(1997) 06 MP CK 0020

In the Madhya Pradesh High Court

Case No : M.A. No. 602 of 1992 (J)

State of M.P. APPELLANT

Vs

Smt. Kishori RESPONDENT

Date of Decision : 24-06-1997

Acts Referred:
Motor Vehicles Act, 1989 — Section 110A, 173

Citation : (1997) 2 MPJR 119

Hon'ble Judges : S.K. Dubey, J;Rajeev Gupta, J

Bench : Division Bench

Advocate : A.S. Gaharwar, for the Appellant; H.B. Agrawal, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Dubey, J.

State is aggrieved of the award dated 1.7.92 passed in Motor Accidents Claims Case No. 40/87 by First Additional Motor Accidents Claims Tribunal, Jagdalpur. Bastar has filed this appeal u/s 173 of the Motor Vehicles Act, 1989.

The circumstances giving rise to this appeal arc thus ; Deceased Vyas Narayan aged 35 years, employed as Sub-Engineer, drawing monthly pay of Rs. 1728.85 was going on his moter-cycle No. M. B. Y. 4108 with a pillion rider one Bholaram Awasthy from the opposite direction a Jeep No. M.P.P. 3979 owned by State, driven by appellant No. 2 was coming on the fateful day i.e. 26.3.1987 which on turning did not remain in control due to bursting of tyre and failure of brakes and dashed with the motor-cyclist, as a result of which he died instantaneously. The legal representatives of the deceased filed an application u/s 110 A of the Motor-Vehicles Act, 1939 (for short the "Act'') to claim compensation of Rs. 3, 08.000. The claim was contended on the ground that the accident was inevitable due to bursting of tyre and failure of brakes, therefore, no liability could be fastened on the appellants. In support of the defence, the appellants examined appellant No. 2 who was driving the Jeep at the relevant time. No mechanical expert was examined or other evidence was adduced by the appellants to establish that the tyre was in road worthy condition. The Tribunal after appreciation of evidence adduced by the parties held that the accident was caused due to sole rash and negligent act of the Jeep driver. To

award compensation the Tribunal estimated the dependaney at Rs. 1000 per month, yearly Rs. 12. 000 applying the multiplier of 16 worked out the compensation of Rs. 1. 92.000 in that an amount of Rs. 5000 was added for pain and sufferings. Out of Rs. 1.97.000 a deduction of 20% towards lumpsum payment and uncertainties of life was made, thus, Rs. 1, 57, 600 was awarded as compensation with interest thereon at the rate of 12% per annum from the date of application till payment.

Shri A.S. Gaharwar. Panel Lawyer for the State submitted that the accident was inevitable as the tyre bursted because of a sharp stone came under it. On this appellant No. 2 applied brakes, but the brakes also failed due to bursting of lyre. In the circumstances the vehicle did not remain in control and dashed with the motor-cyclist. Learned counsel further submitted that the motor-cyclist also contributed to the accident as inspite of blowing the horn, the motor-cyclist did not stop the vehicle and proceeded in the direction of the Jeep resulting in collision.

Shri H.B. Agrawal learned counsel for the claimants submitted that this Court in appeal would not interfere with the findings recorded by the Tribunal based on appreciation of oral evidence. No perversity or any special feature has been pointed out which has escaped the notice of the Tribunal. The appellants have not led any evidence to establish the plea that the tyre which got burst was in a road worthy condition. It is well settled that when such a plea is raised the burden lies on the owner/driver of the vehicle to establish the defence. Counsel cited a decision of the Supreme Court in Minu B. Mehta and Another Vs. Balkrishna Ramchandra Nayan and Another, and decisions of this Court in Sabira Begum and Others Vs. Raipur Transport Co. Pvt. Ltd. and Another, , Jamila Begum and Others Vs. The Raipur Transport Co. Pvt. Ltd. and Another, and Sewaram Alias Sewan v. Nenhe Khan alias Asgar Beg and ors. 1987 A.C.J. 334. In support of Cross-objections to enhance compensation learned counsel submitted that when multiplier method is adopted for working out compensation, it takes care of all heads, hence, no lumpum deduction could be made. A decision of this Court in the Fizabai and ors. v. Namichani and ors. 1993 J.L.J. 437 was pressed into service.

Having heard counsel for the parties and on going through the record we are of the opinion that the appeal has no merit while cross-objections deserve to be allowed.

