

(2000) 03 MP CK 0033

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 658/93

Sadhu and Another

APPELLANT

Vs

Maresh Prasad Soni and Another

RESPONDENT

Date of Decision : 30-03-2000

Acts Referred:

Citation : (2001) 1 ACC 103 : (2000) 2 MPHT 175 : (2001) 2 MPJR 479

Hon'ble Judges : Bhawani Singh, C.J.; A.K. Mishra, J

Bench : Division Bench

Advocate : Naman Nagrath, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Bhawani Singh, C.J.

This appeal is directed against the award dated 12-10-1993 passed by the Motor Accident Claims Tribunal, Chhatarpur in Claim Case No. 24 of 1990.

In this accident, Pyarelal (30) died on 28-11-1989. He was driver of vehicle bearing registration No. C.I.Q. 7666 owned by respondent Maresh Prasad Soni. At the time of accident, the deceased was earning Rs. 600.00 per month. The claimants were dependents on him. The vehicle in question was insured with respondent United India Insurance Company Limited, Branch Office, Chhatarpur.

The defence taken is that the driver himself was negligent for the accident. He violated the terms of policy for carrying more passengers than covered by it. On the pleadings of the parties, the Tribunal framed as many as five issues. The Tribunal found that the accident took place due to the negligence of driver; therefore, the claimants were not entitled to compensation. Issue with respect to loading of more passengers than covered by the policy has not been proved. The age and the salary of the deceased have been proved but not the allegation of driving the vehicle for hire or reward. Since it was found that the driver himself was negligent for the accident, the claim of the claimants has been dismissed by

the Tribunal. However, for no fault liability, amount of Rs. 25,000.00 has been given to the claimants.

The present appeal is at the instance of claimants praying for setting aside of the award and for allowing them just compensation on account of death of deceased. Shri Naman Nagrath, learned counsel for the claimants contends that the finding of the Tribunal with respect to negligence of driver is erroneous and unsustainable. The learned counsel submits that the said finding is liable to be set aside in view of evidence on record suggesting that the vehicle was defective as a result of which the accident took place. With a view to bring home the submission, the learned counsel took us through the evidence recorded in the case. We find that the conductor of the vehicle in question, namely Mangaldin (P.W. 2) has stated that the steering of the vehicle started vibrating suddenly resulting into the accident. The vehicle was not subjected to mechanical examination either by the Insurance Company or by the owner. Therefore, the best evidence in the facts and circumstances of the case is that of Conductor who was in the vehicle sitting by the side of the driver at the time of accident. As per his statement, he noticed vibrating of the steering and taking place the accident and there was no chance to avoid the accident by application of brakes. This means that immediately after vibrating of the steering wheel, accident took place.

Consequently, in absence of any other evidence to the contrary, we find that negligence can not be attributable to the driver (deceased). The vehicle becoming all of a sudden defective is not uncommon. In view of evidence of the Conductor on record and in absence of evidence pointing out negligence of the driver, it can safely be concluded that the driver was not negligent and the Tribunal has not correctly assessed and appreciated the evidence on this point resulting in erroneous finding on this issue. Mother of the deceased driver could not have said anything about the accident. Gorelal was examined by the Insurer but he did not attribute the negligence to the driver.

Having found that the driver was not negligent for causing the accident, the claim of the claimants is maintainable by the parents of the deceased. Now, the question which arises is what should be the just compensation payable in this case. The deceased was 30 years old at the time of accident. He was earning Rs. 600.00 per month. His father was 55 and mother 50 at the time of accident. Keeping one-third of the amount of earning which the deceased might have been spending on himself, he must be spending a sum of Rs. 400.00 on the parents. In a case of this nature, reasonable multiplier would be eleven.

Accordingly, the amount of compensation would be Rs. 52,800.00 (Rs. 400.00 x 12 x 11) in addition to Rs. 2000.00 towards funeral expenses taking the compensation amount to the total of Rs. 54,800.00 (Rupees fifty four thousand eight hundred only) which is payable with interest at the rate of 8% per annum from the date of application till the date of payment. The respondent Insurance Company is directed to pay the amount of compensation awarded within a period of two months from the date of submission of certified copy of this order. In case

the Insurance Company does not pay the amount so awarded within the prescribed period, the awarded amount shall carry interest of 12% per annum from the date of award till the date of payment. Appeal is accordingly allowed.