
(1991) 11 MP CK 0026
In the Madhya Pradesh High Court
Case No : M.A. No. 274 of 1986

Sikia and Others

APPELLANT

Vs

Dhanraj Singh and Others

RESPONDENT

Date of Decision : 25-11-1991

Acts Referred:

Sales of Goods Act, 1930 — Section 19, 20, 21, 22, 23

Citation : (1993) ACJ 317

Hon'ble Judges : K.L. Issrani, J; D.M. Dharmadhikari, J

Bench : Division Bench

Advocate : Alok Aradha, for the Appellant; L.S. Baghel, for the Respondent

Final Decision : Allowed

Judgement

D.M. Dharmadhikari, J.—The appellants are the claimants who are the heirs of deceased Ganeshlal, who died in a motor accident on 3.2.1982.

2. The Claims Tribunal passed an award in the sum of Rs. 20,000/- jointly and severally against the respondent No. 2, Bhaiyalal driver and the respondent No. 4, Dalli Singh. The Claims Tribunal did not pass any award against the respondent No. 3, National Insurance Co. Ltd., on the ground that the motor vehicle was not insured. The Claims Tribunal also did not pass any award against respondent No. 1, Dhanraj Singh, accepting his case that he, only about a month before the date of accident, on 1.1.1982 vide documents Exh. D/2 and Exh. D/3, had transferred the vehicle involved in the accident, i.e., truck No. MRW 5973 in favour of the respondent No. 4. The respondent No. 5, Mahraj Singh, was the person on the vehicle, on behalf of the owner and, therefore, no award was passed against him.

3. The learned Counsel appearing for the appellants, Mr. Alok Aradha, assailed the impugned award on two grounds. Firstly, it is submitted that an award should have also been passed against the respondent No. 1, Dhanraj Singh, as he was

the real owner of the vehicle involved, but only to avoid his liability ante-dated documents of transfer of vehicle were manipulated by him. The second ground urged is on the question of quantum. It is urged that the deceased Ganeshlal was a young man of 38 years and as a barber, he was earning Rs. 1,000/- per month and on that basis the award passed in the sum of Rs. 20,000/- is too low and the compensation amount is liable to be enhanced.

4. The first question that falls for consideration before us is whether the respondent No. 1, Dhanraj Singh, can also be held liable for payment of compensation to the claimants. Learned counsel, Mr. L.S. Baghel, appearing for him, contended that the movable property can be transferred by only delivery of possession and even on payment of part of price. It was argued that there is nothing on record to disbelieve the respondent No. 1, Dhanraj Singh and the respondent No. 4, Dalli Singh, that such a transfer was made. In this respect it is argued that the respondent No. 4, Dalli Singh, examined as NAW No. 4 before the Claims Tribunal has accepted the fact of transfer of the vehicle in his favour and there are no circumstances to disbelieve him as he claimed ownership to the vehicle and did not disown his liability on that count.

5. The learned Counsel appearing for the appellants took us through the testimony of the respondent No. 4, Dalli Singh, NAW No. 4 and of the respondent No. 1, Dhanraj Singh, examined as NAW No. 5 in the case. Dhanraj Singh states that the registered owner of the vehicle was one Sangram Singh, from whom he purchased it. Dhanraj Singh did not get his name registered under the provisions of the Motor Vehicles Act. He admits that the agreed price was Rs. 21,000/- out of which Rs. 10,000/- were paid by Dalli Singh and for the rest instalments were fixed of Rs. 1,000/- per month. He also admits that he himself is Sarpanch and Dalli Singh is Panch and they were intimate. He further admits that he could not get the vehicle registered in the name of Dalli Singh as he himself was not a registered owner. He also admitted that the balance price of vehicle was received by him in small amounts and he did not give any receipt for the same.

6. The respondent No. 4, so-called subsequent owner of the vehicle, was examined as NAW No. 4. He admits in his cross-examination that he has not done in the past any business of running a vehicle on hire. He runs a small kirana shop. So far as the source of money for purchasing the vehicle is concerned, he says that he had sold one cow for Rs. 1,000/- but neither remembers the name of the purchaser nor has produced any receipt for the same. He also says that from kirana shop he had saved about Rs. 7,000-8,000/-. The remaining amount he says that he borrowed from several persons in the village but names of those creditors he could not tell. He stated that the stamp on which documents Exh. D/1 and Exh. D/2 were scribed were purchased by him but he was unable to tell the name of the stamp vendor. He admits that portion C to C in documents Exh. D/2 and Exh. D/3 stipulate that the truck was agreed to be transferred in his name only on payment of full price.

