
(1999) 01 MP CK 0043
In the Madhya Pradesh High Court
Case No : M.A. No. 659 of 1993

Rati Ram Pandey and Another	Vs	APPELLANT
Lalit Kumar and Others		RESPONDENT

Date of Decision : 21-01-1999

Acts Referred:

Citation : (2000) ACJ 910

Hon'ble Judges : A.K. Mathur, C.J.;Dipak Misra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

A.K. Mathur, C.J.—This is an appeal directed against the award dated 30.7.1993 passed by the learned Claims Tribunal in Claim Case No. 12 of 1992, whereby the learned Tribunal has dismissed the claim petition.

2. The brief facts which are necessary for disposal of this appeal are that the appellant No. 1 was father of deceased Nandkishore, appellant No. 2 was mother of deceased and appellant Nos. 3 to 5 were brothers and sister of the deceased Nandkishore. The non-claimant No. 1 Lalit Kumar is owner of bus No. MHG 5653 and non-claimant No. 2 is driver of the said bus. The vehicle in question was insured with the non-claimant No. 3. It is alleged that on 10.3.1990 when the non-claimant No. 2 was driving the said bus from Lanjhi to Rajegaon, at that time Nandkishore was issuing tickets as conductor. On the alleged date of incident, driver Suresh s/o Mohan was on leave. At about 6 p.m. the bus was proceeding from Rajegaon to Lanjhi and at that time, there were about 90 passengers in the bus. The bus was driven by the non-claimant No. 2. Near Devgaon, Nandkishore was standing on the gate of bus and he was managing the boarding as well as getting down of the passengers. It is alleged that at that time, Nandkishore fell down from the bus as the door of the bus was not in proper order and the locks of the door were not in working condition for which it could not be closed. It is alleged that on falling from the bus, Nandkishore was dragged to a considerable distance by the bus. It is alleged that passengers

shouted for stopping the bus, but the bus could not be stopped as the non-claimant No. 2 was driving the bus in a rash and negligent manner. When Nandkishore was crushed under the wheels of the bus and on account of excessive hemorrhage, he died. It is alleged that one Gupta Master, who saw the whole thing, chased the bus on his motor cycle and informed the driver that one passenger had fallen down from the bus and got the bus stopped. Thereafter, deceased Nandkishore was taken to hospital and he ultimately succumbed to the injuries. Therefore, the parents of the deceased and brothers and sister of deceased filed the present claim petition.

3. The claimants examined Dr. N.P. Tamarkar as CW 1, Suresh, driver of bus as CW 2, Yashwant as CW 3, Ramprasad Turkar as CW 4 and Rati Ram, father of the deceased as CW 5. The non-claimants examined three witnesses.

4. Rati Ram, CW 5, has deposed that the deceased Nandkishore was his son. He also deposed that the non-claimant Lalit Kumar is bus owner and Girish Kumar is younger brother of Lalit Kumar. At the time of accident, deceased Nandkishore was aged about 27 years. He also deposed that his deceased son was studying and also working as a ticket agent for Lalit Kumar. His son was a Commerce graduate. He deposed that the deceased used to get Rs. 45 to Rs. 60 per day; therefore, his monthly income was Rs. 1,300. The deceased retained Rs. 100 for his pocket money and rest of salary he was giving to him. He further deposed that he came to know on 10.3.1990 that his son was lying injured in the hospital, therefore, he rushed to the hospital at 8 p.m. and he was informed that his son fell down from the bus on account of failure of latch of door of bus between Rajegaon and Lanjhi at 6 p.m. He deposed that the door of bus was not properly closed; therefore, his son fell down and got crushed under the bus and died. He also deposed that the bus was driven by the non-claimant No. 2, younger brother of Lalit Kumar. He deposed that on the relevant date, the licensed conductor was on leave, therefore, this job was entrusted to his deceased son.

