
(1987) 07 MP CK 0027

Madhya Pradesh High Court

Case No: None

Vivek Kumar

APPELLANT

Vs

Kasturabai and Others

RESPONDENT

Date of Decision: July 15, 1987

Citation: (1987) 2 ACC 362

Hon'ble Judges: P.D. Mulye, J

Bench: Single Bench

Judgement

P.D. Mulye, J.

This judgment shall also govern the disposal of M.A. No. 184 of 86 (Vivek v. Babukhan and 2 Ors.) and M.A. No. 187 of 86 (Babukhan v. Vivek and 2 Ors.) as all these appeals have been filed against the same award dated 17th April, 1986 arising out of separate claim petitions filed on account of the accident which took place on 1-10-1983.

2. Misc. Appeal No. 183 of 86 filed by the truck owner arises out of claim case No. 3 of 84 for Rs. 62,000/-, in which while awarding compensation of Rs. 15,000/- plus cost and interest to the claimant-respondents, the claim against the Insurance Company has been dismissed.

3. M.A. No. 184 of 86 filed by the truck owner, arises out of claim case No. 46 of 84 for Rs. 83,000/- in which even though an award for Rs. 7,500/- plus cost and interest has been awarded to respondent Babu, who was injured in the accident, the same was dismissed against the Insurance Company.

4. Misc. A. No. 187 of 86 which also arises out of claim case No. 46 of 84 has been filed by claimant Babu for enhancement of compensation to the tune of Rs. 50,000/- though he had put up a claim for Rs. 83,000/- for the injuries sustained by him in the said accident.

5. It is not now in dispute that truck number MND 5933 was owned by appellant Vivek Kumar of which the driver on the relevant day of the accident, which took place on

1-10-1983 was respondent No. 6 Bhur Singh, in the employment of the appellant Vivek. The said truck was insured with the respondent the United India Insurance Company for third party risk. It is also not in dispute that on 1-10-1983 the truck met with an accident in which Tatu, who was a labourer died as a result of the injuries sustained by him in the said accident as also the fact that in the same accident Babu, who is also a labourer received injuries.

6. On the relevant day of the accident the deceased Tatu and claimant appellant Babu Khan were proceeding in the said truck from Balwadi towards Sendhwa. When the truck reached village Mohan Padawa, the truck driver at that time drove the truck in such a rash and negligent manner that the truck got over-turned after falling into a ditch as a result of which both Tatu and Babu Khan received injuries. However, Tatu died in the hospital on 5-11-1983.

7. Tatu's legal representatives, namely his widow and children filed the claim petition in which they claimed Rs. 62,000/- as compeniation.

8. Similarly Babu Khan also filed claim petition claiming Rs. 83,000/- by way of compensation for the injuries sustained by him though an award of Rs. 7500/- was given in his favour.

9. In both these cases the Insurance Company has been exonerated.

10. In the written statement filed by the owner, driver and the Insurance Company they did not dispute the factum of accident but they denied that Tatu died in the said accident or that Babu Khan also received injuries in the said accident.

11. According to the claimants in both these petitions their case was that Tatu and Babu Khan were travelling in the truck as labourers and as the truck was hired for carrying goods, the claimants are entitled to receive the compensation.

12. The learned Member of the Tribunal found that the accident occurred because of the rash and negligent driving of the truck driver. He also found that at the time of the accident Tatu was about 60 years. He also found that the daily earning of Tatu was about Rs. 10/-per day. He, therefore, thought it fit to award compensation for Rs. 15,000/- plus cost and interest at 6 per cent from the date of the petition that is 20-12-83 and at the enhanced rate of 12 per cent after six months from the date of the award till realisation.

13. Similarly in the case of Babu Khan he also found that the claimant suffered grievous injuries in the said accident with permanent disability; that at the time of the accident he was aged about 35 years and he thus thought it proper to award him a compensation of Rs. 7500/-plus cost and interest at the rate of 6 per cent from the date of the petition i.e. 11-6-84 and at the enhanced rate of 12 per cent after the expiry of 6 months from the date of the award till realisation.

