
(2017) 03 MP CK 0139
In the Madhya Pradesh High Court
Case No : 246 of 2006

Smt. Premwati Yadav.

APPELLANT

Vs

State of Madhya Pradesh & others.

RESPONDENT

Date of Decision : 07-03-2017

Acts Referred:

Indian Penal Code, 1860, Section 304A - Causing death by negligence
Motor Vehicles Act, 1988, Section 173,&br/>Section 173 - Appeals

Citation : (2017) 03 MP CK 0139

Hon'ble Judges : Anjuli Palo

Bench : Single Bench

Advocate : J.L. Mishra, A.T. Faridi, Ashish Vaidhya

Judgement

1. This appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 being aggrieved by the award dated 18.10.2005 passed by the learned Additional Member MACT, Beohari Distt. Shahdol in Claim Case No.9/2002, by which learned Tribunal has dismissed the claim case of the appellant.

2. It is admitted fact that a tractor trolley bearing registration No. MP18-8547-8548 owned by respondent No.2, insured with respondent No.3 and respondent No.1 was the driver of the aforesaid vehicle at the time of incident.

3. According, to the appellant/claimant, 18 year old deceased Sanju Baiga son of the claimant was travelling as a labourer in the aforesaid tractor trolley on 28.3.2002. He fell down from the trolley due to the rash and negligent driving of respondent No.1. He was brought to District Hospital Shahdol for treatment and he was admitted there for about 24-25 days. But he died on 30.8.2002. An FIR was lodged at Police Station Jai Singh Nagar District Shahdol for offence under Section 304-A of IPC against respondent No.1. On the above grounds, the claimant/appellant filed the application for compensation to the tune of Rs.8,57,750/- against the respondents.

4. In their reply the respondent No.1 and 2 denied the allegations and prayed that the claimant has filed a false case against them. They are not liable for any compensation.

5. The respondent No.3 has specifically alleged that at the time of accident offending vehicle was not used for agricultural purpose, therefore, the insurance company is not liable for compensation.

6. The learned Tribunal found that no eye witness has been examined by the claimant to prove rash and negligent driving on the part of the respondent No.1. AW3 (Premia) has been examined as an eye witness. But the Tribunal found that her name is reflected in the FIR (Ex.P1). Her statement is not found natural and reliable. Because, as per her statement, at the time of accident, she was sitting with the deceased on the sand which was kept in the trolley. About 16 persons were sitting in the trolley. Except the deceased nobody fell down from the trolley. Resultantly the learned Tribunal dismissed the claim petition.

7. The appellant has challenged the findings of the learned Tribunal on the grounds that the evidence adduced by the appellant/claimant has not been properly considered by the learned Tribunal. The claimant adduced sufficient evidence, but the respondents No. 1 and 2 have failed to adduce any evidence in rebuttal of the same. Therefore, he prays to allow this appeal and to set aside the impugned award. It is also prayed to award a just and proper compensation alongwith 12% interest from the date of institution of claim till its realisation.

8. The date of accident was 28.3.2002 and the FIR was lodged on 20.4.2002. There has been a delay of 23 days in lodging the FIR. No explanation has been offered on behalf of the appellant for the delayed FIR which creates some doubt. Only AW3 (Premiya) has stated that she is the eye witness of the incident. But in para-2 of her cross-examination, she has stated that she heard the accident from Nonbai and Lallu. AW3 (Premia) was not named as a witness in the charge sheet filed by the police nor AW-1 (Nan-Dau) and AW2 (Demaji) have stated about the presence of AW3 (Premia) on the spot at the time of the accident.

9. The burden lies on the appellant/claimant to prove that the deceased died due to the injuries caused to him in the accident. Page 6 of the Postmortem Report (Ex.P4) of deceased shows that the cause of death of Sanju was coma and shock due to chronic infection and loss of blood. This report was prepared on 1.5.2002. AW1 (Nan-Dau) is the father of the deceased has stated that after the accident the deceased was under treatment at District Hospital, Sahdol for about one and a half month. In this regard no document has been filed by the appellant of District Hospital, Sahdol. In para 9 of the cross-examination (AW1) Nan-Dau has admitted that during the period of treatment, no report has been lodged in any police station.

10. On the other hand, respondent No.1 driver of the aforesaid offending tractor has admitted in para 10 that on the date of accident Nan-Budiya, Shyambai, Nanbai and deceased Sanju and 6 other persons were working as labourer for

transporting sand. In para 9, he denied the suggestion that any accident has been caused by the tractor, then he also admitted that the report for the accident was lodged by the labourers on his behalf. Such type of statement indicates that the accident has been caused by the tractor and in the said accident injuries caused to the deceased.

11. In claim cases filed under the provisions of Motor Vehicles Act, no strict rule of evidence is applied particularly when there have no evidence is produced by the opposite party in rebuttal to the evidence produced by the complainant it may be considered on the basis of probabilities. The main purpose of Motor Vehicles Act is to provide immediate relief to the victims or the family members of the deceased. Normally some technicalities found while deciding the cases, but in the interest of victim and justice, it may be ignored.

12. From the testimony of respondent No.1 and AW3 (Premia) it appears that Sanju died due to injuries caused to him in the accident while he was travelling in the tractor trolley driven by the respondent No.1 at the relevant time.

13. Now the burden is shifted on to respondent No.1 to explain what was the reason of the accident. The respondent No.1 was the driver and was liable for the accident, because he failed to explain the real cause of accident. Therefore, adverse inference is drawn against the respondent No.1. It may be inferred that he was rashly and negligently driving the aforesaid tractor. He permitted the deceased and other labourers for sitting over the stock of sand, which was carried by the trolley. The respondent No.2 Dhirendra Singh in Para 11 of his cross-examination admitted that at the time of accident the tractor trolley was filled with sand. He has not denied that on the date of accident the deceased was working and travelling on the offending vehicle.

14. Looking to the above facts and the statements of the respondent No.1/driver it is clearly proved that Sanju sustained injuries due to the accident because the offending vehicle was being driven rashly and negligently by the respondent No.1. Father of deceased AW1 (Nan-Dau) has given first preference to the treatment of his son and therefore, he remained in hospital for saving the life of his son. Hence, the applicant/Nan-Dau is entitled to receive the compensation from the respondents under Section 166 of the Motor Vehicles Act, 1988.

15. At the time of accident, deceased Sanju was about 18 years of age. He was working as a labourer. AW1 Nan-Dau has not stated about the income of the deceased. The accident was caused in the year 2002 at that time it can be presumed that the deceased was earning 2,000/- per month, but he was bachelor. His father Nan-Dau was 35 years of age at the time of accident, therefore, multiplier of 15 would be appropriate looking to his age. After accepting the income of deceased Rs.2000/- per month, then yearly income comes to Rs.24,000/- and after deducting 1/3rd amount (24000-8000x15) the total loss of dependency comes to Rs.2,40,000/-. In addition Rs.5000/- is awarded in the head of funeral expenses and Rs.10,000/- for the loss of love and

affection. The appellant has failed to produce any medical bills for the treatment of the deceased, therefore, no amount is awarded in the head of medical expenses.

16. In view of the aforesaid, this appeal is allowed. The award passed by the Tribunal dated 18.10.2015 is set aside. The appellant is held entitled to receive a total compensation of Rs.2,55,000/- from the respondents jointly and severally. Rs.1,55,000/- be deposited in any nationalised bank and remaining amount be disbursed to the appellant. These amount amount shall carry interest @ 6% per annum from the date of application till its realization.

17. In the facts and circumstances of the case parties are directed to bear their own costs.