
(2006) 07 MP CK 0098
In the Madhya Pradesh High Court

Shamma and Others

APPELLANT

Vs

Kartar Singh and Others

RESPONDENT

Date of Decision : 25-07-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2008) ACJ 892

Hon'ble Judges : R.S. Jha, J;Dipak Misra, J

Bench : Division Bench

Judgement

Dipak Misra, J.—Claimants-appellants (hereinafter referred to as "the claimants"), the legal representatives of late Yakoob Khan initiated an action under the provisions of the Motor Vehicles Act, 1988 (for brevity, "the Act*") before Motor Accidents Claims Tribunal, Khandwa (for short, "the Tribunal") forming the subject-matter of Claim Case No. 54 of 2000 whereby a claim of Rs. 7,00,000 as compensation for the death of said Yakoob Khan, husband of appellant No. 1 and father of appellant Nos. 2 to 4, was put forth.

2. Sans unnecessary details, the facts which are essential for adjudication of this appeal are that on 4.9.1999, the deceased Yakoob Khan, was travelling in the jeep bearing registration No. MP 12-B 3528 which was proceeding from Rustampur to Khandwa. The vehicle in question was driven by respondent No. 1 and owned by respondent No. 2 and it was insured with United India Insurance Co. Ltd., respondent No. 3 herein. About 11.30 a.m. when the jeep reached near Ajit Agro Industries, there was a storm, the occupants of the jeep requested the driver to stop the vehicle but, paying no heed to such beseech, the driver continued to drive the jeep. Thereafter, a branch of a tree fell down on the jeep as a consequence of which, Yakoob sustained injuries and died at the spot. It was pleaded before the Tribunal that the deceased was dealer of food grains and was earning Rs. 30,000 per year and was contributing substantially to the family because of his sense of duty and responsibility.

3. The driver of the vehicle chose to remain ex parte. The owner, respondent No.

2, filed a written statement contending, inter alia, that deceased Yakoob was not travelling in the jeep and further the vehicle was insured with respondent No. 3 and hence, insurer was liable to be saddled with the liability. Additionally, it was also contended that the driver was not negligent and by no stretch of imagination, it could be treated as an accident.

4. The insurer filed the written statement disputing the stand put forth by the claimants. It was propounded before the Tribunal that an accident of this nature cannot be regarded to have occurred due to negligence of the driver, but on the contrary, it should be construed as a vis major,

5. The Claims Tribunal framed number of issues and considering the facts brought on record came to hold that the deceased died because of fall of the branch of a tree on the jeep but the said occurrence was a resultant factor of natural calamity and hence, it would not come within the ambit of an accident as is understood within the parameters of the Act and, therefore, the owner is not liable to compensate the legal heirs of the deceased and as a natural corollary, there is no justification to command the insurer to indemnify the owner.

6. Be it noted, the Tribunal being of this view did not advert to other issues and accordingly dismissed the claim petition. Being dissatisfied with and aggrieved by the said award the claimants-appellants have preferred the present appeal u/s 173 of the Act.

7. Mr. N.K. Jain and Mr. Tiwari appearing for the appellants have submitted that the Tribunal has grossly erred in holding that there was no negligence on the part of the driver and the accident would be put in the compartment of a natural calamity though there is ample evidence brought on record to show that the occupants of the jeep requested the driver not to proceed looking to the condition of the weather but the said beseech fell on deaf ears. Learned Counsel urged that when the vehicle was in use, it would tantamount to an accident under the sweep of the Act and in that event claimants would be entitled to get compensation on proper adjudication and the owner and insurer would be jointly and severally liable to pay compensation in the absence of any kind of breach of conditions of policy, It is their further submission that though the Tribunal has not adverted to the issue of quantum, there is material on record with regard to the same and hence, this Court should determine the quantum and not leave the poor claimants to the procedure of remit as in that case their agony would be further accentuated.

8. There has been no appearance on behalf of the respondents.

9. To appreciate the submissions of Mr. Jain and Mr. Tiwari, we have carefully perused the award and scrutinised the evidence brought on record. The Tribunal has returned a finding that the death of late Yakoob Khan occurred because of the fall of a branch of tree. The evidence of Laloo Miya, AW 2, clearly shows that the driver who was driving quite fast and was advised not to do so because of the perilous weather, chose to pave his own fancy and adventure. The question

that arises whether the Tribunal is right in coming to hold that this is an act of vis major or natural calamity or to put it differently whether the Tribunal is justified in recording a finding that negligence on the part of the driver had not been proven by the claimants.

10. Before we proceed to deal with the obtaining factual matrix, we think it appropriate to note certain decisions in the field. In the case of Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, , a two-Judge Bench of the Apex Court while dealing with the concept of "arising out of use of the motor vehicle" provided u/s 92-A of the Motor Vehicles Act, 1939, expressed the view as under:

(27) The only other question which remains to be considered is whether the explosion and fire which caused injuries to the deceased son of the respondent can be said to have taken place due to an accident arising out of the use of a motor vehicle, viz., the petrol tanker. Mr. Sanghi has urged that the expression "arising out of the use of a motor vehicle" implies a causal relationship between the user of the motor vehicle and the accident which has resulted in death or disablement and that in the present case it cannot be said that the explosion and fire which took place in the petrol tanker four and half hours after the collision and after the tanker had turned turtle was an accident arising out of the use of petrol tanker. In this regard, Mr. Sanghi has emphasised that the persons who sustained injuries as a result of the explosion and fire in the petrol tanker were pilfering petrol which had leaked out from the petrol tanker and the explosion and fire was the result of the said unlawful activity of those persons and that it was not on account of the user of the petrol tanker, Mr. Sanghi, in this connection, has placed reliance on the decision in Mackinnon Mackenzie & Co. Pvt. Ltd. v. Ibrahim Mahmmud Issak 1969 ACJ 422 , wherein this Court has construed the expression "arising out of employment" appearing in Section 3 of the Workmen's Compensation Act, 1923 and has laid down that there must be a causal relationship between the accident and the employment. Mr. Sanghi has urged that similarly there must be a causal relationship between the accident and the user of the motor vehicle for the purpose of maintainability of a claim u/s 92-A of the Act.

