
(2000) 03 MP CK 0012

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 815/94

Smt. Sushila and Others

APPELLANT

Vs

Rajendra Prasad Shukla and Others

RESPONDENT

Date of Decision : 30-03-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 95(1)
Penal Code, 1860 (IPC) — Section 304A, 337

Citation : (2000) ILR (MP) 1001 : (2000) 4 MPHT 448

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

Bench : Division Bench

Advocate : G.K. Soni, for the Appellant; R.K. Thakur, for the Respondent

Final Decision : Allowed

Judgement

Bhawani Singh, C.J.—This appeal is directed against the award dated April 30, 1994, passed by the Motor Accidents Claims Tribunal (II), Bilaspur, in Claim Case No. 47/86.

2. On April 10, 1983, at about 3-4 p.m., Dasrath, who was A-Class Contractor, was coming from Bilaspur in Jeep No. M.P.Z. 4641. The Jeep is owned by the State of M.P. and it was being driven by Kashirao (respondent No. 4). It was hit by Truck No. M.P.T. 9390 owned by respondent No. 1 (Rajendra Prasad Shukla), driven by respondent No. 2 (Rahilal) and insured with the respondent No. 5 (Oriental Fire & General Insurance Company, Durg). On account of this accident, Dasrath died at the spot. The matter was reported to the Police by the Jeep Driver and a case under Sections 304A and 337 of the Indian Penal Code was registered and after investigation, challan was filed.

2. The deceased-Dashrath was A-Class Contractor in Public Works Department as also in Irrigation Department and had contracts worth lakhs of rupees. At the time of accident, he had taken contract of M.P. Warehousing Corporation for Rs. 12 lakhs apart from undergoing contracts of Warehousing Board for Rs. 11 lakhs

and Rs. 10 lakhs respectively. Many other works mentioned in Para 5 of the claim petition were also with the deceased Dashrath individually and in partnership. He was income tax payee. He was agriculturist and was earning Rs. 13,000/-. In 1982, he earned net profit of Rs. 37,870/-. Due to this accident, life of claimants became miserable. The deceased wanted his children to be Engineer or Doctor, giving them good education. But after death of Dashrath, one of his children had to leave study and his life is running to darkness. The deceased Dashrath was Vice-President of Block Congress Party apart from being social worker with high prestige in society. If he could live upto 75 years and he earned Rs. 30 to 40 thousand a year, he used to spent Rs. 25,000/- on wife and children and in 32 years, he could give financial help the family. The claimants claimed Rs. 20,000/- towards funeral expenses.

3. The allegation is that the jeep of Irrigation Department was also responsible for the accident, since it was being driven rashly and negligently by its driver. Therefore, the State of Madhya Pradesh is responsible for this, apart from the Insurance Company for compensation payable by the owner and driver, since the vehicle was insured with it at the time of accident. The owner and driver of the truck have denied that the vehicle was being driven rashly and negligently resulting in an accident. They stated that it was negligence on the part of the driver of jeep, which caused accident. It is admitted that the members of the deceased Dashrath's family are politicians; therefore, by use of influence, the jeep and the driver thereof have been saved from the accident. The truck was handed over to Guruvachan Singh of Raipur, on the basis of sale agreement dated 7-2-1983 for Rs. 1,15,101/-. Therefore, at the time of accident, Guruvachan Singh was owner of truck. It is denied that the deceased Dashrath was A-Class Contractor at the time of accident. Similarly, it is denied that his age was 42 years at that time and had contracts worth of lakhs of rupees in hand at that time. The income suggested by the claimants has been denied.

4. On the basis of the pleadings of parties, the Tribunal framed five issues. It is found that the claimants are wife and sons of the deceased and that the accident took place on 10-4-1983 at 6 p.m. when the deceased was coming from Akaltara to Bilaspur in Irrigation Department Jeep No. M.P.Z. 4641, which was driven by Kashirao. The accident took place when it reached near Brook Band Paper Mills, while the truck of Rajendra Prasad Shukla, bearing Registration No. M.P.T. 9390, rashly and negligently, came and hit the jeep, which was damaged and Dashrath died on the spot.

