(1987) 09 MP CK 0017

Madhya Pradesh High Court

Case No: None

K.L. Mishra and Another — APPELLANT

Vs

Biharilal and Another — RESPONDENT

Date of Decision: Sept. 4, 1987

Acts Referred:

- Motor Vehicles Act, 1988 - Section 110D, 92A

Citation: (1988) 2 ACC 440 : (1988) ACJ 54

Hon'ble Judges: B.M. Lal, J

Bench: Single Bench

Judgement

B.M. Lal, J.

This appeal u/s 110-D of the Motor Vehicles Act (hereinafter referred to as the Act) is directed against an award dated 22-12-1986 passed by the Motor Accidents Claims Tribunal, Rewa (hereinafter referred to as the Tribunal) directing the appellants to pay Rs. 30,000/- to the respondent-claimant No. 1, Biharilal.

2. The short facts leading to this appeal are that, in the morning hours of the fateful day (i.e. 24-6-1985) at about 7.30 a.m. Mst. Ramwati, wife of the claimant Biharilal was waiting for a bus. Their six months old son Santosh Kumar was also in her lap. Suddenly, the appellant No. 2, Prabhat Kumar riding a Motor Cycle bearing registration No. MPA 8015, rashly and negligently, dashed Mst. Ramwati Bai whereupon both the wife and the son of the claimant sustained injuries and succumbed to it. On these facts, the husband of Mst. Ramwati Bai and father of the infant Santosh Kumar filed a claim petition, claiming compensation to the tune of Rs. 66,000/-.

3. The learned Tribunal found that the claimant entered into a second marriage, and therefore, only an ex-gratia compensation as contemplated u/s 92-A of the Act has been awarded, i.e. Rs. 15,000/- on each count total Rs 30,000/-; against which the present appeal has been filed by the appellants.

4. This fact is not disputed that the Motor Cycle was regis tered in the name of Shri K.L. Mishra, appellant No. 1.

5. Learned Counsel appearing for the appellants strenuously argued that this Motor Cycle was garaged with a mechanic for repairs and that it was not driven by K.L. Mishra or Prabhat Kumar Mishra at the relevant time and if the machanic had driven the said motor cycle causing the alleged accident, the owner of the vehicle Shri K.L. Mishra is not vicariously liable.

6. The Tribunal, while giving elaborate finding has reached the conclusion that the vehicle was driven by Prabhat Kumar Mishra only and not by any mechanic. Therefore, the question of fastening the liability on the mechanic does not arise. All the same, when an owner gives his vehicle to a mechanic who may take the vehicle for a test drive and drive the same in a rash and negligent manner causing an accident, in such circumstances also the owner is vicariously liable, for the simple reason that it is necessary for the mechanic to have a test-drive after repairs. But such is also not the case here. On the face of findings arrived at by the Tribunal, it cannot be said that the vehicle in question was not driven by the appellant No. 2 Prabbat Kumar Mishra son of K.L. Mishra at the relevant time.

7. It is next contended that, in view of Rule 13 of the Madhya Pradesh Motor Vehicle Accidents Claims Tribunal Rules, 1959 (hereinafter referred to as the Rules 1959) and Rules 293 of the Madhya Pradesh Motor Vehicle Accidents Claims Tribunal Rules, 1974 (hereinafter referred to as the Rules, 1974), no compensation for death of two persons in one claim petition could be awarded. In this context, it will be suffice to say that the Rules have been framed only to assist the Court in arriving at a decision in its right perspective. Moreover, in the instant case only ex-gratia payment of compensation u/s 92-A of the Act has been awarded without any further consideration on the amount of total claim to the tune of Rs. 65,000/- as claimed by the claimant. Therefore, these Rules 293 of the Rules, 1974 and Rule 13 of Rules 1959, will not render the impugned award a nullity.

8. No doubt, in Basantilal Madholal and Ors. v. M.P.S.R.T. Corporation and Anr. 1977 M.P.L.J. 331 the said rules have been taken into consideration and this Court has held that in such circumstances the claimant be given an opportunity to split up the claims and file separate claim petitions accordingly.

9. But the ratio laid down in Bansantilal''s case (supra) has no application to the instant case for the reason that in that case it has been found that there would be some issues in which all the petitioners would not be jointly interested and the relief�s to be granted to them are also bound to be different in the very nature of things including difference in amount of compensation. In the light of that circumstances, it has been found that joint petition by members of a family injured in the same accident claiming different amount as compensation would not be maintainable. Whereas the set of circumstances in the instant case are altogether

different one, where the award for compensation has been restricted only to the extent of ex-gratia payment contemplated u/s 92-A of the Act. Besides this, in Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon, . Their Lordships of the Supreme Court while considering the effect of rule have observed that ''Rules and procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure.'' ?

10. For the reasons aforesaid, this appeal has no substance is hereby dismissed with costs. Counsel''s fee Rs. 500/-, if certified.