
(2007) 07 MP CK 0073
In the Madhya Pradesh High Court

Smt. Shakuntala Pare and Others

APPELLANT

Vs

Narmada Ghati Vikas Pradhikaran

RESPONDENT

Date of Decision : 09-07-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166, 173
Penal Code, 1860 (IPC) — Section 279, 337

Citation : (2007) 3 MPHT 416

Hon'ble Judges : K.S. Chauhan, J;A.K. Mishra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K.S. Chauhan, J.—This appeal has been preferred by the appellants being aggrieved by the award dated 19-3-2007 passed by II Additional Motor Accident Claims Tribunal, Bhopal, in M.C.C. No. 33/2002, whereby the claim petition filed by the appellants u/s 166 of the Motor Vehicles Act, 1988 for awarding the compensation on account of the death of Anokhilal has been dismissed.

2. The brief facts of the case in short are that in the intervening night of 27th and 28th of October, 1999 at about 12 o'clock Anokhilal was coming from his office by driving Jeep (CPZ 5996) which fell down in a ditch on account of brake failure. Consequently, he received serious injuries. He was carried to Hamidia Hospital, Bhopal where he succumbed to injuries on 28-10-1999. The report was lodged at Police Station, Govindpura wherein the Merge No. 73/1999 was registered.

It was also averred that Anokhilal was the driver at the time of incident in the office of Narmada Valley Tribunal and was getting a sum of Rs. 5,360/- per month. The appellants have suffered a great loss on account of death of Anokhilal, therefore, they filed the claim petition for compensation of Rs. 10,25,000/- with interest at the rate of 18% per annum.

3. The respondent submitted written statement denying the claim and its liability

mainly contending that the accident did not occur (sic: occurred) due to rash and negligent driving by the deceased himself, therefore, the appellants are not entitled for any compensation.

4. After appreciating the evidence the Tribunal found that the accident occurred due to rash and negligent driving by Anokhilal himself and therefore the appellants are not entitled for any compensation, hence dismissed the claim. Being aggrieved with the said award the appellants have filed this appeal u/s 173 of the Motor Vehicles Act, 1988 on the ground mentioned therein to set aside the award and to grant the compensation.

5. The learned Counsel for the appellants have submitted that the Tribunal has not appreciated the evidence in the proper perspective and has committed illegality in holding that the accident occurred due to rash and negligent driving of the deceased himself.

6. The learned Counsel for the respondent supported the award and submitted that it was not proved that the accident occurred due to brake failure and hence the Tribunal has rightly dismissed the claim petition. It does not require for interference.

7. In this appeal the main point for consideration is that whether the Tribunal has committed any illegality in holding that the accident occurred on account of rash and negligent driving by the deceased himself and not by the brake failure.

8. Shakuntala (A.W. 1) is the widow of the deceased Anokhilal Pare. She has stated in her evidence that her husband died in the accident. Her husband was driver and was getting the salary a sum of Rs. 5,000/- per month from his office. She has further deposed that she obtained the document from S.P. Office, which she has filed in the claim petition.

9. In the cross-examination, she has admitted that she was not present at the spot when this accident occurred. She has admitted that brake of the vehicle did not fail but the accident occurred due to rash and negligent driving of the deceased himself. She has further admitted that the respondent is not responsible for the negligence committed by her husband and she has instituted this claim petition on the instance of an advocate.

10. Appellant Shakuntala Pare herself has admitted that the accident had occurred due to rash and negligent driving by her husband. No document relating to mechanical failure of that vehicle has been filed. There is no evidence that the accident occurred due to brake failure of the vehicle. The case was also registered against her husband under Sections 279 and 337 of the IPC in Govindpura Police Station but ultimately the F.R. was filed.

11. The Tribunal has discussed at length about this aspect and rightly came to the conclusion that this accident occurred due to rash and negligent driving by the deceased himself and not by brake failure. Since the finding is based on the evidence adduced in the case therefore we affirm such finding.

12. Since the deceased himself drove the jeep rashly and negligently and caused this accident, therefore the appellants are not entitled for compensation.

13. The learned Counsel for the appellants has submitted that the Tribunal has not awarded the interim compensation on the basis of no fault liability.

14. From a perusal of the record, it is found that the application filed by the appellants u/s 140 of Motor Vehicles Act, 1988 has been rejected on 9-4-2002, which clearly indicates that no interim compensation was awarded on the basis of no fault liability but we find that the interim compensation ought to have been awarded to the appellants for the death of Anokhilal caused in this accident. Therefore, we award the compensation of Rs. 50,000/- with interest at the rate of 6% per annum from the date of filing of the application till realization.

15. From the foregoing discussion, we find that the claimants are not entitled for compensation other than the interim compensation hence this appeal deserves to be dismissed.

16. Consequently, the appeal fails and is dismissed accordingly. There shall be no order as to costs.