14. As the learned Counsel for the truck owner as also the Insurance Company did not dispute the factum of accident nor did they challenge the finding that the accident occurred because of the rash and negligent driving of the truck driver coupled with the fact that in the said accident Tatu died and Babu received injuries, it is not necessary to reconsider that part of the evidence.

15. However, the learned Counsel for the truck owner submitted that the learned Member of the Tribunal has committed an illegality in dismissing the claim against the Insurance Company by holding the owner of the truck as also the driver of the truck jointly and severally liable for the compensation. The learned Counsel for the appellant relying on the decisions reported in 1986 ACJ 394 , [New India Assurance Co. Ltd. Vs. Shakuben and Others](#), and 1987 ACJ 1(MP-EB) (Harishankar Tiwari v. Jagru and Ors.) submitted that from the evidence and material on record it has been clearly established that both Tatu and Babu were travelling in the said truck as labourers and even if they were treated as gratuitous passengers, still in view of the terms of the insurance policy the Insurance Company could not be exonerated, though on this point the learned Counsel for the Insurance Company relying on the decisions reported in 1977 ACJ, 343 (Pushpabai Purshottam Uceshi v. Ranjit Ginning and Pressing Co.); 1979 ACJ 292 (Ambaben v. Usmanbhai Amirmiya Sheikh) and 1981 2 MP WN 226 contended that the Insurance Company has been rightly exonerated.

16. However, after hearing the learned Counsel on this point and after going through the authorities I am of opinion that considering the facts and circumstances of the case as also the evidence on record, which has not been properly considered and appreciated by the learned Member of the Tribunal, the finding of the Tribunal that the Insurance Company cannot be held liable to pay compensation cannot be upheld because the learned Member has relied on Ex. D-3 which in fact is a statement recorded by the police and the same has not been proved as required by law, apart from the fact that it could not be treated as any admission therein of Babu. Admittedly the truck driver has not been examined to rebut the evidence adduced by the claimants on this point. Consequently the Insurance Company could not be absolved from its liability.

17. So far as the appeal filed by Babu Khan for enhancement of compensation is concerned, from the evidence of Dr. Vijay Kumar Pure it has been established that because of the fractures sustained by him in his leg Babu Khan cannot walk fast though he has also opined that the recovery to his hand could be to the tune of 90 per cent and the disability of the right leg is only to the extent of 25 per cent. The learned Member of the Tribunal has taken this evidence into consideration and the compensation awarded to him does not call for any further interference as the same appears to be just, proper and reasonable.

18. However, the learned Counsel for claimant Babu Khan also submitted that the learned Member of the Tribunal has committed an error of law in not awarding interest at the rate of 12 per cent from the date of the filing of the application till realisation in view of

the Supreme Court decision and several other decisions on this point. This position was not disputed by the learned Counsel for the truck owner as also by the learned Counsel for the Insurance Company. Therefore, to that extent the award given in both these cases deserves to be modified and, therefore, the claimants in both these cases are entitled to claim interest at the rate of 12 per cent from the date of the filing of their claim petitions.

19. Similarly as pointed out above, in my opinion, the learned Member of the Tribunal has committed an illegality in exonerating the Insurance Company from its liability to pay the compensation. Consequently, M.A. No. 183 of 1986 and M.A. No. 184 of 86 are allowed and it is held and ordered that the Insurance Company is also jointly and severally liable to pay the amount of compensation already awarded along with truck owner and truck driver and shall also pay interest at the rate of 12 per cent per annum from the date of the filing of the application by the claimants. M.A. No. 187 of 1986 for enhancement of compensation is dismissed except with the modification regarding interest as indicated above.

20. However, considering the facts and circumstances of the case parties are directed to bear their respective costs of these appeals.