
(1994) 05 MP CK 0007

In the Madhya Pradesh High Court

Case No : M.A. No's. 262 of 1992 and 10 of 1993

Shakun

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 27-05-1994

Acts Referred:

Motor Vehicles Act, 1988 — Section 173
Penal Code, 1860 (IPC) — Section 304A

Citation : (1995) ACJ 64

Hon'ble Judges : Tej Shankar, J;S.K. Dubey, J

Bench : Division Bench

Advocate : N.D. Singhal, for the Appellant; C.R. Roman and R.K. Vashishtha, Additional Government Advocate, for the Respondent

Judgement

Tej Shankar, J.—Both these appeals arise out of a claim petition presented by Shakun, wife of Suresh Dheemar, u/s 173 of the Motor Vehicles Act, 1988. It appears that Suresh, husband of claimant Shakun and son of Puniya, was a temporary employee in the Irrigation Department and was earning a sum of Rs. 450/- p.m. On 31.10.1986 he was going on the site on truck No. MPZ 8125. It was being driven by Shiv Lahri rashly and negligently. Due to his rash and negligent driving it turned turtle near village Sallaiya and Suresh Dheemar was badly injured. He was sent to Gwalior hospital but declared dead. The police had arrived at the place of occurrence and registered a case against Shiv Lahri driver u/s 304A, Indian Penal Code, 1860. The petitioner claimed herself to be the wife of deceased Suresh Dheemar. Puniya is his mother. The claimant further claimed that had Suresh not died he would have lived since 70 years of age and would have mended his sons. She had suffered mentally due to death of her husband. The truck belonged to the State of Madhya Pradesh. She, therefore, claimed compensation of Rs. 1,50,000/- for the loss she suffered due to death of Suresh. A sum of Rs. 50,000/- was also claimed for mental agony. Puniya, who was arrayed as non-applicant No. 3, supported the claim of the claimant and alleged that she is the mother of the deceased. She also claimed compensation equally

along with the claimant.

2. The State of Madhya Pradesh in its written statement denied that the claimant was the wife of the deceased. It was alleged that Suresh was a daily-wage employee and was working as helper at the rate of Rs. 9.65 per day plus Rs. 2.90 as D.A. Thus he used to get Rs. 12.55 per day in all. His wages were used to be deducted for his absence. It was incorrect that he was a temporary employee at the rate of Rs. 450/- per month. The accident has not been disputed, vide para 4 of the written statement, but it has been alleged that it took place due to mechanical failure of the brakes. As brakes failed the truck turned turtle. The death of Suresh did not take place due to rash and negligent driving. The claimant was not entitled to any compensation. The claim is also exorbitant. The claimant had also performed dharecha and as such she was not entitled to any claim. The Claims Tribunal framed the necessary issues that arose from the pleadings of the parties, took evidence, heard the parties and after considering the entire material awarded a sum of Rs. 70,000/- as compensation to the claimant as well as to non-applicant No. 3 jointly and severally. Besides it, interest at the rate of 12 per cent per annum from the date of the petition was also awarded. Feeling aggrieved, the State of Madhya Pradesh has preferred M.A. No. 10 of 1993 and the claimant has preferred M.A. No. 262 of 1992. As both the appeals have arisen out of the same judgment, they have been heard together on merits and are being disposed of by this common judgment.

3. We have heard the learned Counsel for the claimant, learned Additional Advocate General for the State as well as the counsel for non-applicant No. 3 at length and gone through the record.

4. It has been contended primarily by the learned Additional Advocate General that the Claims Tribunal has committed an error in allowing the petition. In fact the accident did not take place due to rash and negligent driving of the driver but it took place due to the fact that all of a sudden brakes failed. The driver was not at fault. It was inevitable accident and as such the claim ought to have been rejected. The learned Counsel for the claimant contended that the claim awarded is inadequate. As the deceased was about 30 years of age at the time of his death the multiplier should have been higher. Besides this, he also contended that the mother has been awarded equal compensation with the claimant though looking to her age her longevity is very short and as such, she should have been awarded a token amount.

