

(1900) 01 MP CK 0003
MADHYA PRADESH HIGH COURT
Case No: 3489 of 2005

MANJU JAIN

APPELLANT

Vs

KAPIL SHARMA

RESPONDENT

Date of Decision: Jan. 1, 1900

Acts Referred:

- Motor Vehicles Act, 1988, Section 173, Section 173 - Appeals

Hon'ble Judges: Anjuli Palo

Bench: Single Bench

Advocate: Sandeep Kachhi

Judgement

1. This appeal has been filed under Section 173 of the Motor Vehicles Act 1988, being aggrieved by the impugned award dated 05.09.2005 passed by the Motor Accident Claims Tribunal, Khandwa (MP) in Claim case No. 18/04.

2. It is not in dispute that applicant no. 1 to 4 are the children of applicant no. 5 and deceased Umen Singh. It is also admitted that the respondent no. 2 is the owner and respondent no. 3 is the insurer of the offending tractor and trolley bearing registration no. MP 12 M / 0787 & 0788.

3. In brief, the facts of the case are that on 13.12.2003, the deceased Umen Singh was travelling in the offending vehicle along with his yield (soyabean crop) which was being taken to Bhikangaon Krishi Upaj Mandi. Due to negligent and rash driving of the tractor by respondent no.1, deceased Umen Singh who was sitting over the sacks containing soyabean on the trolley, fell down from the trolley and the wheel of the tractor rolled over his body. Deceased Umen Singh was brought to the hospital where he succumbed to his injuries.

4. Being his LR's and dependents, the appellants preferred claim petition for compensation to the tune of Rs. 17,50,000/- against the respondents No. 1 to 3. Learned Tribunal awarded only Rs. 1,62,000/- holding that the deceased himself was negligent to the extent of 25% and the learned Tribunal exonerated the insurance company from its liabilities on the ground that at the time of the accident, the deceased was travelling on the offending vehicle as a gratuitous passenger. His risk is not covered under the insurance policy.

5. The claimants/appellants challenged the impugned award on the grounds that the findings of the Tribunal is contrary to the material available on record. Learned Tribunal grossly erred in holding the negligence to the extent of 25% of the deceased Umen Singh by ignoring the evidence of eye-witness Mohan (PW-2) and record of the criminal case which was registered against respondent no. 1, which shows that due to the negligence of respondent no. 1, the accident has occurred.

6. It is claimed that Learned Tribunal further grossly erred in exonerating the insurance company from its liabilities, on the ground that the deceased was traveling as a passenger in the goods vehicle. Even though, the deceased was sitting in the trolley attached to the tractor for taking yield of his soyabean crop which was being taken to the mandi, therefore, there is no violation of the policy. Insurance company is liable to satisfy the award. The claimants / appellants prayed to modify the award and suitably enhance the amount of compensation.

7. This appeal is pending since 2004 neither anyone appeared on behalf of the appellants / claimants to argue the matter, hence it is considered on merits of the case.

8. With regard to the contributory negligence of the case, AW-2 Mohan clearly deposed that due to rash and negligent driving of respondent no. 1, the offending tractor turned turtle at the turning. As the deceased was sitting over the sacks piled up on the trolley. Therefore at the time of accident, he fell down and was crushed. Findings of the learned Tribunal is that deceased Umen Singh was himself negligent because he knew that it was unsafe to travel in a trolley which was already filled with sacks of soyabeans that too when the road was in a very bad condition.

9. Learned Tribunal found that, deceased Umen Singh fell down first and then the wheels of tractor rolled over him and turned turtle. But this situation has not been indicated in the evidence of eyewitness PW-2/Mohan, nor the driver of the aforesaid offending tractor. Isram / Respondent No. 1 has been examined with regard to the contributory negligence of the deceased, who could be the star witness to explain the root cause of the accident. In the absence of his evidence, the contributory negligence of the deceased cannot be asserted on assumptions. Therefore, the findings recorded by the learned Tribunal is not based on the evidence on record.

10. Learned Tribunal in Part 14 of the impugned award, has found that the offending tractor and trolley was insured only for the driver and four laborers. It was not proved that at the time of the accident, Umen Singh was traveling in the capacity of driver or labour. It is not proved that he was traveling as the owner of soyabean crop which was being transported to the mandi.

11. It is settled law that for breach of condition of the insurance policy, the burden lies on the insurance company to prove the aforesaid breach. In this regard, no witness has been examined by the insurance company.

12. The findings of the learned Tribunal is based only on the testimony of Radhabai (AW-1) who is the wife of deceased Umen Singh. Further, they failed to produce any documentary evidence with regard to batai sajhedar. This Court is not in agreement with the findings of the learned Tribunal because the testimony of Radhabai (AW-1) and other applicant witness Mohan has not rebutted. Further, respondent no. 2/drivers himself explained that the deceased was sitting on the trolley traveling as the owner of the soyabean yield which was being transported to the mandi. Learned Tribunal failed to consider that breach of any condition of policy has not been proved by the respondents. These findings are totally based on assumptions. Therefore, it cannot be upheld.

13. As in the opinion of this Court, the insurance company failed to prove any breach of condition. Hence, it cannot be exonerated from the liability to pay compensation. Learned Tribunal wrongly assessed that the deceased himself was negligent to the extent of 25%. Learned Tribunal assessed total compensation to the tune of Rs. 2,16,000/-. While considering the dependency of the applicants at the rate of Rs. 1500/- per month. The age of the deceased was 40 years hence, multiple of 12 has been used by the learned Tribunal which is proper.

14. Learned Tribunal has not awarded any compensation in the head of "loss of consortium" in favour of appellant no. 1 /wife (aged about 36 to 40 years). She is entitled to receive 25,000/- for loss of consortium. Further, the appellants are also entitled to receive Rs. 10,000/- in the head of funeral expenses. Due to the accident, the appellant no. 2 to 4 have lost their father's love and affection. Hence, each of appellant no. 1 to 4 are entitled to receive Rs. 10,000/- in the aforesaid head.

15. Thus, the total sum of compensation comes to Rs. 2,91,000/- (Rs. 2,16,000/- + 25,000/- + 10,000/- + 40,000/-). On deducting the amount of Rs. 1,62,000/- awarded by the Tribunal, the enhanced amount comes to Rs. 1,29,000/-.

16. In view of the aforesaid, this appeal is partly allowed and the appellants are held entitled to receive sum of Rs. 1,29,000/- over and above the amount of

compensation already awarded by the Tribunal. The finding of learned Tribunal with regard to 25% of contributory negligence is hereby set aside. The enhanced amount shall carry interest @ 6% per annum from the date of application till its realization. In the facts and circumstances of the case parties are directed to bear their own costs.

17. Accordingly, the appeal stands allowed in part and disposed of.