
(2006) 09 MP CK 0060
In the Madhya Pradesh High Court

Sitabai and Others

APPELLANT

Vs

K.B. Saxena and Another

RESPONDENT

Date of Decision : 18-09-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 163

Citation : (2007) 1 ACC 446

Hon'ble Judges : S.K. Kulshrestha, J;N.K. Mody, J

Bench : Division Bench

Judgement

N.K. Mody, J.—Being aggrieved by the award dated 27.3.2004 passed by MACT, Narsingharh, District Rajgarh in claim cash No. 55 of 2003 whereby the claim petition filed by the appellants has been dismissed, the present appeal has been filed.

2. Short facts of the cash are that a claim petition was filed by the appellants alleging that in a motor accident, one Mangilal died who happened to be husband of appellant No. 1 and father of appellant Nos. 2 to 5. In the claim petition it was also alleged that accident took place with the vehicle bearing registration No. MP-20W 2069 which was being driven by the deceased Mangilal, owned by respondent No. 1 and insured with respondent No. 2. Claim petition was contested by respondent No. 2 on various grounds including the ground that since the offending vehicle was being driven rashly and negligently by the deceased Mangilal himself, the claim petition deserves to be dismissed.

3. Learned Tribunal framed the issues, recorded the evidence and dismissed the claim petition with a further direction to refund Rs. 50,000 which were paid to the appellants towards no fault liability vide interim award. Being aggrieved by the impugned award, the present appeal has been filed.

4. Learned Counsel submits that from perusal of record, it is evident that appellant Nos. 2 to 5 are minors and appellant No. 1 who happens to be mother of appellant Nos. 2 to 5, is an illiterate lady who has put her thumb impression

on the claim petition. It is submitted that learned Tribunal has held that since the accident because of rash and negligent driving of deceased Mangilal, therefore, appellants are not entitled for any amount of compensation. It is submitted that appellant No. 1 was not on spot when the accident occurred. The only fault of the appellant No. 1 is that she has put her thumb impression without understanding the contents of it. It is submitted that there is no evidence on record on the basis of which it could have been held that the accident occurred due to rash and negligent driving of deceased Mangilal.

5. Learned Counsel for the respondent No. 2 submits that learned Tribunal has rightly rejected the claim petition as the accident occurred due to rash and negligent driving of offending Jeep which was being driven by deceased himself.

6. From perusal of record, it is evident that in evidence, the appellant No. 1 has examined herself, who has stated in her examination-in-chief that she lost her husband in the accident. It is not stated in the statement that accident occurred because of rash and negligence driving on the part of the deceased. Another witness is AW-2, Babulal, who has stated that accident occurred when deceased Mangilal was trying to save the offending vehicle from a pit. He has also not stated that the accident was due to rash and negligent driving of the offending vehicle.

7. Respondents have filed Ex. D/1 which is the statement of appellant No. 1 given in ST No. 176 of 2000 State v. Mangilal on 7.9.2001. Appellant No. 1 has admitted that she has given the statement Ex. D/1 while she has denied that she has given any statement to police authorities which is Ex. D/2. No oral evidence has been adduced by the respondent to prove the fact that accident has occurred due to rash and negligent driving of deceased Mangilal.

8. Ex. D/1 which is the statement of appellant Sitabai has no relevance with the present case. No efforts have been made by respondent No. 2 to demonstrate the relevancy of the earlier statement of the appellant No. 1, Sitabai. Learned Counsel for appellants had placed reliance on a decision in the matter of K. Nandakumar Vs. Managing Director, Thanthal Periyar Transport Corpn., , wherein the Hon''ble Apex Court has observed that in a case where the claimant was injured and was solely responsible for the accident, is also entitled for compensation on account of no fault liability.