It is well settled that in order to succeed in a defence that the accident was due to a mechanical defect which was latent and not discoverable by the use of reasonable care, and therefore, they arc not liable, the owner and driver of the vehicle involved in the accident have to prove that they had taken all necessary precautions and kept the motor vehicle in a road worthy condition and that the defect occurred remained hidden inspite of reasonable care and caution taken by them. See - Minu B. Mehta''s case (supra) and decision of this Court in Bibi v. Sona Khan 1996 P.L.J. 988. To establish the defence appellants did not lead any evidence except the statement of the appellant No. 2 (NAW-1) who was driving the Jeep. This witness even did not state that the lyre which got burst was in a road worthy condition and the brakes were checked by him. The defect in brakes was not visible even after taking reasonable and due care like a prudent man. In such circumstances, in the absence of legal evidence that the tyre was serviceable and the brakes were in order the plea of inevitable accident cannot be accepted." That is the view of this Court in Sabira Begum and ors. and Jamila Begun and ors. (supra), wherein it has been held that when accident occurs due to bursting of tyre and the tyre was good and road worthy condition, but, due to stones on the road the lyre bursted and the accident was inevitable, owner has to establish that the tyre was not old and worn out, but, was serviceable lyre, that having not been established the owner was negligent in playing the bus. In Sewaram''s case (supra) same is the view. Therefore, finding of the Tribunal that the owner and driver has failed to establish that the vehicle was in road worthy condition and the accident was caused due to the negligence of the appellants do not call for any interference.

Re. quantum : So far the estimation of dependency and working out compensation by applying the multiplier of 16 in our opinion, the Tribunal rightly worked out the compensation. However, the Tribunal committed an error in making a deduction of 20% from the said amount for lumpsum payment and for uncertainties of life, It is well settled that when the Court or Tribunal applies multiplier method, which is more logical and sound, for calculating the compensation in case of a motor-accident, no deduction is permissible on account of lumpsum payment as it lakes care of all heads. Pi vision Bench of this Court in Fizabai''s case (supra) following the decision in case of Nisar Fatima and ors. v. M.P.S.R.T.C. and ors. 1990 P.M.L.J. 437 held that when compensation is arrived at by applying the principle of multiplier, it is wrong to make any kind of deduction. While choosing the multiplier itself, the figure chosen is far less than the number of years of reminder of working life of the deceased. That reduced figure itself taken care of imponderables. There is also the circumstance that with rising inflation year after year the value of money goes on getting eroded. There is, therefore, no scope for making any kind of deductions while working out the figure of loss of dependecy by applying the principle of multiplier.

True, the Tribunal has awarded Rs. 5.000 for pain and sufferings, but that amount could not have been awarded. However, that amount can be awarded to the widow towards consortium. Thus, the claimants would be entitled to total amount of compensation of Rs. 1.97,000.

At this stage, learned counsel for the State submitted that the interest be not awarded for the total period spent in litigation as for the delay in disposal of the case before the Tribunal, the appellants cannot be made to suffer for no fault of their. Besides, this appeal was filed in the year 1992 which has come up for final hearing in June 1997 hence, for that also the appellants cannot be made responsible. Counsel cited a decision of this Court in Oriental Insurance Company v. Ramsingh 1995 J.L.J. 342. In our view the submission of learned counsel for State deserves consideration, as we find from the record of the Tribunal, that the claimants closed their evidence on 27.6.1991 and the evidence of appellants/non-applicants was closed on 22.6.1992. The award was passed on 1.7.1992 against which the appeal preferred in the year 1992 came up for hearing in June 1997. For the delay so caused for no fault of the appellants, it will be unjust to burden the appellants with the interest for the total period spent in litigation. To say so we take support from the decision of this Court in Oriental Insurance Co. v. Ramsingh (supra). Therefore, we direct that the respondents /claimants would to entitled interest at the rate of 12% per annum for a total period of six years.

Accordingly, we direct the appellants to deposit the amount of Rs. 1.97, 000 with interest at the rate of 12% per annum for a period of six years only, less the amount already deposited by the appellants within a period of 3 months from the dale of supply of certified copy, failing which, the interest shall be payable at the rate of 15% per annum. On deposit the amount shall be dispursed to the respondents/claimants keeping in mind the guidelines laid down by the Supreme Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, and Lilaben Udesingh Sohel v. Oriental Insurance Co. Ltd. (1996) 4 S.C.C. 608.

In the result the appeal fails and is dismissed. Cross-objections arc allowed, award of the Tribunal shall stand substituted as indicated hereinabove. The respondents/claimants will be entitled to costs of this appeal. Counsel''s fee Rs. 1000 if pre-certfied.

C.C. as per rules.