

(2013) 11 CHH CK 0027

In the Chhattisgarh High Court

Case No : Miscellaneous Appeal No. 425 of 2004

Shankar Lal Khunte and Another

APPELLANT

Vs

Tikait Ram and Another

RESPONDENT

Date of Decision : 01-11-2013

Acts Referred:

Citation : (2014) 1 CGLJ 329

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : V.G. Tamaskar, for the Appellant; Praveen Das, for the Respondent

Final Decision : Allowed

Judgement

Sanjay K. Agrawal, J.—This is claimants appeal u/s 173 of the Motor Vehicles Act, 1988 (henceforth "the Act, 1988") challenging the award dated 25-2-2004 passed by the Additional Motor Accidents Claims Tribunal, Korba in Claim Case No. 66/2003 (Shankar Lal Khunte and another v. Tikait Ram and another) by which claimants' claim in respect of deceased Karmeshwar alias Kamleshwar has been partly allowed. Brief facts, as projected, are thus:

The appellants/claimants, being the parents of deceased Karmeshwar alias Kamleshwar, who was, on the date of his death, aged about 16 years, filed an application u/s 166 of the Act, 1988 pleading inter alia that on 14-2-2003 the bus, being driven by respondent No. 1 and owned by respondent No. 2/SECL rashly and negligently, dashed the motorcycle which was being driven by their son deceased Dinesh and on which their another son Karmeshwar alias Kamleshwar was sitting as a pillion rider, as a result of which, their both the sons suffered injuries and succumbed thereto. The appellants/claimants made a claim before the Claims Tribunal for compensation for the death of a Karmeshwar alias Kamleshwar for a sum of Rs. 19,07,000/- along with interest.

2. Respondents No. 1 and 2, i.e., driver and owner, of the offending bus jointly filed a written statement before the Claims Tribunal stating inter alia that the

motorcycle was being driven by deceased Dinesh without having any licence to drive the vehicle. Near the place of occurrence, there was a turning on which the motorcycle riders deceased Dinesh and Karmeshwar alias Kamleshwar lost their balance, the motorcycle skidded on the road, both the deceased fell down and sustained injuries on the head which resulted into their death. It was further pleaded that when respondent No. 1/the driver of the bus noticed that the motorcycle was coming from the opposite side rashly, he not only reduced the speed of the bus but also stopped the bus and as a matter of precaution, parked it on the left side of the road, but the motorcycle being driven by deceased Dinesh came in such a high speed that both the deceased lost their control, the motorcycle skidded and both the deceased fell down from the motorcycle and as such there was no negligence on the part of respondent No. 1/the driver of the bus. Therefore, the respondents were not liable for the accident.

3. In support of their case, the appellants/claimants examined Bhojalbai (AW-1) and Shankar Lal Khunte (AW-2), whereas the respondents/SECL examined Tikaitram (NAW-1), who was driver of the bus, Bharatlal (NAW-2), who was helper in the bus and Omprakash (NAW-3), who was an officer of the SECL.

4. The appellants/claimants filed copies of some educational certificates of deceased Karmeshwar alias Kamleshwar before the Claims Tribunal, whereas the respondents did not produce any document. Copies of First Information Report, Dehati Merg Intimation, Post Mortem Report, Seizure Memorandum of motorcycle bearing registration No. CG 12 A 7704 and that of the offending bus bearing registration No. CG 12 ZA 0224 have been filed and are available on the record of the Claims Tribunal. The said documents were filed on 20-3-2003 along with an application under Order 14 Rule 5 CPC.

5. The Claims Tribunal, after close scrutiny of the oral as well as documentary evidence available on record, holding that respondent No. 1, who was driving the bus, deceased Dinesh, who was driving the motorcycle and deceased Karmeshwar alias Kamleshwar, who was sitting on the motorcycle as a pillion rider were liable for the accident, arrived at a finding that the appellants/claimants were entitled for compensation to the extent of Rs. 1,70,000/-. The Claims Tribunal further held that deceased pillion rider Karmeshwar alias Kamleshwar was a contributory negligent for which an amount to the tune of 2/3rd was liable to be deducted and thus deducted a sum of Rs. 1,13,333/- from total compensation of Rs. 1,70,000/- and only granted a sum of Rs. 76,667/- along with interest @ 9% from the date of application.

