(1986) 2 ACC 129 : (1987) ACJ 820

Madhya Pradesh High Court (Indore Bench)

Case No: None

Hemlata Devi and Others		APPELLANT
	Vs	
Gurudayal and Others		RESPONDENT

Date of Decision: April 23, 1986

Citation: (1986) 2 ACC 129 : (1987) ACJ 820

Hon'ble Judges: K.K. Verma, J; G.G.Sohani, J

Bench: Division Bench

Judgement

R.K. Varma, J.
This order shall also govern the disposal of Misc. Appeal No. 57/76 (Gurudayal Singh and Ors. v. Smt. Hemlata Devi

and Ors.).

2. The present appeal by the two legal representatives of the deceased Bhupendra who died as a result of accident with Truck No. MHS 6461 is

directed against the award dated 22-1-1976 passed by the learned Member, Motor Accident Claims Tribunal, Indore. The other connected

appeal aforesaid has been filed by the Truck owner, driver and the insurer against the said award.

3. The case of the claimants-appellants was that on 30-6-1974 at about 11.00 a.m., one Shyaralal was coming from the side of Dewas on his

scooter, driving along Agra-Bombay Road, The deceased Bhupendra was sitting behind him on his scooter. Near the Burmah Shell Petrol Pump,

while Shyamlal was driving his scooter, the driver-respondent No. 2 came driving the truck MHS 6461 rashly and negligently and dashed the truck

against the scooter from behind. As a result of this collision, Bhupendra fell down on the road, was run-over by the truck and died on the spot. He

was 32 years of age and was engaged in business of scooter parts which brought him an average income of Rs. 1,350/- per month.

4. The learned Tribunal held that the truck driver-respondent No. 2 caused the accident by rash and negligent driving of the truck as a result of

which the deceased Bhupendra died. As regards the quantum of compensation, the learned Tribunal determined the amount as Rs. 41,400/-. It

held that the monthly dependency of the widow Hemlata, mother Mangalaben and minor daughter Manisha amounted to Rs. 500/- and using the

multiplier of 10, determined , the amount of compensation as Rs. 60,000/-. Out of this, the learned Tribunal deducted Rs. 10,000/-, being the

insurance amount payable on account of death of the deceased who was insured and Rs. 8,600/- being 1/3rd of the value of scooter parts store on

account of the accelerated succession due to accidental death of the deceased. The limit of liability of the Insurance Company was found to be Rs.

50,000/- as per the Insurance Policy placed on record.

5. The learned Tribunal after determining the compensation amount payable to the legal representatives of the deceased at Rs. 41,400/-, has

awarded out of it a sum of Rs. 20,000/- to the widow Smt. Hemlata, Rs. 15000/- to the minor daughter Ku. Manisha and Rs. 6,400/- to the

mother Smt. Mangala Ben.

6. Being not satisfied with the amount of compensation awarded by the learned Tribunal, the two legal representatives Hemlata and Manisha filed

the present appeal joining initially in the array of respondents the third legal representative Smt. Mangala Ben, mother of the deceased as the

respondent No. 4. But subsequently on 27-9-1978, the appellants have without good reason decided to delete the name of the third legal

representative Mangala Ben from the array of respondents and deleted her name from the array of respondents. But deletion of her name has

brought about a serious defect in the appeal inasmuch as all the necessary parties are not joined in the memo of appeal. The appeal, is, therefore,

not properly constituted and only on this ground, the appeal must fail.

7. In the connected Miscellaneous Appeal No. 57/76, by the owner of the truck and others, the main contention on their behalf has been that there

was no negligence on the part of the truck-driver and as such, no liability arises against them. However, it is an admitted position that the truck in

question had struck the scooter from behind. This circumstances by itself is sufficient to come to the conclusion that there was negligence on the

part of the truck-driver. The plea that there was a sudden mechanical failure in the scooter at the time of the accident, has not been believed by the

learned Tribunal and there is no reason for us to come to a different conclusion on facts. As such, this appeal has no substance and the same also

deserves to be dismissed.

8. In the result, both these appeals fails and are hereby dismissed. There shall, however, be no order as to the costs.