

**(2000) 03 MP CK 0014**  
**In the Madhya Pradesh High Court**  
**Case No : M.A. No. 815 of 1994**

Sushila and Others

APPELLANT

Vs

Rajendra Prasad Shukla and Others

RESPONDENT

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**Date of Decision :** 30-03-2000

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 304A, 337

**Citation :** (2002) ACJ 167 : (2000) 3 MPLJ 290

**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

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## Judgement

Bhawani Singh, C.J.

This appeal is directed against the award dated 30.4.94, passed by the Motor Accidents Claims Tribunal (II), Bilaspur, in Claim Case No. 47 of 1986.

On 10.4.83, at about 3-4 p.m., Dashrath, who was A-class contractor, was coming from Bilaspur in jeep No. MPZ 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. MPT 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 Co. Ltd., Durg). On account of this accident, Dashrath 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.

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 lakh apart from undergoing contracts of Warehousing Board for Rs. 11 lakh and Rs. 10 lakh 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 up to 75 years and he earned Rs. 30,000 to Rs. 40,000 a year, he used to spend Rs. 25,000 on wife and children and in 32 years, he could give financial help to the family. The claimants claimed Rs. 20,000 towards funeral expenses.

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 blame for the accident. The truck was handed over to Guruvachan Singh of Raipur, on the basis of sale agreement dated 7.2.83 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 that he had contracts worth lakhs of rupees in hand at that time. The income suggested by the claimants has also been denied.

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 10.4.83 at 6 p.m. when the deceased was coming from Akaltara to Bilaspur in Irrigation Department jeep No. MPZ 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. MPT 9390, rashly and negligently, came and hit the jeep, which was damaged and Dashrath died on the spot.

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.

Mr. G.K. Soni, learned Counsel for the appellants, 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.

Mr. R.K. Thakur, the 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.

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 Rs. 35,000. It is in evidence that the deceased's yearly income was Rs. 32,000 to Rs. 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 worth 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 Rs. 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 dependants. In this case, a suitable multiplier should be 15. Thus calculated, the compensation should be Rs. 24,000 x 15 = Rs. 3,60,000. The claimants are entitled to Rs. 2,000 towards funeral expenses. Therefore, the claimants would be entitled to total compensation of Rs. 3,62,000, carrying interest at the rate of 8 per cent per annum from the date of application till the date of payment.

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 the report in the newspaper, this accident had taken place since both the drivers were driving the vehicles at an excessive speed.

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 the compensation equally.

The said accident took place on 10.4.1983. At that time, the liability of the insurance company u/s 95 (2) (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, liability extends to Rs. 1,50,000.

It is also pointed out by Mr. R.K. Thakur, learned Counsel for the insurance company, that the insurance company has already paid Rs. 61,620 on 5.7.1994 inclusive of interest as per award. It is directed that the remaining amount along with the interest shall be calculated and paid within two months or else, it will carry interest at the rate of 11 per cent from the date of filing the appeal in this Court till the date of payment. Fifty per cent 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.