
(1981) 10 MP CK 0014
In the Madhya Pradesh High Court
Case No : M.A. No. 128 of 1976

Sitaram and Others

APPELLANT

Vs

The Nagar Palika Parishad, Mandsanr and Others

RESPONDENT

Date of Decision : 12-10-1981

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A, 110D

Citation : (1982) ACJ 466

Hon'ble Judges : R.K. Vijayvargiya, J

Bench : Single Bench

Advocate : P.K. Saxena, for the Appellant; B.L. Bavecha, B.I. Mehta and S. Jain, for the Respondent

Final Decision : Allowed

Judgement

R.K. Vijayvargiya, J.—This appeal u/s 110-D of the Motor Vehicles Act, is directed against the award dated 30.3.76 passed by the learned Member, Motor Accidents Claims Tribunal, Mandsaur in claim case No. 5 of 1974.

2. The facts giving rise to this appeal briefly stated areas follows: On 4.12.73 at about 11.00 am. motor-truck No. M.P.I. 4310 belonging to the Respondent No. 1 and driven by the Respondent No. 2 Madanlal and insured with the Respondent No. 3 ran over Km. Kamla aged about 10 years on Pratapgarh Mandsaur road. Kamla was crushed and died on the spot. The claimants-Appellants who are respectively the father and the mother of the deceased submitted an application u/s 110A of the Motor Vehicles Act claiming Rs. 50,000/- as compensation for the death of Kamla caused by the rash and negligent driving of the truck by the Respondent No. 2 in the course of his employment with the Respondent No. 1. The Respondents contested the claim. The Tribunal dismissed the application on the ground that it was not proved that the accident was caused on account of the rash and negligent driving of the truck by the Respondent No. 2. Aggrieved by the award of the Tribunal the Appellants have preferred this appeal.

3. Having heard learned Counsel for the parties I have come to the conclusion that this appeal deserves to be partly allowed to the extent hereinafter stated.

4. Now it is not in dispute that the death of Kamla was caused on account of her having being dashed against the truck belonging to the Respondent No. 1 and being driven at that time by the Respondent No. 2 in the course of his employment with the Municipal Council, Mandsaur. The defence of the Respondents was that the driver was over taking some bullock-carts and at that time, Kamla who was collecting cow-dung on the road dashed against the truck and was killed. According to them the driver was not rash and negligent in driving the truck and the deceased Km. Kamla herself was responsible for the accident.

5. The accident occurred in the city of Mandsaur. The driver of the truck should have been cautious in driving the truck because there was every likelihood of children crossing the road in the city. The N.A.W. 2, Madan, driver of the truck deposed that he over took the bullock-carts and then heard the cries of some one from behind to stop the truck and when he stopped the truck he found that Kamla had dashed against the truck. In the written statement given by the Respondents including the driver it was suggested that Kamla was collecting cow-dung from the road and herself dashed against the truck. The Respondent No. 2 denied having stated so in the written statement and stated that he had not seen the girl at all and therefore, could not say that she was dashed against when she was collecting cow-dung on the road. From the photograph produced and proved in the case it is clear that the girl was run over by the front wheel of the truck. In the circumstances the finding of the court below that the accident was not caused on account of the rashness or negligence in driving the truck by the Respondent No. 2 is patently erroneous and cannot be sustained. I, therefore, hold that the accident on account of which Km. Kamla died on the spot was caused because of the rashness and negligence in driving the truck by the Respondent No. 2 in the course of his employment with the Respondent No. 1 and therefore the Respondents are liable to pay compensation to the claimants on account of death of the deceased Kamla.

6. The next question that arises for consideration is regarding the amount of compensation awardable to the claimants. Kamla bai was the daughter of the claimants and was aged about 10 years at the time of the accident. A.W. 3 Sitaram has deposed that Kamla was assisting in the household work. He has not stated as to what pecuniary loss he has sustained on account of the death of Kamla. Kamla being the daughter of the claimants would have been married in due course and she would have assisted the claimants in their house hold work for about 5-6 years. In the circumstances I am of the opinion that a sum of Rs. 2,000/- would be adequate recompense to the claimants for the death of Kamla caused by the rash and negligent driving of the truck by the Respondent No. 2 during the course of his employment with the Respondent No. 1 as the driver of the truck. The Respondent No. 3 as the insurer of the truck is also liable to pay

the amount of compensation.

7. As a result of the discussion aforesaid this appeal is partly allowed. The award of the Tribunal is set aside and it is directed that the Respondents shall pay a sum of Rs. 2,000 (Two thousand) to the Appellants as compensation for the death of Kamla with interest at 6% p.a. from the date of application till realisation. The Respondents shall also pay costs of this appeal to the claimants. Counsel's fee Rs. 100/-if certified.