
(1986) 11 MP CK 0005
In the Madhya Pradesh High Court

Ambalal	Vs	APPELLANT
Anna and Others		RESPONDENT

Date of Decision : 27-11-1986

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 110D

Citation : (1987) 2 ACC 131

Hon'ble Judges : K.L. Shrivastava, J

Bench : Single Bench

Judgement

K.L. Shrivastava, J.—This order shall also dispose of the Cross Misc. Appeal No. 226 of 1984 (Oriental Fire & General Insurance Co. v. Ambahl and Ors.) which is by the insurer.

2. This appeal u/s 110-D of the Motor Vehicles Act, 1939 (for short "the Act") is directed against the award dated 29-3-1984 made by the Member, 1st Additional Motor Accidents Claims Tribunal, Indore in Claim Case No. 153 of 1979 whereby the claim petition u/s 110-A of the Act filed by the appellant Ambalal has been allowed only partly.

3. It is not in dispute that on 2-8-79 there was a collusion between the passenger bus bearing registration number C.P.H. 8080 belonging to the M.P.S.R.T.C. Bhopal and the truck bearing registration number M.H.V. 5185 near village Badodiya Khan on the Indore-Ujjain road. At the relevant time the accident bus was being driven by the appellant Ambalal and the truck in question was being driven by Mustafa, the respondent No. 2 (N.A.W. 1). The truck belonged to the respondent No. 1 Anna and was insured with the respondent No. 4 Oriental Fire & General Insurance Co. Ltd., Indore (for short "the insurer").

4. The claim petition was filed on the following averments. The accident occurred due to the negligence of the truck driver who had come on the wrong side. As a result of the accident, the appellant Ambalal had sustained several injuries including those on his right leg and on his face. He had sustained fractures and

had to remain under treatment for a considerable period. It was stated that Ambalal has sustained permanent disability. A claim for Rs. 28,000/- was laid against the driver, insurer and the owner of the truck.

5. The owner and the driver remained ex-parte and the claim petition was contested by the insurer denying the averments as to negligence. It was contended that the accident had occurred due to negligence of the appellant Ambalal himself and at any rate he was guilty of contributory negligence.

6. At the conclusion of the trial the learned Tribunal, disbelieving the defence version, held that the accident had occurred due to the negligence of the truck driver and awarded compensation in the sum of Rs. 10,750/- inclusive of loss of pay and medical expenses. Interest @ 6% p.a. has been awarded from the date of award.

7. Aggrieved by the award the claimant and the insurer both have come up in appeal.

8. According to appellant Ambalal the amount of compensation is inadequate.

9. The contention of the insurer is that the learned Tribunal erred in not dismissing the claim petition. In the alternative it is contended that at any rate, in the circumstances of the case, the amount of compensation is excessive and deserves to be reduced.

10. The points cropping up for consideration in these appeals may conveniently be crystalised in the following terms:

(1) Whether the learned Tribunal erred in holding that the accident was occasioned due to the negligence of the truck driver.

(2) Whether the quantum of compensation deserves to be interfered with.

11. In the decision in *British India Insurance Co. Ltd. v. Capt. Itbar Singh* AIR 1959 S C. 1331 it has been held that when Sub-section (6) of Section 96 of the Act talks of avoiding liability in the manner provided by Sub-section (2) it necessarily refers to the defences under Sub-section (2) and it cannot be said that in enacting Sub-section (2) the Legislature was contemplating only those defences which were based on the conditions of the policy. In paragraph 16 of the judgment it has been observed that though the defences open to the insurer are only those specified under the Act, it cannot be said that the statute causes any hardship to the insurer because the insurer has the right, provided he has reserved it by the policy, to defend the action in the name of the insured and if he does so all defences available to the insured can then be urged by him. It is not for the Court to add these grounds of defences. Further if the insurer has been made to pay something which on the contract of the policy he was not bound to pay, he can under the proviso to Sub-section (3) and under Subsection (4) recover it from the insured.

