
(2005) 08 MP CK 0109
In the Madhya Pradesh High Court
Case No : M.A. No. 506 of 1998

Sushila Bai and Others

APPELLANT

Vs

Kunwar Singh and Others

RESPONDENT

Date of Decision : 17-08-2005

Acts Referred:

Citation : (2006) ACJ 1435

Hon'ble Judges : U.C Maheshwari, J;A.K. Mishra, J

Bench : Division Bench

Advocate : Amit Verma, for the Appellant;

Judgement

U.C. Maheshwari, J.—Being aggrieved by the award dated 6.2.1998, passed by Motor Accidents Claims Tribunal, Bhopal in Claim Case No. 69 of 1996, appellants-claimants have preferred this appeal against dismissal of the claim petition.

2. The factual matrix of the case is that on 3.2.1996, at about 9.30 in the evening Prakash Sharma was going on his scooter bearing registration No. MP 4-Q 504 from Habibganj Dairy Road to Bawadia Kalan, Bhopal. On reaching near the water-head tank, Habibganj Naka, his scooter was overtaken by a dumper/truck bearing the registration No. MP 20-C 9012 driven by Kunwar Singh, respondent No. 1, in a rash and negligent manner, after overtaking it at some distance without any indication of the brake lights or any other signs suddenly said dumper was stopped in middle of the road. Due to this negligent act of the driver of truck, Prakash, who was riding scooter behind the dumper truck rammed into the truck from back side, he sustained fatal injuries on head and died on spot. On information, offence u/s 304A of Indian Penal Code was registered against respondent No. 1 at P.S. Govindpura. The dumper was owned by respondent No. 2 while it was insured with respondent No. 3. The deceased was working in Revenue Department as Patwari getting salary of Rs. 3,500 per month out of which Rs. 1,330 per month was basic pay and other sums were related to allowances. The appellant No. 1 being widow, appellant Nos. 2 to 4 are children and appellant Nos. 5 and 6 are parents of the deceased were dependent

on him, they filed claim petition for compensation of Rs. 24,83,000.

3. Respondent Nos. 1 and 2 remained ex parte in the Tribunal.

4. In the reply of respondent No. 3, the material facts as mentioned by the claimants-appellants in application have been denied. The factum of insurance with it has been admitted. It was pleaded that the scooter was driven by the deceased in a rash and negligent manner which was the cause of accident, thus deceased himself was responsible for the accident. The said dumper was plied in violation of the terms and conditions of the insurance policy, thus, the insurer is not liable to indemnify any claim of appellants.

5. As per prescribed procedure, the issues were framed by the Tribunal. After the recording of evidence at the stage of appreciation, it was held that accident was the consequence of rash and negligent driving of the scooter by deceased. In view of this finding by exonerating the respondent, the claim of the appellants was dismissed. Hence this appeal has been preferred by appellants.

6. Mr. Amit Verma learned Counsel for the appellants had submitted that in view of the evidence available on record it was proved that the said dumper was driven by respondent No. 1 in a rash and negligent manner when scooter of the deceased was overtaken and subsequent to it the dumper was suddenly stopped by respondent No. 1 in the middle of the road without giving any signal or switching on the brake lights. Thus in spite of taking all care the deceased rammed into the truck. He further submitted that it was a case for saddling the liability against all respondents on account of the negligent driving of the dumper by respondent No. 1. But, contrary to evidence the claim of appellants have been dismissed. He further submitted that the deceased was working as Patwari in the Revenue Department and getting salary of Rs. 3,500 per month as per evidence on record, he also referred the statements of witnesses and prayed for setting aside the impugned award of the Claims Tribunal by awarding the claim of the appellants for adequate compensation.

7. For consideration of the aforesaid submissions, we have gone through the record of Claims Tribunal. The aforesaid incident was reported to Police Station, Govindpura, Bhopal on which Crime No. 78 of 1998 was registered u/s 304A of Indian Penal Code against respondent No. 1. In this regard, the papers of investigation, police report, Exh. P1; dehati nalisi, Exh. P2; post-mortem report of the deceased, Exh. P4, have been produced and proved to prove the factum of incident. It is further proved by the deposition of Kaushal Kumar Dwivedi, CW 2, the eyewitness of incident, he stated that his car was behind the deceased and on overtaking his car and the scooter by the said dumper, the dumper suddenly stopped in the middle of the road without giving any indication or switching on the brake lights. He also said regarding the high speed of the dumper. According to him, due to this sudden stoppage of the dumper, the deceased was rammed into dumper and died. Thus, according to our considered opinion, the incident took place because of the rash and negligent act of respondent No. 1 in driving

the said dumper. Therefore, it is held that respondent Nos. 1 to 3 are liable to indemnify the claim of the appellants.

8. Coming to the question of quantum of compensation. As per statement of widow of the deceased Sushila Bai, CW 1, she stated that her husband's salary was Rs. 3,500 per month. He was contributing the entire salary to his family. This version is further supported by H.S. Vishwakarma, CW 3, the official witness of Revenue Department who proved the service record and salary of the deceased. He also stated that the salary of the deceased was Rs. 3,500 per month. It is held that the earnings of the deceased was Rs. 3,500 per month. Thus the same is taken up for assessment of the loss of dependency. The annual salary comes to Rs. $3,500 \times 12 = \text{Rs. } 42,000$. Out of this 1/3rd amount is to be deducted which would have been spent by deceased on him had he been alive then annual loss of dependency comes to Rs. 28,000. The age of deceased was 38 years and dependent persons are widow, children and parents of the deceased. Thus, as per Second Schedule of Motor Vehicles Act, multiplier of 16 is applicable to this age group. On applying it the total loss of dependency comes to Rs. $28,000 \times 16 = \text{Rs. } 4,48,000$. In addition to it Rs. 2,000 towards funeral expenses, Rs. 2,500 for loss to the estate, Rs. 5,000 for loss of expectancy of life and Rs. 5,000 to appellant No. 1, the widow of the deceased as loss of consortium are also awarded. Thus the total award comes to Rs. 4,62,500, the same is hereby awarded. The enhanced amount shall carry interest at the rate of 6 per cent per annum from the date of filing the application. It has to be paid by respondent Nos. 1 to 3 jointly and severally.

9. The appeal is allowed in part. There shall be no orders as to the costs.