9. In this case, the Hon''ble Apex Court has observed that by reason of Sub-section (1) of Section 92A, an absolute liability is cast upon the owner of a vehicle to pay compensation in respect of death of permanent disablement resulting from an accident arising out of its use. By reason of Sub-section (3), the claimant is not required to plead or establish that the death or disablement was due to a wrongful act or neglect or default of the owner or any other person. Sub-section (4) is in two parts. The first part states that a claim for compensation under the section is not defeated by reason of any wrongful act, neglect or default of the person who had died or suffered permanent

disablement. The second part states that the quantum of compensation is not to be diminished even if the person who had died or suffered permanent disablement bore some responsibility for his death or disablement.

There was, therefore, on a plain reading of Section 91 A, particularly the first part of Sub-section (4) thereof, no basis for holding that a claim thereunder could be made only if the person who had died or suffered permanent disablement had not been negligent. The provision being clear, no external aid to its construction, such as the statement of Objects and Reasons, was called for.

10. On behalf of the respondents, it was submitted that claim petition has rightly been dismissed. It is submitted that deceased was not having the driving licence. Reliance was placed on a decision in the matter of Chhotekhan Vs. Rajesh Kumar Agrawal, wherein in a case where the deceased was not having a valid driving licence, it was held that when the deceased had himself endangered his safety and life by inviting unnecessary calamity, by unnecessary adventure, by engaging in driving of the vehicle, when he was not having valid licence, neither the employer nor the Insurance Company can be asked to pay compensation to the heir-claimants of such deceased.

11. After going through the evidence on record, this Court is of the view that learned Tribunal committed error in dismissing the claim petition. There is no evidence on record from which it can be ascertained that the accident occurred due to rash and negligent driving of Mangilal. Appellant No. 1 is an illiterate lady and rest of the appellants are minor sons and daughter of the appellant No. 1 and deceased Mangilal.

12. From perusal of claim petition, it is evident that handwritten claim petition has been filed which consists of the thumb impression of appellant No. 1. It is a settled law that strict rules of pleadings as laid down in the CPC are not applicable to the claim cases. Since there is no evidence on record to substantiate that the accident occurred due to rash and negligent driving by Mangilal, therefore, the claim petition could not have been dismissed. Apart from this, no efforts were made to prove this fact that deceased was not having the driving licence. Even the appellant No. 1, who happens to be wife of deceased Mangilal was not asked produce the driving licence, therefore, the learned Tribunal was not correct in holding that at the relevant time, the deceased was not possessing the driving licence. Even if for a moment it is assumed that accident occurred due to rash and negligent driving of deceased Mangilal, then too it is immaterial for disposal of claim petition filed u/s 163(a) of the Act.

13. Since Mangilal had died in motor accident by vehicle which was owned by respondent No. 1 and insured with respondent No. 2, therefore, appellants are entitled for compensation.

14. For ascertaining the quantum of compensation, there is no evidence on record relating to the income of the deceased. So far as the age of deceased is concerned, since the age of appellant No. 1, wife of deceased is 33 years,

therefore, it may be presumed that deceased must have been aged about 35 years. For this age group, as per second schedule of Motor Vehicles Act, the multiplier of 16 applies. Since there is no evidence about the occupancy of the deceased and his income, therefore, for the purpose of awarding the compensation, notional income is taken into consideration i.e., Rs. 15,000. The deceased must be spending one-third amount towards his personal expenses. Thus, loss of dependency comes to Rs. 10,000. The appellants are entitled for the following amount:

Towards loss of dependency Rs. 1,70,000	Towards loss of consortium Rs. 5,000
Towards loss of love and affection Rs. 5,000	Towards funeral expenses Rs. 2,000
Towards loss of estate Rs. 2,500	_____ Total: Rs. 1,84,000

15. Appellant are entitled for a sum of Rs. 1,84,000 which shall be paid by the respondents jointly or severally. The amount of Rs. 50,000 which has already been paid to the appellants towards no fault liability shall be adjusted from the aforesaid amount. The amount shall carry interest @ 6% per annum from the date of application.

Thus, the appeal stands allowed. The impugned award stands set aside.