5. With respect to liability for payment of compensation of Rs. 2,40,000/- and interest thereon, it is directed that the Insurance Company would pay Rs. 50,000/- and remaining amount to be paid by Rajendra Prasad Shukla and Rahilal. It is held that the driver of the jeep was not driving the vehicle rashly and negligently; therefore, he was not responsible for the accident. The claimants are not satisfied with this award, hence this appeal.

6. Shri G.K. Soni, learned counsel for the appellant, submitted that the Tribunal

has not assessed the compensation properly. With the result, that just compensation has not been awarded. The income of the deceased has not been properly settled nor reasonable multiplier applied to the case. Therefore, the learned counsel contends that award deserves to be enhanced after settlement of proper income of the deceased, dependency of the claimants and use of suitable multiplier.

7. Shri R.K. Thakur, learned counsel for the respondent/Insurance Company, supports the award and contends that the liability of Insurance Company has been correctly settled by the Tribunal. It is also contended that the jeep driver was also responsible for the accident. Therefore, the conclusion of the Tribunal that the driver of the truck committed the accident, is not correct. At the most, it is a case of contributory negligence and the liability for payment of compensation should be equal in cases. It is found that the truck driver was also responsible for the same.

8. We have given our consideration to the whole matter carefully. Record has been perused. The contention raised by the learned counsel for both the parties appreciated. After perusal of evidence, certain facts are emerging, which may be stated. The deceased Dashrath was 44 years old at the time of accident. He was A-Class Contractor and had contracts worth lakhs of rupees. He was income tax payee. He was also engaged in agricultural operations as well, out of which his income was Rs. 13,000/- per annum, though Rajkumar has stated that the income of the deceased was Rs. 32,000/- to 35,000/-. It is in evidence that the deceased's yearly income was Rs. 32,000/- to 40,000/-, out of which he was spending Rs. 25,000/- on wife and children. No evidence in rebuttal has been produced by the other side. Looking to his standing as A-Class Contractor with contracts work lakhs of rupees, his family expenditure as well as standing in society, it is not difficult to accept that his income could be between Rs. 35,000/- to 40,000/- a year. Otherwise, it is difficult to manage all the expenditure of the family and his own. Taking reasonable view of the matter, the income of the deceased could be Rs. 36,000/-per annum. He would be spending 1/3rd on himself leaving Rs. 24,000/- per annum to the dependents. In this case, a suitable multiplier should be 15. Thus, counted, the compensation should be Rs. $24,000 \times 15 = \text{Rs. } 3,60,000/-$. The claimants are entitled to Rs. 2,000/- towards funeral expenses. Therefore, the claimants would be entitled total compensation of Rs. 3,62,000/-, carrying interest at the rate of 8 % per annum from the date of application till the date of payment.

9. Now, the question is that who is responsible for the accident. The evidence suggests that the accident was result of contributory negligence of both the drivers. True, it may be that the first information report blames the truck driver for the accident, but it was lodged by Kashirao, driver of the jeep. Therefore, much reliance cannot be placed on this statement. On the other hand, Rajkumar has stated that as per report in the news paper, this accident had taken place since both the drivers were driving the vehicle at an excessive speed.

10. The jeep driver has not come in witness box to state about the accident. Consequently, it is not difficult to hold that the drivers of two vehicles were equally responsible for the accident and therefore, they are liable to pay compensation equally.

11. The accident took place on 10-4-1983. At that time, the liability of the Insurance Company u/s 95(1)(a) of the Motor Vehicles Act (as amended from 1-10-1982) was to the extent of Rs. 1,50,000/-. The policy has to adhere to this provision. Therefore, the liability extends to Rs. 1,50,000/-.

12. It is pointed out by Shri R.K. Thakur, learned counsel for the Insurance Company, that the Insurance Company had already paid Rs. 61,620/- on 5-7-1994 inclusive interest as per award. It is directed that the remaining amount along with interest shall be calculated and paid within two months or else, it will carry interest at the rate of 11% from the date of filing the appeal in this Court till the date of payment. Fifty percent award amount with the same rate of interest shall be paid by the State of Madhya Pradesh within the same period with same stipulation fixed with respect to the Insurance Company. The remaining amount shall be paid by Rajendra Prasad Shukla (owner of the truck) with same rate of interest and stipulation. The appeal is allowed accordingly. The parties shall bear their own costs.