
(2004) 01 MP CK 0058
In the Madhya Pradesh High Court
Case No : M.A. No. 545 of 1998

Savitri and Others

APPELLANT

Vs

Mallu Singh and Another

RESPONDENT

Date of Decision : 06-01-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 147(1)

Citation : (2004) ACJ 1344

Hon'ble Judges : Deepak Verma, J; Ashok Kumar Tiwari, J

Bench : Division Bench

Advocate : Indira Vyas, for the Appellant; K.K. Gupta, for the Respondent

Final Decision : Allowed

Judgement

A.K. Tiwari and Deepak Verma, JJ.—Feeling aggrieved by the award passed on 5.3.1998 by First-Addl. Motor Accidents Claims Tribunal, Barwani in Claim Case No. 94 of 1996, present appeal u/s 173 of Motor Vehicles Act, 1988 has been preferred by claimants for enhancement as also for fixing the liability to pay compensation on the insurance company.

2. Appellants have been awarded a sum of Rs. 1,99,000 against respondent No. 1 owner of the truck only. Insurance company has been exonerated of its liability.

3. The main thrust of the arguments of learned counsel for appellants was that Tribunal committed a manifest error in not fastening any liability on the insurance company. It was submitted that as per claim petition filed by claimants, it has been specifically pleaded and proved also that deceased Rajesh was travelling in the truck bearing registration No. MP 09-K 0507 as a second driver. The truck at the relevant point of time was being driven by Ramsingh who also died in the same accident and owned by respondent No. 1 Mallusingh and insured with respondent No. 2 insurance company.

4. Respondent No. 1 owner had not contested the matter and remained ex parte before the Tribunal.

5. By the impugned award, two claim petitions have been disposed of; one preferred by legal representatives of deceased Rajesh, i.e., present appellants and another preferred by legal representatives of the deceased Laddu, cleaner of the vehicle. In the claim petition of legal representatives of Laddu, liability on insurance company has been fastened because cleaner was covered under the policy and the claimants have not preferred any appeal.

6. In this appeal, appellants have also filed an application under Order 41, Rule 27 of the CPC read with Section 151 with a prayer to take the additional documents on record.

7. From the insurance policy issued by respondent No. 2 which is not in dispute, it is established that for the said truck the liability of two drivers and one cleaner was covered. This is also admitted by DW 1 Rajendra Kumar Upadhyaya. From the evidence available on record and statement of Mallusingh recorded in criminal case filed at Exh. D-8, it is also fully established that deceased Ramsingh was driving the offending vehicle at the time of accident and was holding a valid licence, whereas, deceased Rajesh was said to be the second driver in the said vehicle and was sitting next to Ramsingh.

8. In the light of evidence available on record, the Tribunal below has committed an error in holding that deceased Rajesh was not travelling in the said truck as a second driver but was travelling as a passenger.

9. From the claim form, submitted by respondent No. 1 soon after the accident, the owner of vehicle himself has shown that vehicle in question was being driven by Ramsingh, son of Jagannath in the said claim form in condition No. 8, he has further described that driver, second driver and cleaner expired. If according to Mallusingh, owner of the vehicle, at the relevant point of time vehicle was being driven by first driver Ramsingh and Rajesh was sitting by his side, then Rajesh alone would be deemed to be the second driver. This document and the document under which respondent No. 1 Mallusingh had taken the vehicle on supratnama, have not been properly appreciated by Claims Tribunal. In the light of these documents and as per terms and conditions of the policy, the Tribunal below committed an error in exonerating insurance company. Policy clearly stipulates that two drivers under the said policy for the said offending vehicle were covered and there is sufficient evidence to show that even deceased Rajesh was travelling in the said truck as a second driver.

10. Thus, the finding recorded by the Claims Tribunal that no liability can be fastened on the insurance company is patently illegal and erroneous. The same is hereby set aside.

11. Learned counsel for appellants further contended that the amount awarded is on lower side and deserves to be enhanced.

12. We have examined the evidence of Savitri, widow of Rajesh and find that just and proper amount of compensation has been awarded to appellants. Even,

otherwise, looking to the fact that award was passed on 5.3.1998 and interest has been awarded from 8.9.1992 at the rate of 12 per cent per annum, we find that no case for any enhancement of amount of compensation is made out.

13. The appeal is allowed to the extent that both respondents would be jointly and severally liable to pay the amount of compensation of Rs. 1,99,000 together with interest as has been awarded by the Claims Tribunal. Parties to bear their own costs.