5. Suresh, CW 2, has deposed that on the relevant date, he had left the job, therefore, Girish, younger brother of Lalit, took up the job of driving of the said bus and he asked Nandkishore, agent, to go along with him in the bus as a conductor. Thereafter, he came to know about the death of deceased Nandkishore. He deposed that he was called by Lalit Kumar but he refused to go. He also deposed that at the relevant time when he was driver of the bus both the doors of the bus were not properly functioning as latches were not in working order and it used to slip very easily. He also deposed that at the relevant time, Nandkishore was asked to go in a bus as a conductor. Yashwant, CW 3, has deposed that on the relevant day, Nandkishore was asked by Girish, younger brother of Lalit to work as conductor and Girish himself took up the responsibility of driving the vehicle. Ramprasad Turkar, CW 4, has deposed that on the relevant day, he was going on a motor cycle from Rajegaon to Devgaon and when he saw a crowd on the road, he found that one person was lying and he was told by the persons, who gathered there, that some person had fallen down from the bus;

therefore, he went on motor cycle and informed the driver of the said bus about the unfortunate falling of passenger from bus. Thereafter, he left for his destination.

6. Both the non-claimants examined themselves. As per the statement of original driver Suresh, the deceased was working on the relevant date as a conductor of the said bus and he deposed that doors of bus were not properly locked and they used to open on jerk. Therefore, it is apparent that the vehicle in question was not kept properly and it was a rash and negligent act on the part of owner of the bus that it was not maintained properly. The doors of the bus were not in proper working condition as a result of which Nandkishore, who was working at the relevant time as a conductor of the bus, fell down and got himself killed underneath the bus.

7. After perusal of evidence it is apparent that the learned Tribunal has drawn wrong conclusion and committed error in dismissing the claim petition. It is an admitted fact that the deceased was employed with the non-claimant Nos. 1 and 2 as ticket agent and it is also an admitted fact that on the relevant date, his services were utilised as a conductor. It is also stated by the previous driver Suresh, CW 2, in his statement that the latches of the doors of the bus were not working properly; therefore, the deceased, who was working as a conductor, unfortunately fell down because of poor maintenance of bus and got himself killed. This negligence on the part of owner of bus is well established and it is also established that the deceased was working as a conductor at the relevant time. From these facts, the Tribunal has failed to draw the inference of rash and negligent act of the owner and exonerated the non-claimants, this is erroneous approach of the Tribunal.

8. After going through the evidence on record, we are satisfied that the deceased Nandkishore, who was working as a conductor with the non-claimants, died as a result of rash and negligent act of owner of the bus; therefore, the claimants are entitled to compensation for death of deceased Nandkishore. Rati Ram, CW 5, father of the deceased Nandkishore, has come in witness-box and has deposed that at the relevant time, his age was 60 years and his wife, i.e., mother of the deceased, was aged about 53 years and the deceased was earning Rs. 1,300 per month. The deceased used to retain Rs. 100 for his pocket money and remaining sum was given by him to parents. Therefore, we assess the income of the deceased approximately Rs. 1,200 p.m. and after deducting 1/3rd of that amount, the contribution would be Rs. 800 p.m. and we apply multiplier of 11 because the age of his father was 60 years and that of mother was 53 years. Therefore, it will be proper to take average age and we apply multiplier of 11, which comes to Rs. $800 \times 12 \times 11 = \text{Rs. } 1,05,600$. The claimants are also entitled to Rs. 5,000 as loss to the estate and Rs. 2,000 for funeral expenses. Hence, the claimants are entitled to total compensation of Rs. 1,12,600 with interest at the rate of 12 per cent per annum from the date of the claim petition. The insurance company/non-claimant No. 3 is liable to compensate the claimants

on account of death of the deceased Nandkishore. The National Insurance Co. Ltd. shall pay a sum of Rs. 1,12,600 to the claimants with interest at the rate of 12 per cent per annum from the date of claim petition. The amount in question should be paid within a period of four months failing which the claimants will be entitled to interest at the rate of 15 per cent per annum. The appeal is allowed. No order as to costs.