
(2002) 04 MP CK 0041

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 745/98

Smt. Rukmani Bai and Another

APPELLANT

Vs

Kanchhedi Lal and Others

RESPONDENT

Date of Decision : 02-04-2002

Acts Referred:

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

Citation : (2002) 2 MPHT 464

Hon'ble Judges : Bhawani Singh, C.J.;Rajendra Menon, J

Bench : Division Bench

Advocate : P.K. Jain, for the Appellant; R.P. Agrawal and Vishal Dhagat, for the Respondent

Judgement

Bhawani Singh, C.J.—This appeal is directed against the award dated February 18, 1998 of Motor Accident Claims Tribunal in MACT Case No. 62 of 1996.

2. Accident took place on 10-12-1995 at 7.30 p.m. when Truck No. CPQ 6655 driven rashly and negligently hit the deceased at Bhagwanganj (Sagar) resulting in his death. It is stated that deceased Narendra Kumar Bhadoriya was Mistri earning Rs. 1,800 per month. Due to the death, the family has been left without any source of income since it was dependent on the deceased. The vehicle was ensured with the New India Assurance Company Limited, Branch Sagar. It was owned by Kanchhedilal Kori and driven by Munna Lal Patel.

3. Owner and driver have been proceeded exparte in absence of their written statement or counter-claim. The defence of Insurance Company (respondent No. 3) is that driver did not possess valid driving licence, therefore, it was not liable to pay the compensation. Claims Tribunal has come to the conclusion that the deceased was earning Rs. 1,800.00 per month and that it was not proved that Driver did not possess valid driving licence. However, the claim has been dismissed on the ground that negligence on the part of driver has not been proved.

4. After perusal of the evidence on record, we find that the Tribunal has rejected the testimony of Suresh (P.W. 2). It came to the conclusion that this witness did not see the taking place of accident since he came to the spot after he heard uproar about the taking place of the accident. Moreover, he could not notice the number of vehicle which had left the place by the time he reached the spot and that it had grown dark at that time. This witness has clearly stated that at 7.00 p.m. he was sitting at the scooter repairing shop in Bhagwanganj (Sagar). At that time, he saw the deceased coming on foot from the side of Station when Truck No. CPQ 6655 came from the right side and hit him as a result of which the deceased fell. He received injuries on the back and ribs and was taken to the Police Station and then to the Hospital. From perusal of this statement, it can be plainly said that this witness has given vivid account of the taking place of the accident, therefore, it has to be accepted. Going to the spot after accident was obvious. From that conduct, it can not be inferred that he went to the spot after the taking place of accident and he had not seen it when it actually took place.

Similarly, in the absence of positive evidence to the contrary, it is not difficult to accept that he had noticed the number of vehicle also at that point of time. Result is the finding recorded by the Claims Tribunal on this aspect of the matter is not correct and is set aside. It is held that accident had taken place as alleged and rash and negligent driving by the driver is clearly established and in a case of this nature, the allegation by claimant that accident had taken place due to rash and negligent driving of vehicle as the heavy vehicle was expected to be driven on highway with high care and caution and taking place of accident goes to show that it was being driven rashly and negligently.

5. After coming to the aforesaid conclusion, we turn to decide the quantum of compensation payable in this case. Evidence suggests that the deceased was 20 years old working as Mistri and earning Rs. 1,800.00 per month. That being so, after deducting one third towards personal expenditure, annual dependency comes to Rs. 14,400.00. Multiplied by 17, the amount of compensation comes to Rs. 2,44,800.00 plus Rs. 14,500.00 towards loss of expectancy of life (Rs. 10,000.00), funeral expenses (Rs. 2,000.00) and loss to the estate (Rs. 2,500.00), taking the total amount of compensation to Rs. 2,59,300.00 (Rupees two lacs, fifty nine thousand three hundred only). The compensation will carry interest at the rate of 12% per annum from the date of application i.e., 17-5-1996 till December, 2001. Thereafter it shall be 9% per annum.

6. Appeal is disposed of in terms aforesaid. Parties to bear their own costs.