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Madhya Pradesh High Court (Gwalior Bench)

Case No: Miscellaneous Appeal No. 259/92

Harprasad and Others	APPELLANT
Vs	
Sohan Singh @ Saheblal and Another	RESPONDENT

Date of Decision: May 9, 2000

Citation: (2000) 3 MPHT 75 : (2000) 2 MPJR 3 : (2000) 2 MPLJ 429

Hon'ble Judges: Bhawani Singh, C.J; Faizanuddin, J

Bench: Division Bench

Advocate: N.D. Singhal, for the Appellant; R.K. Goyal, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Bhawani Singh, C.J.

This appeal is directed against the award of the First Additional Motor Accidents Claims Tribunal, Shivpuri (for short, the Tribunal") in Claim Case No. 109/1987, dated 25-1-1992.

Briefly stated, Dashrath (30) died on 7-2-1986. Allegation is that the accident took place due to the rash and negligent driving of the tractor No. MBH 9363 by Sohansingh when the deceased was run over by the vehicle. Matter was reported to the Police by Sanjay Singh. This accident took place near Rajapur Stone Quarry when the deceased was coming home after filling the trolley with stones. The deceased was earning Rs. 20/- per day. The vehicle was owned by Sohan Singh, who gave Rs. 7,000/- to the claimants apart from some grain. It is stated that after this payment no further claim is sustainable, apart from the fact that the vehicle was being driven at low speed and the deceased died while attempting to get into the vehicle. The Tribunal examined the matter and found that the deceased was earning Rs. 20/- per day. It found that the deceased did not die due to the rash and negligent driving of the tractor on 7-2-1986; the deceased was not sitting in the tractor and the claimants were not entitled to any compensation except Rs. 15,000/- towards no fault liability. This award has been assailed through this appeal by the

claimants who are the legal heirs of the deceased.

Learned counsel for the parties were heard. Evidence perused. First question for determination in this case is whether the deceased was engaged by respondent No. 1 for filling stones in the vehicle on the date of accident. So far as engagement is concerned, evidence clearly suggests that the deceased was taken from his house on that date as per the statement of Harprasad (A.W-1), the father of the deceased. The vehicle was filled with stones and it was coming back. Whether the deceased was in the vehicle or outside, learned counsel appearing for the Oriental Insurance Company Ltd., submits that as per the statement of Sanjay (A.W. 2) the deceased asked the driver to stop the tractor to enable him to get into it. It was not stopped and deceased tried to get into it but failed and, at this stage, he was run over by the vehicle. This statement, if read with other evidence on record, is not satisfactory and cannot be depended upon for proving the engagement of the deceased by respondent No. 1 for filling the vehicle with stones which is clearly established. Obviously, after filling it the deceased was to return home as per the statement of his father. Therefore, it was the duty of the driver to see that he got into the vehicle safely. Apart from this conclusion emerging out of proper appreciation of the evidence, we find that the version of Sanjay Singh in the first information report is that the tractor-driver who happened to be the son of the owner of the vehicle, was driving it rashly and negligently. As soon as it reached the culvert, deceased Dashrath who was sitting in the tractor, fell down and was run over by the front tyres of the vehicle. The driver left the vehicle there and ran away. In the same information, Sanjay Singh has said that he as well as the deceased had been engaged by respondent No. 1 on wages. Therefore, it can safely be concluded that the deceased had been engaged by respondent No. 1 on that date and was travelling in the tractor when he fell down and was run over by it. The vehicle was being driven rashly and negligently resulting in the accident and the death of the deceased. It is worthwhile to record that the defence of the Insurance Company that the vehicle was being used for non-agricultural purpose and the driver did not possess a valid driving licence has been rejected by the Tribunal as not proved. This being a finding of fact cannot be assailed. It has not been proved by the Insurance Company on whom the onus lay to prove the same.

After deciding the question of negligence, we turn to the other aspect, namely, compensation payable to the claimants. Evidence suggests that the deceased was earning Rs. 20/- per day. At the time of accident he was 30 years old. At that time minimum wages were Rs. 20-25 per day. Since the claimants have come forward with a definite figure of Rs. 20/- per day as the wages, the contention of the learned counsel for the appellants that for assessment of compensation the standard of minimum wages should be adopted, cannot be accepted. We find that the deceased was earning Rs. 20/-per day. Obviously, he must be spending at least Rs. 5/- on himself leaving Rs. 15/- per day for the family. As per the Second Schedule of the Motor Vehicles Act, 1988 the appropriate multiplier in this case should be 18. This way, the compensation (Rs. 15 x 30 x 12 x 8) works out to Rs. 97,200/-. The claimants are entitled to Rs. 2,000/- for meeting

the funeral expenses. There is no evidence of expenditure on treatment, since the deceased died on the spot. The total compensation shall be Rs. 99,200/-. Taking the round figure, we award Rs. 1,00,000/- (Rs. one lac) to the claimants by way of compensation in this case. It shall carry interest at the rate of 9% per annum from the date of application to the date of payment. The compensation shall be paid as follows:

(1) Harprasad, father of the deceased Rs. 15,000/-

(2) Smt. Simma Bai w/o Harprasad. Rs. 15,000/-

(3) Mahila Phool Kunwar, wd/o of deceased. Rs. 40,000/-

(4) Nirasha d/o of the deceased. Rs. 20,000/-

(5) Deshraj, brother of the deceased. Rs. 10,000/-

The amount of interest shall also be distributed in the same ratio. The amount paid by way of interim compensation shall be deducted from the amount assessed above. Amount payable to any minor(s) be got invested by the Tribunal in Nationalised Bank till it (they) attain majority.

Costs on parties.