5. We have given our anxious consideration to the arguments advanced before us by the learned Counsel for the parties. Certain facts are not disputed in this case. It is admitted on all hands that the accident on the date and time as claimed by the claimant did take place and Suresh Dheemar lost his life in the accident. The main question is as to whether the accident took place due to rash and negligent driving of the driver or it took place as a result of failure of brakes as claimed by the State. The Claims Tribunal has given a categorical finding that the accident took place due to rash and negligent driving. It has been held in

Madhusudan Das Vs. Smt. Narayanibai (Deceased) by Lrs. and Others, that the general rule is that the appellate court should permit the findings of fact rendered by the trial court to prevail unless it clearly appears that some special feature about the evidence of a particular witness has escaped the notice of the trial court or there is a sufficient balance of improbability to displace its opinion as to where the credibility lies. A perusal of the evidence on record clearly goes to show that the finding arrived at by the Claims Tribunal with respect to the fact that the accident took place due to the rash and negligent driving is established. We may make a reference to the evidence in this regard. No doubt, it is true that the oral evidence adduced by the claimant does not throw any light on this point. PW 1 is Shakun claimant herself. She has not said anything on this point but simply stated that the deceased was her husband. He died in a truck accident 6 years back and at that time his age was about 30 years. Besides that, there is nothing in her statement. The other witness is one Ghansunder Rathor. He is a person who was travelling on the same date by the bus from Jhansi and he has stated that ahead of his bus a truck of the Irrigation Department was going at a fast speed. The truck all of a sudden turned turtle. When bus stopped he got down. He saw that Suresh had fallen and was badly injured. Suresh was known to him. He had asked the truckwala to help, whereupon the truckwala said that he would take him to hospital. In his cross-examination he stated that the truck was more than 5 or 6 kms. ahead of the bus. The truck did not turn turtle before him. Besides these two statements, there is no other statement on the record in favour of the claimant. The statements of these two witnesses do not help in arriving at a conclusion as to whether the accident took place due to rash and negligent driving. However, there is sufficient material on record to establish this fact. DW 1, R.P. Sharma, who was Supervisor in E&M, Irrigation Department on 31.10.1986 at Shivpuri stated that he was travelling on that date by truck No. MPZ 8125, i.e., the truck in question. Shiv Lahri was its driver. Ganpat and another driver Shripat and one Maharaj Singh helper were there. The truck was driven by Shiv Lahri. The other driver was also in the cabin with him. Suresh and Maharaj Singh were on the dala. At the turn of Sallaiya a private truck was coming from other side. The driver of that truck did not take the truck downwards whereupon the driver of this truck did apply brakes but brake pipe gave way and the vehicle became unbalanced and turned turtle. Suresh got down. Shiv Lahri was driving the truck at the speed of 35-40 kms. per hour. The most important feature in the case is that he was a person who had lodged F.I.R. Copy of the F.I.R. is on record. This document shows that he had unequivocally mentioned in the F.I.R. itself that the driver Shiv Lahri was driving rashly and negligently due to which the truck turned turtle. The relevant words mentioned in the F.I.R. are:

veksyk ls ly?;k ds chp eksM+ ds ikl jksM+ ij M?kbZoj ygjh us ykijokgh o rsth ls V? d pyk dj V?d dks iyV fn;kA V?d esa cSBs lqjs"kdqekj] egkjkT flag] eq>s o M? kbZoj l?h yksx tks cSBs Fks pksVs vkbZ gSaA