7. On being questioned as to what he did of the vehicle after it was damaged in

the accident, his reply in cross-examination is that he sold its parts to several persons but he could neither mention name of anyone nor the amount that he received from the same. He admits that he gradually paid the balance amount of price to the respondent No. 1 but did not obtain any receipt from him.

8. The circumstances brought on record in the cross-examination of the respondent No. 1, Dhanraj Singh and the respondent No. 4, Dalli Singh, lend a doubt to the credibility of the versions of the above two witnesses. It has come on record that Dalli Singh was never in the trade of running vehicles on hire. He is obviously not a man of means and runs a small kirana shop. He has not been able to convincingly prove that he could raise a sum of Rs. 10,000/- for payment of the vehicle. He could not name the borrowers from whom he took loans. He has also not been able to name the person to whom he sold the cow for purchasing the truck. After the accident he has not been able to give the details how the involved truck and its parts were disposed of. All these factors cumulatively go to show that the respondent Nos. 1 and 4 in collusion have manipulated ante-dated documents to avoid liability of respondent No. 1 and create liability against the respondent No. 4, who has no means to pay the amount of compensation.

9. Apart from the above factual aspects, from the relevant terms of the documents of transfer (Exh. D/2 and Exh. D/3) it cannot be held that the transfer of the vehicle was complete and the respondent No. 4 had become the owner of the vehicle on the date of the accident. It is clearly mentioned in the above documents of transfer as confirmed by the testimony of the respondent No. 1 and No. 4 that it was agreed between the parties that the balance of price would be paid in instalments. The two documents are in identical terms and the relevant portion reads as under:

tc iwjh fdLr ?pqdrk? iV tk;sxh rks eSa okgu dks Myyh flag ds uke ls V?kalQj dj nwaxk!

(See Exh, D/2 dated 1.1.1982)

tc iwjh fdLr dh jde vnk gks tk;sxh rc /kujkt flag V?d esjs uke ls V?kalQj ?vkj- Vh-vks-? esa dj nsaxs!

(See Exh. D/3 dated 1.1.1982)

10. The provisions of Section 19 of the Sale of Goods Act govern the question of ownership of the vehicle which reads as under:

19 (1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

(3) Unless a different intention appears, the rules contained in Sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

The aforesaid provisions in Sub-sections (1) and (2) expressly declare that the property in the goods transferred passes at such time as the parties to the contract intend it to be transferred. In the case before us the aforesaid relevant portion of the documents of transfer coupled with the testimony of the parties clearly show that the ownership was intended to be transferred in the vehicle only on payment of full price. Admittedly, on the date of the accident full price of the vehicle agreed between the parties did not pass from purchaser to the seller. Dhanraj Singh, respondent No. 1, in his testimony as NAW No. 5 in para 7 clearly admits that the balance price of the vehicle was received by him from Dalli Singh after the date of the accident. The vehicle thus continued to be owned by respondent No. 1 on the date of the accident and, therefore, as owner of the vehicle he cannot disown his vicarious liability. We do not propose to set aside the award of the Claims Tribunal against the respondent Nos. 2 and 4. The respondent No. 2 was the driver and was directly liable for the tort committed by him. The respondent No. 4, Dalli Singh, having admitted in his testimony to be in control of the vehicle at the relevant time and having not disposed his liability on that count, can also be held liable. In addition to them the respondent No. 1 who continued to be the owner of the vehicle on the date of the accident is also jointly and severally liable for compensation.

11. The next question is whether the quantum of compensation deserves to be enhanced as claimed on behalf of the appellants/claimants. Without going deeper into the question we find that the compensation awarded is on the lower side particularly as under the Motor Vehicles Act, 1988, even no fault compensation for death minimum prescribed is Rs. 25,000/-. It is true that the accident is of the year 1982 but the principle contained in the new Motor Vehicles Act can be applied for directing payment of compensation today. We have no information about whether any amount of compensation could be recovered from the respondent Nos. 2 and 4 against whom alone the Claims Tribunal has passed the award. Learned counsel for the appellants, however, submitted that the respondent No. 4 had no assets from which the amount could be recovered. The award that we are passing now would be an award of the year 1991. Therefore, minimum amount of compensation fixed for death under the new Act can be a good guide to assess the minimum compensation in case of death.

12. In view of the discussion aforesaid the appeal succeeds. The award of the Claims Tribunal jointly passed against the respondent Nos. 2 and 4 is maintained but the amount of compensation is increased to Rs. 25,000/-. The award of the Claims Tribunal is also modified by directing that the above compensation of Rs. 25,000/- shall be jointly and severally payable by the respondent Nos. 1, 2 and 4. The compensation amount shall carry interest at the rate of 8 per cent per annum from the date of the petition to its recovery. The appellants shall also get

costs of this appeal. Counsel's fee Rs. 1,000/-, if certified.