6. Shri V.G. Tamaskar, learned counsel for the appellants/claimants would submit that the finding of the Claims Tribunal that deceased Karmeshwar alias Kamleshwar was also negligent is per se illegal and is liable to be set aside as deceased Karmeshwar alias Kamleshwar was a pillion rider on the motorcycle and there is no allegation or evidence on record to hold that deceased Karmeshwar alias Kamleshwar, in any way, contributed to the accident.

7. Per contra, Shri Praveen Das, learned counsel for the respondents would submit that the impugned award passed by the Claims Tribunal is in accordance with law and no interference is warranted by this Court in exercise of its appellate jurisdiction u/s 173 of the Act, 1988.

8. I have heard and considered the rival submissions and have perused the record of the Claims Tribunal.

9. It is admitted position that deceased Karmeshwar alias Kamleshwar was a pillion rider on the motorcycle and he was not driving the motorcycle. There is no averment in the written statement filed by the respondents herein before the Claims Tribunal that deceased Karmeshwar alias Kamleshwar, in any way, contributed in driving the motorcycle which resulted into the accident in which he and his brother Dinesh died. The Claims Tribunal has recorded a finding that deceased Karmeshwar alias Kamleshwar had no licence to drive the motorcycle and straightway reached to the conclusion of contributory negligence on the part of deceased Karmeshwar alias Kamleshwar without noticing the fact that deceased Karmeshwar alias Kamleshwar was a pillion rider on the motorcycle. There is no evidence on record to hold that deceased Karmeshwar alias Kamleshwar, in any way, contributed to the accident occurred on 14-2-2003 and thus, the finding recorded by the Claims Tribunal that deceased Karmeshwar alias Kamleshwar, who was sitting on the motorcycle as a pillion rider, was also negligent, is contrary to the facts and material available on record and is liable to be set aside.

10. In M.P. State Road Transport Corporation and Others Vs. Abdul Rahman and Others, it has been held that a pillion rider ordinarily has nothing to do with occurrence and hence the concept of contributory negligence cannot be applied to him. In paragraph 12 of the judgment, it is held thus:

12. With regard to the contributory negligence on the part of Mohd. Matin, fact remains -- he was not riding the Motorcycle and was a pillion rider. It has been held in the case of Manjit Kaur and Others Vs. Gurmail Singh and Others, that a pillion rider has no contributory negligence in causing accident. In the case of S.D. Balaji v. General Manager, Karnataka State Roadways Transport Corporation, Bangalore, 1985 Acc CJ 150 the High Court of Karnataka has ruled that pillion rider ordinarily has nothing to do with occurrence, and hence the concept of contributory negligence cannot be made applicable to him. In the instant case, there is no evidence whatsoever, that Mohd. Matin had any role to play in causing the accident. In absence of such a fact, we are of the considered view, that the claim of the legal representatives of Mohd. Matin cannot be denied on the ground of contributory negligence.

11. Keeping in view the above-quoted decision of the High Court of Madhya Pradesh and considering the fact that deceased Karmeshwar alias Kamleshwar had no role to play in causing the accident, I am of the considered opinion that the finding recorded by the Claims Tribunal, holding deceased pillion rider

Karmeshwar alias Kamleshwar contributory negligent and thereby deducting 2/3rd amount from the compensation assessed, is contrary to the record and, therefore, I hereby set aside the same. I direct respondent No. 2/SECL to deposit the sum of Rs. 1,13,333/- deducted as 2/3rd amount for contributory negligence along with interest @ 9% per annum from the date of claim application within a period of six weeks from today. Rest of the impugned award passed in Claim Case No. 66/2003 shall remain intact. The appeal is allowed. The impugned award is modified to the extent indicated above. There shall be no order as to costs.