
(2005) 06 MP CK 0001

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 386 of 2004

Smt. Maya Kewat and Others

APPELLANT

Vs

Sukram Dwivedi and Others

RESPONDENT

Date of Decision : 30-06-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 304A

Citation : (2005) ILR (MP) 1065 : (2005) 4 MPHT 477 : (2005) 4 MPLJ 29

Hon'ble Judges : U.C Maheshwari, J;A.K. Mishra, J

Bench : Division Bench

Advocate : Alok Hoonka, for the Appellant; S.K. Rao, assisted by Ajit Agrawal, for the Respondent

Final Decision : Allowed

Judgement

U.C. Maheshwari, J.

This appeal is directed against the award dated 22-12-2003 passed by Motor Accident Claims Tribunal Sihora in Claim Case No. 5/03 whereby the claim petition of the appellants regarding vehicular death of their predecessor Kewat was dismissed.

According to appellants on 29-12-2002 at about 6.45 p.m. husband of appellant No. 1 and father of remaining appellants namely kewat was coming back to home from Rampur, on the way he was subjected to an motor accident caused by Armada Jeep bearing No. M.P. 21-B-8208, driven by respondent No. 1 in a rash and negligent manner. The then respondent No. 2 was registered owner of this jeep while it was insured with respondent No. 3. The incident was reported to Police Station, Gosalpur and on completion of investigation respondent No. 1 was charge-sheeted u/s 304A, IPC.

Appellants filed claim petition before Motor Accident Claims Tribunal with the pleading that deceased was working as mason and earning Rs. 5,000/- p.m. And appellants were depend on him and prayed for compensation of Rs. 16,00,000/-

against the respondents.

In reply respondents No. 1 and 2 denied the allegations and pleaded that vehicle was insured with respondent No. 3, so no liabilities can be imposed against them. Respondent No. 3 in its reply also denied the liability and pleaded that respondent No. 1 was not having valid license and it is also said that two conflicting first information reports were registered regarding this incident and such accident was caused by some bus and not by this jeep. So in spite the said jeep was insured with it the respondent No. 3 is not liable for any compensation.

On pleadings of both the parties issues were framed, parties led their evidence and on appreciation of evidence only on the ground that accident was not caused by alleged jeep and in view of other conflicting police report, the claim of the appellants has been dismissed. Hence, this appeal.

Counsel for the appellants submitted that accident was caused only by alleged jeep and that has been proved by Exhibits P-1 to P-6, which are police report and other papers of criminal case and according to his submission other FIR could not be accepted in the light of evidence and besides this such other FIR has said nothing regarding impugned accident or incident. Therefore, findings of the Tribunal on this point are without any cogent evidence and mere on assumption such conclusion was drawn and claim was dismissed. He further submitted that the deceased was working as mason and earning rupees four to five thousand per month and all appellants were dependent on him have also been proved but these aspects have not been considered by the Tribunal and dismissed the claim petition.

On the other hand Counsel for respondent No. 3 by referring the FIR of Crime No. 1048/02 submitted that alleged accident was not caused by respondent No. 1. He referred other FIR of Crime No. 1048/02 of the same police station, the Tribunal on appreciation of evidence was correct for dismissing the claim of the appellants and prayed for dismissal of this appeal.

Having heard the parties, on perusing the record, it appears from Ex. P-1 to P-6 (papers of criminal case) that aforesaid accident was caused by the alleged jeep bearing No. M.P. 20-B-8208 driven by respondent No. 1 in rash and negligent manner and other report as referred by the respondent is not found related with the impugned incident according to its contents. Therefore, the Tribunal has committed grave error in relying such version of other report and dismissing the claim of the appellants.

Thus, in view of available evidence and exhibited papers, we are of the considered view that aforesaid accident was caused by rash and negligent driving of alleged Armada Jeep bearing No. M.P.21-B-8028 by respondent No. 1. Therefore, respondents are jointly and severally liable to compensate the appellants.

So far assessment of claim is concerned, according to appellants evidence

deceased was earning four to five thousand rupees per month but the same is not supported by any documentary evidence. So according to our view the mason earns Rs. 80/- per day, and therefore, income of deceased is assessed Rs. 2,400/- p.m., out of this 1/3 amount would have been spent by the deceased on himself, hence dependency comes to Rs. 1,600/- p.m. and the deceased was 45 days old as per post-mortem report, so multiplier of 15 is applicable to this case.

Thus the compensation amount regarding accidental death of Kewat is awarded $1,600 \times 12 \times 15 = 2,88,000/-$, besides this Rs. 5,000/- is awarded to widow for loss of consortium. Rs. 2,500/- regarding loss of Estate. Rs. 2,000/- for funeral expenses and Rs. 5,000/- regarding loss of expectancy of life are also allowed. Therefore, appellants claim for compensation is awarded to the tune of $(2,88,000 + 5,000 + 2,500 + 2,000 + 5,000) = \text{Rs. } 3,02,500/-$. The aforesaid amount shall carry interest at the rate of 6% per annum from the date of initiation of claim petition before the Tribunal, i.e., 11-2-2003. Respondents shall also pay the entire cost of this case including Counsel fees Rs. 1,500/-, if certified.

Appeal is allowed accordingly.