

(2003) 11 MP CK 0078
In the Madhya Pradesh High Court

Vidya Devi and Others

APPELLANT

Vs

Maya Bai and Another

RESPONDENT

Date of Decision : 05-11-2003

Acts Referred:

Citation : (2004) 2 ACC 498

Hon'ble Judges : Shravan Shanker Jha, J;S.M. Samvatsar, J

Bench : Division Bench

Judgement

S.S. Jha, J.—This appeal is filed by the appellants against dismissal of their claim by the Commissioner, Workmen's Compensation.

2. Deceased Ramdayal Verma was a driver on truck bearing registration number MPW 8225. While he was driving the truck from Shivpuri to Gwalior, another truck bearing registration number UAB 9321 driven in a rash and negligent manner dashed against his truck which resulted into his death. On account of fire in the truck he was burnt alive in the truck. Application for compensation was filed by the claimants. Application has been dismissed by the Commissioner, Workmen's Compensation on the ground that the death of the deceased and factum of accident is not proved. Commissioner has also recorded a finding that it is not proved that the deceased died during the course of and arising out of the employment. Commissioner has also considered the driving licence Ex. P/1, in which it is mentioned that the name of the husband of Claimant No. 1 is Ramdayal Verma and from the documents Exs. P/2 and P/3, it is found that one Ramdayal s/o Mangaliya Soni died in the accident, his body was burnt and the ashes were handed over to his son Mahavir s/o Ramdayal Soni. This fact is also proved by the award passed by the Motor Accident Claims Tribunal. In the award, name of the driver of the truck MPW 8225 is mentioned as Ramdayal Soni s/o unknown person. It is held that the claimants have failed to prove that Ramdayal Verma and Ramdayal Soni are one and the same person. Claimants had claimed that ashes were burnt in the accident whereas in Ex. P/3 it is mentioned that ashes of the deceased were handed over to Mahavir s/o Ramdayal Soni by the

police. A.W. 2 Ramji Lal Verma has not deposed that Ramdayal was by caste jeweller and used to write his name as "Soni". It is held by the Commissioner, Workmen's Compensation that husband of the Claimant No. 1 Vidya Devi Verma has not died in the accident. In the evidence of claimant Vidya Devi Verma (A.W. 1), she has not deposed that the accident was during the course of and arising out of employment. In the absence of such evidence and the dead body was not found, no case is made out for interference with the order of Commissioner, Workmen's Compensation.

3. This appeal is admitted on the following substantial questions of law:

(i) Whether in view of the admission by the Insurance Company/respondent contained in para 3 of special pleas of its written statements in which the death of the deceased Ramdayal is admitted, the finding recorded by the Workmen's Compensation Commissioner is perverse?

(ii) Whether in view of the statement of Vidyadevi (widow of the deceased) proving her husband to have died in the accident and there being no cross-examination on this point and no other evidence contrary to it was adduced, the finding of the learned Workmen's Compensation Commissioner is sustainable in law?

4. Question No. (i) relates to admission by the Insurance Company contained in para 3 of special pleas. Insurance Company in para 2 of its written statement has categorically denied the factum of accident. Similarly, in special pleas it is pleaded that accident had occurred on account of rash and negligent driving of truck No. UAB 9321, therefore, for damages respondent No. 1 Insurance Company is not responsible and in the alternative it is pleaded that the deceased was guilty of contributory negligence. There is no admission about the factum of the accident, as an alternative pleading contributory negligence is pleaded. On going through the entire written statement, Insurance Company has denied the factum of accident. Therefore, this question is answered in negative.

5. As regards question No. (ii), this is a question of fact and is not a substantial question of law. Therefore, this question does not arise in the case being finding of fact.

6. In the result, appeal fails and is dismissed without any order as to costs.