

(1987) 09 MP CK 0026

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 32 of 1984

Shahzadibai

APPELLANT

Vs

Babukhan and Others

RESPONDENT

Date of Decision : 16-09-1987

Acts Referred:

Citation : (1988) 1 ACC 24 : (1990) 68 CompCas 605

Hon'ble Judges : R.K. Verma, J;G.G.Sohani, J

Bench : Division Bench

Advocate : S.K. Pavakar, for the Appellant; C.L. Yadav and B.K. Samdani, for the Respondent

Final Decision : Partly Allowed

Judgement

R.K. Verma, J.—This is an appeal by the claimant-Shahzadibai, widow of the deceased, Nabinoor, against the award dated September 26, 1983, passed by the Motor Accidents Claims Tribunal, Mandsaur, in Claim Case No. 46 of 1978 whereby the learned Tribunal has awarded a compensation of Rs. 8,250 for the death of the deceased, Nabinoor, together with interest at 6% per annum from September 27, 1978, the date of filing the claim petition till realisation.

2. The facts giving rise to this appeal, briefly stated, are as follows :

On March 28, 1978, the deceased, Nabinoor, who was employed as a cleaner by respondent No. 1, Babukhan, owner of the truck bearing Registration No. MPM-3221, died during the course of his employment as a result of the accident to the truck aforesaid which, while transporting a consignment of oranges from Bhawani Mandi to Bhilwara, turned turtle at a place called Gandhi Sagar No. 1.

3. On a claim petition having been filed by the appellant-widow and two others, the learned Tribunal, on appreciation of the evidence adduced in the case, found that the deceased, Nabinoor, died as a result of the accident to the truck in question which occurred due to rash and negligent driving of the truck by its driver-respondent No. 2. The owner-respondent No. 1 was, during the material

time, insured in respect of the truck in question by the insurer-respondent No. 3. The learned Tribunal found that the deceased was aged about 60 years at the time of the accident and his income as a cleaner was Rs. 300 per month out of which, the dependency of the widow who was found to be the sole dependant of the deceased was assessed at Rs. 150 per month. Adopting a multiplier of five years, the learned Tribunal has assessed the loss of dependency to be Rs. 9,000. To this amount, the learned Tribunal has added Rs. 2,000 as loss of consortium, thus computing a total amount of Rs. 11,000. Out of this, the Tribunal has deducted 25 per cent, on account of uncertainties and imponderables in life and has consequently awarded Rs. 8,250 as compensation payable to the appellant-widow by the owner and the driver-respondents Nos. 1 and 2 respectively. The learned Tribunal has, however, found that the insurance company-respondent No. 3 was not liable under the insurance-agreement because it held that the truck in question was being driven by respondent No. 2, Hiralal, who had no valid licence. The reason for so holding was that the learned Tribunal took the view that the burden to prove the fact that the driver had a valid licence was on the owner and the driver which they failed to discharge. The plea that the driver did not hold a valid licence was of course raised by the insurance company-respondent No. 3.

4. Being not satisfied with the amount of compensation awarded and the finding that the respondent No. 3, insurance company, was not liable, the appellant-claimant, the widow of the deceased has filed this appeal.

5. Having heard learned counsel and having considered the evidence and the award, we have come to the conclusion that the finding of the learned Tribunal that the insurance company was not liable because the owner and the driver had not proved holding of a valid licence, is patently erroneous. The burden lay on the insurance company to establish the plea taken by it in this regard and the insurance company having failed to make proper inquiries from the office of the R. T. O. regarding the fact of issue of driving licence to the driver-respondent No. 2, and having adduced no relevant evidence which could give rise to an inference about the respondent No. 2 being an unauthorised driver, the finding of the learned Tribunal in this regard cannot be sustained and is consequently reversed. The insurance company is, therefore, held liable jointly and severally along with the owner and the driver of the truck in question, for payment of compensation to the appellant-claimant.

6. As regards the quantum of compensation, it has not been shown as to how the amount of compensation awarded by the learned Tribunal was unjust or improper. In the circumstances of the case and on the findings arrived at by the learned Tribunal, we hold that the compensation amount awarded is not unreasonable and as such the same does not call for any modification.

7. In the result, this appeal is partly allowed only to the extent that the insurance company-respondent No. 3 is also liable jointly and severally along with the owner and driver-respondents Nos. 1 and 2 to pay the amount of compensation as determined by the learned Tribunal to the appellant-widow of the deceased.

8. There shall, however, be no order as to costs.