

(2013) 09 MP CK 0141

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 170/10

Bajaj Alliance General Insurance Co. Ltd.

APPELLANT

Vs

Smt. Kapoori Devi and Others

RESPONDENT

Date of Decision : 03-09-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2013) 09 MP CK 0141

Hon'ble Judges : G.D. Saxena, J

Bench : Single Bench

Advocate : Anand Bhardwaj, for the Appellant; D.S. Kushwaha and Shri S.S. Dhakad, Advocates for Respondents No. 1 to 7, for the Respondent

Final Decision : Dismissed

Judgement

G.D. Saxena, J.—This appeal u/s 173 of the Motor Vehicles Act 1988 has been preferred by the appellant/Insurance company against an Award dated 14th September 2009 in Claim Case No. 54/2008 passed by the Second Additional Member of the Motor Accident Claims Tribunal, Gwalior, awarding thereby compensation to the tune of Rs. 5,56,000/- payable jointly or severally by the appellant/Insurance company, driver and owner of the vehicle involved in the accident with a request to exonerate the appellant-company from indemnifying the liability of payment of award amount on behalf of the owner of the vehicle or the award amount under appeal may be modified in the interest of justice. The admitted facts of the case are that on 17th December 2007 at about 9 p.m., deceased Durgesh Singh, aged 21 years, who was working in the Indian Army, was going on his motorcycle to Railway Station, Gwalior. When he reached near J.B. Mangharam Biscuit Factory at Trisection of A-B National Highway Road, some unknown vehicle dashed him resultantly, he died on the spot. The F.I.R. was lodged at Police Station Gola Ka Mandir Gwalior against unknown driver of the unknown vehicle. During investigation, it was disclosed that truck No. MP07/G 6382 which was driven by Satyendra Singh, owned by Abdul Haleem and insured

with the Insurance company (appellant) hit the motorbike driven by the deceased. Accordingly, the charge-sheet against the driver of the offending truck was submitted by the concerned police station. The deceased was unmarried, hence, the petition u/s 166 of the Act 1988 was submitted by the grandparents, parents, brother and sister of the deceased, being his legal heirs, claiming compensation to the sum of Rs. 39,69,000/- against the driver, owner and the Insurance Company. The learned tribunal after considering the evidence as adduced by the parties, passed the impugned award of Rs. 5,56,000/- in favour of the claimants. Being aggrieved by the direction of joint and several liability of payment of the award, the instant appeal has been filed by the Insurance Company.

2. Learned counsel for the appellant contended that the award assailed in the appeal is not in accordance with the evidence adduced before the learned tribunal and the law applicable to the case, hence, same is liable to be set aside. It is further submitted that the learned tribunal has failed to appreciate the evidence that the vehicle truck No. MP07/G 6382 was not involved in the alleged accident and further erred to calculate monthly income of the deceased vis-a-vis dependency at the rate of 50%. On the basis of the above arguments, it is prayed that by allowing the appeal, the award under appeal may be set aside or in alternative the compensation may be modified as per evidence of the parties.

3. On the other hand, the submission on behalf of the respondents No. 1 to 7/ claimants is that there is no illegality or irregularity committed by the learned tribunal while issuing the award. It is submitted that the accident occurred in night which took the life of Durgesh Singh. It is submitted that initially the F.I.R. was lodged against unknown vehicle, but during investigation the involvement of offending truck was appeared, which was insured with the appellant and so after completion of investigation, the charge-sheet was filed against the driver of the offending vehicle. It is further urged that the involvement of the offending truck in this case can be examined on the basis of eyewitness's account, which was rightly done by the learned tribunal. In view of the aforesaid submissions, it is prayed that the appeal deserves to dismissal.

4. The questions for consideration in this appeal are whether the learned tribunal was justified in finding the involvement of truck No. MP07/G-6382 in the accident, which resulted in the death of the deceased and/or whether the award passed by the learned tribunal does require any interference in view of the available facts and circumstances of the case?

5. Heard the learned counsel for the parties. Also perused the record of the case.

6. On perusal of the evidence on record, it seems that Sandeep Singh Badoria (AW-2) who is also prosecution witness confirms the accident and involvement of the truck in the accident. By producing the evidence contradicting the fact of involvement of the offending vehicle driven by Satyendra Singh, the appellant neither pointed out anything to discredit the testimony of this witness nor proved

non-involvement of the offending vehicle in accident up to the hilt of satisfaction. It is true that the deceased was unmarried and at the time of his death, his grandparents, father, mother, sister and brother being his legal heirs were dependents up to some extent on the deceased. It is also true that the deceased was in active service in Indian Army and by that time he was getting regular salary alongwith all facilities which were made available to Army Personnels. Therefore by considering the case from all four corners and the evidence on record, the award under appeal appears to be passed in right direction and hence no ground for interference in the impugned Award is made out. In the result, this appeal being bereft of substance is hereby dismissed. The appellant being insurer of the offending vehicle and shall indemnify the vicarious liability of the insured/ owner of the vehicle and deposit the award amount with interest awarded within four weeks from the date of this order before the tribunal and shall also pay the costs of this appeal to the respondents-claimants. Counsel Fee, Rs. 1000/-, if certified, be added in the costs.