12. It may be stated that in the instant case the owner and the driver of the

truck having not contested the claim, the insurer, as provided u/s 110-C(2-A) of the Act, had a right to contest the claim on all or any of the grounds available to the insured and his driver.

13. On the question of negligence we have the evidence of Sardar Singh (A.W. 1) resident of Badodiya Khan, the appellant Ambalal (A.W. 2), Ramchandra (A.W.3) the Conductor of the bus and Mustafa (N.A.W.1), the driver of the accident truck.

14. The testimony of Sardar Singh (AW 1) is that on hearing the noise of collision, his attention was attracted to the scene of the occurrence and he had found that the bus was lying by the side of the road on the left Side of the driver's seat and the truck was standing on the middle of the road. According to him on the basis of the tyre marks he had found the left side wheels of the bus on the Kutcha portion of the road. Appellant Ambalal has also stated that finding the truck coming on to the bus he had taken it towards the Kutcha portion of the road. According to him the Kutcha portion of the road is 5 ft. in width.

15. The testimony of Rarachandra (A.W. 3) is that the truck was coming at fast speed and had collided against the right side of the bus. He has stated that at the time of the accident the bus was not stationary but was moving.

16. The testimony of Mustafa (N.A.W. 1) is that at the relevant time he was driving the truck which was empty and on seeing the bus coming at great speed he had slowed the speed of the truck. According to him after the accident he himself did not go to the truck owner for the job. His version is that the bus had come on the middle of the road. He has stated that he had lodged a report of the occurrence but no such report was produced.

17. In the instant case no spot map has been filed. On the basis of the evidence of Sardar Singh (A.W. 1) it has to be held that the bus was on the Kutchha portion of the road. The version of Ramchandra (A.W. 3) is that as a result of the collision, the buffer and the steering of the bus had been damaged and the truck had come to the middle of the road. The fact that the bus had been thrown aside indicates that the truck was at great speed.

18. On a careful consideration I am of the view that the finding recorded by the learned Tribunal that the accident occurred due to the negligence of the truck driver is on firm foundation. On the material on record the contention that the accident was due to negligence of the bus driver or that at any rate he was guilty of contributory negligence has no force.

19. This brings us to the question of quantum of compensation.

20. It is well-settled that compensation should be awarded with due advertence to the comparable cases.

21. In the decision in Santoshkumar's case (1982 M.P.W.N. 403) a boy aged 10 years had suffered 13% disability due to shortening of his leg by 1 inch. It was held that the award granting Rs. 10,000/- as compensation was not excessive. It

was observed that in cases of injuries compensation has to be ascertained keeping in view the gravity of the injury, loss of enjoyment and degree of deprivation.

22. The contention of the learned Counsel for the appellant Ambalal is that in the instant case according to the medical evidence, the shortning of leg is by 1/1-2 inch and the permanent disability is 17%. It has further been urged that the appellant Ambalal had also sustained fracture of his jaw. He invited my attention to the decision in Dr. Maharaj Krishna Chopra and Another Vs. The State of Punjab and Others, wherein the jaw of a nurse was tilted slightly and she could not open her month properly and could not castigate and chew. Assessing the disability at 20% and dis-figurement at 10% a sum of Rs. 4000/- was awarded as compensation. Learned Counsel contended that it has also to be remembered that the value of money has gone down.

23. Under the Act the Tribunal has to determine just compensation. It has rightly been remarked that in assessment of compensation arithmetic is a good servant but a bad master.

24. In the instant case the shortening of leg is to a greater extent and there was fracture in the jaw though there is no evidence as to the resultant effect. I am, therefore, of the view that a sum of Rs. 15,000/- would constitute just compensation.

25. In the result, the appeal preferred by Ambalal is partly allowed with costs. The amount of compensation is increased to Rs. 15,000/-. This amount shall carry interest @ 12% per annum from the date of the award till realisation. Counsel's fee Rs. 150/- only. The award shall stand accordingly modified. The appeal preferred by the insurer (Misc. Appeal No. 226 of 1984) is dismissed with costs as incurred.