
(2001) 10 MP CK 0022

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 1045/95 with M.A. No's. 278 and 285-287 of 1996

Smt. Fagani and Another

APPELLANT

Vs

Prakash and Others

RESPONDENT

Date of Decision : 04-10-2001

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 168, 171, 173

Citation : (2002) 2 MPHT 106 : (2002) 6 MPLJ 1

Hon'ble Judges : Bhawani Singh, C.J.; A.K. Mishra, J

Bench : Division Bench

Advocate : Nilesh Kotecha, for the Appellant; Amrit Ruprah, for the Respondent

Judgement

Bhawani Singh, C.J.

This group of five appeals (Misc. Appeal No. 1054/95, Smt. Fagani and Anr. v. Prakash and Ors., Misc. Appeal No. 278/96, Natthu v. Prakash and Ors., Misc. Appeal No. 285/96, Kishan and Anr. v. Prakash and Ors.; Misc. Appeal No. 286/96, Kunji v. Prakash and Ors. and Misc. Appeal No. 287/96, Thumuru v. Prakash and Ors.) are proposed to be decided by this common order, since they arise out of the same accident with separate awards.

Before taking up all the cases for determination of compensation, facts about taking place of accident be mentioned. The accident took place on 18-1-1993. The deceased Ratan Gond and other injured claimants were travelling by Jeep No. MP-04 J/0282 from Betul to Multai against the payment of fare of Rs. 8/- each. The driver did not control the vehicle, which turned turtle resulting in death of Ratan Gond (44) and injuries to Natthu, Kishan, Smt. Sumitra, Kunji and Thumuru. Accordingly, compensation has been claimed alleging rash and negligent driver by the driver resulting in the accident.

The defence taken by the owner and driver of the jeep is that the truck came from opposite direction and with a view to avoid the accident, the jeep was taken

to the side where it turned turtle. The Insurance Company has alleged that the vehicle was used for hire and reward though it was insured for private use. Consequently, it is not liable to pay the compensation.

The Claims Tribunal, after recording the evidence, came to the conclusion that the accident took place as alleged and it was not proved that the jeep was taken to side to avoid the accident. It also came to the conclusion that the jeep was being plied against the terms and conditions of the Insurance Policy, being used for hire and reward, though it was insured for private use. Consequently, the compensation awarded to Smt. Fagani and Kamlesh alias Golu has been made payable by the owner and driver of the vehicle jointly and severally. The claim petitions of other claimants have been rejected.

Through these appeals, Smt. Fagani and Kamlesh alias Golu are seeking enhancement of compensation, while other claimants are claiming payment of compensation for the injuries suffered by them. Now, we take up these appeals one by one.

Misc. Appeal No. 1054/95 :

The deceased Ratan Gond was 48 year old at the time of accident. The claimants are wife and son of the deceased. The deceased was agriculturist and would sell fuel-wood in the market. It is stated that he was earning Rs. 600/- per month. That being so, after deducting 1/3rd towards personal expenses, monthly dependency comes to Rs. 400/- and yearly Rs. 4800/-. Multiplier in this case should be 13 and the compensation comes to Rs. 62,400/-. The claimants shall also be entitled to Rs. 10,000/- for loss of expectancy of life, Rs. 2500/- for loss to the estate, Rs. 2000/- for funeral expenses and Rs. 5000/- for consortium, taking total compensation of Rs. 81,900/-. The enhanced amount shall carry interest at the rate of 9% per annum from the date of application till payment.

Misc. Appeal No. 278/96 :

The claimant Natthu suffered head injury for which 30 stitches had to be applied, apart from fracture in fingers. He was a Carpenter. He alleges that he spent Rs. 3,000/- towards treatment, which took six months. There is no reason why his statement should not be accepted. However, the reasonable compensation should be Rs. 10,000/- payable with interest at the rate of 9% per annum from the date of application till realization.

Misc. Appeal No. 285/96 :

In this case, Kishan (husband) and Smt. Sumitra (wife) suffered injuries to their heads. They got treatment and were discharged in two hours from the hospital. However, it can be said that they suffered injuries in this accident, therefore, subjected to pain and suffering to some extent. However, for this kind of injury, compensation of Rs. 2,000/- each of them would be sufficient payable with interest at the rate of 9% per annum from the date of application, till realization.

Misc. Appeal No. 286/96 :

The claimant Kunji suffered injuries to head and left hand. He remained in hospital for three days. The medical certificate (Ex. P-12) indicates the injuries suffered by him. He must have suffered pain on account of these injuries for some time, therefore, in the interest of justice, he should be allowed compensation of Rs. 2,000/- for the injuries and Rs. 500/- for medical expenses payable with interest at the rate of 9% per annum from the date of application, till payment.

Misc. Appeal No. 287/96 :

The claimant-Thumuru suffered injuries on head, finger, right hand and right cheek. As per Ex. P-21, he remained in hospital for 8 days. Obviously, he must have suffered pain, after injuries till he was cured of them. Consequently, it would be just and proper to award compensation of Rs. 3,000/- for the injuries and Rs. 1,000/- for treatment. It would be paid with interest at the rate of 9% per annum from the date of application till payment.

Accordingly, the award passed by the Claims Tribunal in these cases are modified to the extent aforesaid. The finding of the Claims Tribunal with regard to liability of the owner and driver of the jeep for payment of compensation is maintained. Costs on parties.