When his attention was drawn during his cross-examination he had to admit that

he had lodged report but he gave a lame excuse with respect to the contents of the report. He stated that the report was written by the police on its own accord and he volunteered that at that time as he had pain in his ribs, he did not read the report but from such a literate person it can hardly be accepted. It appears to us that he has given such an explanation in order to save the driver and the Department from the liability. In view of the specific admission in the first information report that the truck was being driven rashly and negligently, there does not remain anything more to be considered. We may also add that it is common experience that when a vehicle is going at a fast speed and all of a sudden brakes are applied it may turn turtle. It appeal's to us that it might have happened in the present case as well. As regards the plea of the Department that the brakes failed it may be mentioned that the burden to prove the fact lay on the Department. In order to succeed in a defence that the accident was due to mechanical defect the owner must have proved that he had taken all necessary precautions and kept the vehicle in roadworthy condition as held by the Hon''ble Supreme Court in *Minu B. Mehia v. Balkrishna Ramclumdra Nayan* 1977 ACJ 118 (SC). It was the duty of the Department to establish that all necessary precautions were taken to keep the vehicle in a roadworthy condition and that the defect occurred in spite of the reasonable care and caution taken by the owner. Here in the present case there is no evidence to show that when the vehicle started it was got checked and the vehicle was found in order. It was for the Department to establish this fact unless it is shown that every care was taken to keep the vehicle in order and the vehicle was in order. The plea that the accident took place due to sudden failure of brakes cannot be accepted. In view of what has been said above, it is amply proved that the accident took place due to the rash and negligent driving. We, therefore, confirm the finding of the Claims Tribunal in this regard.

6. Now we come to the question of quantum of compensation which can be awarded to the claimant. The Tribunal has awarded a sum of Rs. 60,000/- on account of loss of dependency and another sum of Rs. 10,000/- for loss of consortium. Thus a total sum of Rs. 70,000/- has been awarded. It has been contended on behalf of the claimant that this is inadequate. In order to arrive at the conclusion as to what should be the correct and just compensation awardable to the claimant we have to go back to the evidence on record. It may be mentioned that according to the case of the claimant the deceased was a temporary employee of the Irrigation Department and was drawing a sum of Rs. 450/- p.m. On the other hand, it was urged on behalf of the Department that he was a daily wage earner and he was getting a sum of Rs. 12.55 per day and his salary was deducted for his absence. In this regard both the parties have adduced evidence. The claimant in her statement stated that the deceased was getting Rs. 450/- per month as his salary. This fact has been denied by DW 1, R.P. Sharma, who was the Supervisor of E&M, Irrigation Department. He has stated that the deceased was getting Rs. 12.55 per day and his wages were being deducted for his absence. It is significant to mention here that the best

evidence was in possession of the employer. The employer could have filed the documentary evidence to show as to what was the nature of the employment of the deceased and what he was earning. Learned Additional Advocate General has not been able to show from the record that the deceased was getting a sum of Rs. 12.55 per day and he was only a daily wage earner. Thus, there remains the oath of the claimant, on one hand, and the oath of R.P. Sharma, on the other. As said above, the documentary evidence was in possession of the Department and it has been suppressed. Hence an adverse presumption can be drawn against the Department. In this view of the matter, the oath of the claimant has to be preferred in comparison to the oath of Sharma. We, therefore, accept that the deceased was a temporary employee and was earning Rs. 450/- per month.

7. The next question is what amount the deceased was spending on his family. This question need not detain as much because there is clear statement of the claimant, who is none else than the wife of the deceased. She is the best person who deposed in this regard. She has stated that the deceased used to spend Rs. 200/- to Rs. 250/- per month over himself. Thus, if we say the minimum of the amount, i.e., Rs. 200/- p.m. which the deceased used to spend on himself, the amount spent on his family out of his income comes to Rs. 250/- only. For determining the compensation payable the Hon''ble Supreme Court in *General Manager, Kerala State Road Transport Corporation v. Susamma Thomas* 1994 ACJ 1 (SC), has laid down that the multiplier method is appropriate method which should be adopted. A departure from this principle can only be justified in rare and extraordinary circumstances and in very exceptional cases. It has been also observed in this case that future prospects of advancement in life and career should also be sounded in terms of money to augment the multiplicand. Many factors have to be put into the scales to evaluate the contingencies of the future. In the present case the deceased was aged about 30 years as stated by the claimant herself and this fact has not been rebutted. As said above, he was a temporary employee earning a sum of Rs. 450/- p.m. It can be said in the absence of any other evidence on record that the temporary employment was more or less a stable employment. We are conscious of the fact that it has been contended on the side of the State that he was a daily wage earner but that fact has not been established and hence it is taken that temporary employment was more or less a stable employment. Once it is taken that employment was more or less stable, we have to take into consideration the future prospects as such. In the aforesaid case the Hon''ble Supreme Court took into consideration all these factors. There the deceased was aged 39 years and was earning Rs. 1,032/- per month. It was observed that neither assessment of gross income will be unreasonable to estimate the loss of dependency on the actual income of Rs. 1,032/- per month. Taking into consideration the advancement of future career the Hon''ble Supreme Court observed that it will not be wrong if a higher estimate of monthly income at Rs. 2,000/- as the gross income is taken. Thus taking into consideration all these factors the Hon''ble Supreme Court enhanced the loss of dependency and after enhancing the loss of dependency applied the

