., Ratlam (Camp Jaora).

2. By the impugned award, the Tribunal was pleased to allow the claim petition filed by the claimants and awarded a total sum of Rs. 3,78,000. However, apportioning the liability, to the extent of 50 per cent on the ground of contributory negligence, the compensation eventually payable by both insurance companies was Rs. 1,89,000 and accordingly and in consequence thereof award was passed for a sum of Rs. 1,89,000 against respondents, i.e., non-applicants. It is this award which is sought to be challenged by the claimants before this Court in this appeal.

3. Facts in brief are these:

In the midnight of 2.9.2000, Poonamchand who was driver of bus bearing No. MP 43-F 0011 while driving this vehicle dashed with a stationary truck bearing No. UP 78-T 2752. This led to his death giving rise to filing an application by the present appellants who are the claimants, i.e., wife and children of deceased Poonamchand.

4. The claim petition was filed u/s 163A of the Motor Vehicles Act claiming

compensation on the principles underlying Section 163A *ibid*. The driver, owner and insurance companies of both the vehicles involved were sued as the non-applicants. Claimants only examined the wife of Poonamchand, i.e., Ramkanyabai, to prove the claim. Nobody was examined on behalf of the respondents, i.e., non-applicants.

5. By the impugned award, the Tribunal held that the claimants are entitled to claim a sum of Rs. 3,78,000. However, in the opinion of Tribunal it was a case of contributory negligence attributable to both, i.e., Poonamchand, the driver of the bus and the driver of other stationary truck with whom the bus of Poonamchand dashed. On this basis, it was held that both were liable to the extent of 50 per cent and, therefore, relying upon the principle of contributory negligence the compensation was apportioned to Rs. 1,89,000. Accordingly, this amount was directed to be recovered from both the insurance companies of two vehicles in the ratio of 50 per cent each. The Tribunal also held that this is not a case falling u/s 163A *ibid* but it is a case falling u/s 166 *ibid*. As stated *supra*, it is this determination which is sought to be challenged by the claimants in this appeal.

6. Heard Mr. Manish Jain, the learned Counsel for the appellants, Mr. H.G. Shukla learned Counsel for respondent No. 3 and Mr. P.K. Gupta learned Counsel for the respondent No. 5.

7. Having heard the learned Counsel for the parties and having perused the record of the case, we are inclined to allow this appeal thereby modifying the award as indicated *infra*.

8. In our opinion, the Tribunal was not right in holding that the claim petition was not filed u/s 163A *ibid* but was essentially filed u/s 166 of the Act. In our opinion, the application should have been held to have been filed u/s 163A *ibid* only and should have been accordingly dealt with. Firstly, mere perusal of the application filed by the claimants out of which this appeal arises shows that application in question was undoubtedly made u/s 163A *ibid*. Under these circumstances and in this view of the matter, the application ought to have been treated and was in fact treated to some extent as having been filed u/s 163A *ibid*.

9. So far as the finding in regard to contributory negligence is concerned, we cannot countenance it. When an application is made u/s 163A *ibid*, one is not required to examine negligence part of the parties. In other words, in an application made u/s 163A, the court is not required to examine the issue relating to negligence but what is required to be seen is whether the accident has occurred out of the use of the motor vehicle, as described u/s 163A *ibid*. This issue was answered in favour of the claimants by the Tribunal. Once this finding is recorded by the Tribunal in favour of the claimants then there was no necessity for the Tribunal to have examined the question of contributory negligence on the part of the drivers of the two vehicles and then recorded a finding of 50 per cent negligence *inter se*. Even otherwise there was absolutely no basis nor any evidence to record the finding of contributory negligence. It is an admitted fact

that there was no eyewitness to the incident. Secondly, none of the non-applicants entered the witness-box and led evidence. So there was no evidence so far as the nature of accident and how it occurred on record. In this view of the matter there was no basis nor any foundation led for recording a finding of contributory negligence and then reducing the contribution to the extent of 50 per cent on the basis of principle of contributory negligence of both the drivers.

10. Accordingly and in view of the aforesaid discussion which alone, in our opinion, is necessary, we are inclined to allow the appeal and while holding that the application out of which this appeal raises was filed u/s 163A *ibid*, we upset the finding of the Tribunal by holding that there was no case made out for holding both the drivers to be negligent in driving their respective vehicles.

11. So far as filing of cross-objections by the insurance companies, i.e., respondents herein is concerned, we do not find any merit in cross-objections, as in our opinion, the same have no foundation. Even otherwise, the insurance companies have got no right to challenge any finding except those which are recognised under Motor Vehicles Act. The finding which is sought to be challenged in this case is not such which can be made basis to challenge. Moreover in view of the fact that this Court has gone into evidence and has already upset the finding of the Tribunal, the cross-objections have got no merit. Accordingly the cross-objections filed by respondent Nos. 3 and 5 are found to be devoid of merit and the same are accordingly rejected.

12. In the result, this appeal succeeds and is hereby allowed. The impugned award is modified to the extent indicated above. The claimants are, therefore, held entitled to receive a sum of Rs. 3,78,000 (rupees three lakh and seventy-eight thousand) as already determined by the Claims Tribunal in favour of the claimants. The amount shall be recoverable from both the insurance companies in equal proportion. The counsel's fee Rs. 1,000, if certified.