
(1979) 01 MP CK 0013

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 163 of 1975

Sabir Ali and Another

APPELLANT

Vs

Dewalal and Others

RESPONDENT

Date of Decision : 05-01-1979

Acts Referred:

Motor Vehicles Act, 1939 — Section 110D

Citation : (1979) ACJ 76

Hon'ble Judges : B.R. Dubey, J

Bench : Single Bench

Advocate : R.G. Nigam, for the Appellant; H.S. Rajpal and Dhupar, for the Respondent

Final Decision : Dismissed

Judgement

B.R. Dubey, J.—This is an appeal u/s 110-D of the Motor Vehicles Act, 1939 against the award and decree passed by the member Motor Accidents Claims Tribunal, Indore in claim case No. 9 of 69, whereby a sum of Rs. 2,500/- by way of compensation for a fatal accident was allowed to the Applicants Respondents Nos. 1 and 2.

2 The claimants Respondents Nos. 1 and 2 are the parents of deceased Shakunbai who met with an accident by the MPE 1279 on 3.4.69 and died on the spot. The truck was registered in the names of Respondents Nos. 3 and 4 who had sold it to Appellant No. 2 Bhauddin. It was being driven by Appellant No. 1 Sabir Ali.

3. The case of the claimants was that on the date of the accident at about 4 or 4.30 p.m. deceased Shakun Bai was standing out of her house on the roadside and she was knocked down by the truck MPE 1279 which was being driven rashly and negligently by its driver, Appellant No. 1 Sabir Ali. The Respondent No. 4 Harnam-Singh did not file any written statement. The Respondent No. 3 Balwant Singh in his written statement denied the liability for compensation on the

ground that he had already sold the truck to Appellant No. 2 Bhauddin. The Appellants resisted the claim inter alia on the ground that the driver Appellant No. 1 was driving the truck diligently, but the girl on account of her own mistake dashed against rear wheel of the truck and died on the spot. The Claims Tribunal however held that the accident occurred on account of the rash and negligent driving of the truck by Appellant No. 1 and that both the Appellants were liable to pay compensation to the legal representatives of deceased Shakun Bai. The Claims Tribunal assessed the compensation at the sum of Rs. 2,50,00/- and gave the award and decree accordingly. The Appellants have, therefore come to this Court in this Misc. Civil appeal. The Respondents Nos. 1 and 2 have filed cross objection in which they have claimed the compensation at a sum of Rs. 5,00,00/-.

4. I have heard the learned Counsel from both the sides and perused the record. To my mind, this appeal as well as the cross-objection must be dismissed. The evidence of Sita Bai (A.W.7), the sister of the deceased is quite reliable. She has deposed that just before the said accident her mother had boarded a bus for going to Depalpur and this witness and the deceased were standing on the side of the road. She has further deposed that one truck came from the side of Depalpur in high speed without blowing any horn and it passed away crushing the deceased under the front wheel. A suggestion was made in the cross examination of this witness that she and the deceased had already crossed the road for giving a send off to their mother who boarded the bus which was standing on the other side of the road while on its way to Depalpur and when that bus started these two girls were again crossing the road and at that time the deceased came underneath the rear wheel. To my mind this defence would not in any way help the Appellants.

5. The Appellant No. 1 Sabir Ali (NA.W.3) has examined himself and has deposed that at the time of the said accident, the Kesur bus which was going towards Depalpur was standing on the road. He has further deposed that while he was driving the truck towards Indore side he felt a jerk and stopped the truck. Thereafter people started crying that a girl was crushed under the truck. The said Appellant has deposed that he did not know from what direction the deceased had come and how she was run over by the truck.

6. It may be noted that the Appellant No. 1 having noticed that a bus was standing on the road either to take the passengers or to drop them he ought to have been very careful in driving the truck at the time when he actually crossed the bus. Even presuming that the two girls Sita Bai and the deceased had gone to the other side of road to give a send off to their mother and after their mother boarded the bus they were again crossing the road, the Appellant No. 1 ought to have blown the horn and should have driven the truck very slowly. In case the story given by Sita Bai is true, the Appellant No. 1 could not have any difficulty in seeing the two girls standing by the side of the road. Thus in any case had the Appellant No. 1 been careful while crossing the passenger bus the accident could have been avoided.

7. It is true that one witness Kanhaiya Lal, who according to the case of the claimants was an eye witness was not produced for cross-examination after the exparte decree was set aside. However, as already stated earlier there is no ground to discard the solitary testimony of Sita Bai (A.W.7). I therefore concur with the finding of the Claims Tribunal that the accident took place on account of rash and negligent driving of the truck by Appellant No. 1. It is not disputed that at the time of the accident the truck was owned by Appellant No. 2 and hence both the Appellants are liable to pay compensation on account of the fatal accident.

8. As regards the quantum of compensation the learned Counsel for the Appellants has not challenged it at the time of the arguments. The Respondents Nos. 1 and 2 have filed a cross objection whereby they have sought to enhance the compensation to a sum of Rs. 5,000/-. In this connection it may be noted that the learned Member of the Claims Tribunal has rightly held that the deceased was not an earning member of the family and being a girl she was expected to remain as a liability till her marriage. Therefore, a nominal compensation of Rs. 2,500/- has been awarded. There is no material on record to enhance the compensation awarded by the Claims Tribunal. For the above reasons, I am of the view that both the appeal as well as the cross objection are liable to be dismissed.

9. In the result this appeal as well as the cross objection of Respondents Nos. 1