multiplier of 12. Here in the present case, as stated above, at the time of death the deceased was earning Rs. 450/- per month and the loss of dependency was Rs. 250/- per month. We think that taking into consideration the future prospects this amount should be enhanced to Rs. 300/- per month. There is practically no material on record with respect to longevity of a person of the family of the deceased. Learned Tribunal took into consideration all these aspects and came to the conclusion that deceased Suresh was a person of ordinary family and it took the age upto which he could earn as 55 years. Thus after deducting the age of 30 years the learned trial court had applied the multiplier of 25. This appears to be unreasonable. In a decision of this Court reported in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, (to which one of us S.K. Dubey, J. was a party) it was held that in case of deceased persons who come in thirties/forties it is proper to take multiplier of 15 years. Thus we come to the conclusion that the multiplier of 15 years is just and proper. In this way, if we calculate the loss of dependency we come to a figure of Rs. 54,000/-. Thus the loss of dependency comes to Rs. 54,000/-. Over and above this amount, the claimant is also entitled to loss of consortium. In another case reported in Fizabai and Others Vs. Nemichand and Others, a Division Bench of this Court to which one of us (S.K. Dubey, J.) was a party, it was held that on this count the sum awarded should be Rs. 5,000/- to Rs. 10,000/-. As deceased in the present case was hardly of 30 years of age, we think that in the interest of justice the amount for loss of consortium should be enhanced. We, therefore, think that it would be reasonable and just to award a sum of Rs. 15,000/- for loss of consortium. Besides this, the claimant should also be awarded a further sum of Rs. 5,000/- towards the loss to the estate. Thus the total sum comes to Rs. 74,000/-. We make it in round figure as Rs. 75,000/-. We, therefore, hold that the claimant is entitled to a sum of Rs. 75,000.

8. Before parting, we also mention that to non-applicant No. 3, Puniya Bai, mother of the deceased, the learned Claims Tribunal has given equal share in the amount awarded. This appears to be unreasoned. It may be mentioned that the principles of Hindu Succession Act are not applicable to such cases. Several factors have to be taken into consideration while awarding compensation. The age of the mother of the deceased is 69. Thus she has hardly a short span of life to live. Taking into consideration this aspect, we think that out of the sum of Rs. 75,000/- the claimant should be awarded a sum of Rs. 50,000/- whereas non-applicant No. 3, Puniya Bai, should be awarded a sum of Rs. 25,000/- only.

9. Thus, in view of what has been said above, appeal No. 262 of 1992 filed by the claimant is partly allowed and the amount of compensation is enhanced to Rs. 75,000/-. Out of this amount a sum of Rs. 50,000/- will be payable to the claimant and the rest Rs. 25,000/- to non-applicant No. 3, Puniya Bai. Besides it, the claimant is also entitled to interest at 12 per cent per annum from the date of application till recovery. Appeal No. 10 of 1993 filed by the State of Madhya Pradesh is dismissed. Parties are, however, directed to bear own costs of both the appeals.