(37) Was the accident involving explosion and fire in the petrol tanker connected with the use of tanker as a motor vehicle? In our view, in the facts and circumstances of the present case, this question must be answered in the affirmative. The High Court has found that the tanker in question was carrying petrol which is a highly combustible and volatile material and after the collision with the other motor vehicle the tanker had fallen on one of its sides on sloping ground resulting in escape of highly inflammable petrol and that there was grave risk of explosion and fire from the petrol coming out of the tanker. In the light of the aforesaid circumstances the learned Judges of the High Court have rightly concluded that the collision between the tanker and the other vehicle which had occurred earlier and the escape of petrol from the tanker which ultimately

resulted in the explosion and fire were not unconnected but related events and merely because there was interval of about four to four and half hours between the said collision and the explosion and fire in the tanker, it cannot be necessarily inferred that there was no causal relation between the collision and explosion and fire. In the circumstances, it must be held that the explosion and fire resulting in the injuries which led to the death of Deepak Uttam More was due to an accident arising out of the use of the motor vehicle, viz., the petrol tanker No. MKL 7461.

11. The Apex Court in the case of Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another, , while delineating with the expressions "death due to accident arising out of the use of motor vehicle" as employed in Sections 163-A and 166 of the Act took note of the fact situation wherein the driver of autorickshaw was murdered by certain persons who had the intention to steal the said auto. After referring to statutory supervision and the decisions rendered in the cases of Challis v. London and South Western Rly. Co. (1905) 2 KB 154; Nisbet v. Rayne and Burn (1910) 1 KB 689 and Board of Management of Trim Joint District School v. Kelly (1914) AC 667, the Supreme Court expressed the opinion in para 14 as under:

(14) Applying the principles laid down in the above cases to the facts of the case in hand, we find that the deceased, a driver of the autorickshaw, was duty-bound to have accepted the demand of fare paying passengers to transport them to the place of their destination. During the course of this duty, if the passengers had decided to commit an act of felony of stealing the autorickshaw and in the course of achieving the said object of stealing the autorickshaw, they had to eliminate the driver of the autorickshaw then it cannot but be said that the death so caused to the driver of the autorickshaw was an accidental murder. The stealing of the autorickshaw was the object of the felony and the murder that was caused in the said process of stealing the autorickshaw is only incidental to the act of stealing of the autorickshaw. Therefore, it has to be said that on the facts and circumstances of this case the death of the deceased (Dasarath Singh) was caused accidentally in the process of committing the theft of the autorickshaw.

12. We may profitably state here that in the aforesaid decision their Lordships also placed reliance on the decision rendered in the case of Shivaji Dayanu Patil (supra).

13. The present factual matrix is to be tested on the anvil of the aforesaid annunciation of law. There is testimony of PW 2, which has gone uncontroverted. True it is, the death of Yakoob occurred because of fall of a branch of tree on the jeep but the vehicle in question was in use. If the pronouncement of law, as has been done in the case of Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another, , is properly understood, there can be no trace of doubt that the death was due to accident which occurred when the vehicle was in use. The question of negligence which has been negated by the Tribunal, in our considered opinion does not withstand scrutiny, for the occupant of the vehicle

had warned the driver not to drive in a great speed and to stop the vehicle. The said admonition did not have any impact on the driver. If the said factum is appreciated, it is clear as day that there was negligence on the part of the driver. Thus, we have no hesitation in holding that the accident had occurred due to negligence of the driver and hence, the claimants are entitled for compensation.

14. Presently, we shall proceed to deal with the issue of quantum. The Tribunal has not adverted to the same. It has been pleaded that the deceased was dealing in food grains. The wife of the deceased has deposed that he was earning Rs. 2,500 per month. No documentary evidence has been adduced but the fact remains that he was 45 years of age and sustaining wife and three minor children. In such circumstances, we are not inclined to apply the principle of notional income. We are disposed to think that the annual contribution of the deceased to the family would not be less than Rs. 20,000 per year. As is patent that the age of the deceased was within 45 to 50 years of age, the multiplier of 13 would be applicable. Thus, the amount of compensation would come to Rs. $20,000 \times 13 = \text{Rs}72,60,000$. To the aforesaid, Rs. 15,000 is to be added on three heads, namely, loss of consortium, loss to estate and funeral expenses. Ergo, in toto the claimants would be entitled to get Rs. 2,75,000. The said sum shall carry interest at the rate of 6 per cent per annum from the date of presentation of application before the Tribunal till the date of deposition of the same before it. On such deposit being made, the Tribunal shall disburse the amount keeping in view the law laid down in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, .

The appeal is allowed in part. There shall be no order as to costs.