
(2008) 03 MP CK 0048

Madhya Pradesh High Court (Gwalior Bench)

Case No: None

Shakuntala and Others

APPELLANT

Vs

Ghanshyam Dhakad and Others

RESPONDENT

Date of Decision: March 13, 2008

Citation: (2008) ILR (MP) 27 : (2008) 2 MPHT 449 : (2008) 3 MPLJ 442

Hon'ble Judges: S.M. Samvatsar, J; Abhay M. Naik, J

Bench: Division Bench

Judgement

Subhash Samvatsar, J.

This appeal is filed by the claimants being aggrieved by the award dated 8th October, 2002 passed by Additional Member Judge, Motor Accidents Claims Tribunal, Sabalgarh, District Morena in Motor Accident Claim Case No. 18/99 whereby a sum of Rs. 1,02,000/- has been awarded towards compensation to the claimants for the death of deceased Netram.

Brief facts of the case are that deceased Netram was about 24 years of age at the time of the accident as per the findings of the Claims Tribunal. He was a driver of a tractor owned by Gangaram. On 30-4-1999 at about 3.00 in the noon, he was sleeping in a shadow beneath the tractor-trolley bearing registration No. MP 06/1462 which was loaded with sugarcane. Respondent No. 1 Ghanshyam Dhakad, driver of the tractor started the tractor on reverse side due to which head of the deceased came under the rear wheel of the trolley and the deceased died due to the said injury.

Widow, sons and parents of the deceased filed an application for compensation. The Claims Tribunal found that the deceased was 24 years of age at the time of the accident. The Claims Tribunal also found that though the accident has resulted due to rash and negligence on the part of the driver respondent No. 1, but the deceased has also contributed to the accident to the extent of fifty percent. According to the finding of the Claims Tribunal, the deceased could not have slept beneath the trolley

of the tractor and thus, he has contributed to the extent of fifty percent in the accident. Hence, the Claims Tribunal deducted fifty percent amount from the compensation.

The contention of Shri Anand Bhardwaj, the learned Counsel for the claimants is that the finding of the Claims Tribunal that the deceased contributed to the accident to the extent of fifty percent is erroneous. According to him, the driver of the offending tractor had full opportunity to avoid the accident. The deceased was sleeping at the time of the accident hence, he has nowhere contributed in the accident.

On the other hand, Shri Amit Bansal, learned Counsel for the respondent Insurance Company submitted that the deceased himself had contributed in the accident. He relied upon the judgment of the Apex Court in the case of *Municipal Corporation of Greater Bombay v. Shri Laxman Iyer and Anr.* 2004(1) TAC 3 (SC). The Apex Court in the aforesaid judgment has laid down in Para 6 as under:

Though, there is no statutory definition, in common parlance "negligence" is categorised as either composite or contributory. It is first necessary to find out what is a negligent act. Negligence is omission of duty caused either by an omission to do something which a reasonable man guided upon those considerations who ordinarily by reason of conduct of human affairs would do or obligated to, or by doing something which a prudent or reasonable man would not do. Negligence does not always means absolute carelessness, but want of such a degree of care as it required in particular circumstances.

The Apex Court in the aforesaid judgment had laid down that though there is no statutory definition in common parlance for negligence, negligence means omission of duty or care as required by a responsible man in particular circumstances.

In the present case, from the evidence, it appears that the deceased was sleeping at the time of the accident. Thus, he has not at all contributed in the accident. On the contrary, the driver of the tractor had full opportunity to avoid the accident, either by awakening the deceased or by taking the tractor forward. However, he started the tractor without ascertaining if someone is sleeping beneath the trolley. In such circumstances, we hold that the Claims Tribunal has committed error in holding that the deceased had contributed in the accident to the extent of fifty percent.

So far as quantum of compensation is concerned, it has come in evidence that the deceased was a driver of a tractor. It is true that there is no definite evidence on record about the income of the deceased, but the claimants in their pleadings in the evidence have alleged that the deceased was getting a salary of Rs. 2500/- per month. Even in the absence of definite evidence about the income of the deceased, we can presume that income of a driver of the tractor must be around Rs. 2000/- per month. In such circumstances, we assess the income of the deceased at Rs. 2000/- per month, i.e., Rs. 24,000/- per annum. After deducting 1/3rd towards personal

expenses, the dependency of the deceased would come to Rs. 16,000/- per annum.

As the deceased was 24 years of age, multiplier of 17 will be applicable. On applying the multiplier of 17, the compensation comes to Rs. 2,72,000/-. Apart from this amount, the claimants shall be entitled to another sum of Rs. 28,000/- towards damages under various heads such as loss of estate, loss of consortium, love and affection, funeral expenses etc. etc. Thus, the total compensation comes to Rs. 3,00,000/- (Rupees three lac). The claimants shall also be entitled to interest on the enhanced amount of compensation at the rate of seven percent per annum from the date of appeal till realisation.

Appeal thus, stands allowed in part as indicated herein above.