
(2008) 02 MP CK 0107
In the Madhya Pradesh High Court

Bane Singh and Another

APPELLANT

Vs

Santosh Giri and Others

RESPONDENT

Date of Decision : 19-02-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22
Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2009) ACJ 898

Hon'ble Judges : S.K. Seth, J;A.M. Sapre, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.M. Sapre, J.—This is an appeal filed by owner and driver of offending vehicle, NA1/2, u/s 173 of Motor Vehicles Act (for short called "the Act") against an award dated 20.4.2004 passed by Third Additional Member, M.A.C.T., Dewas in Claim Case No. 86 of 2003. By impugned award, Claims Tribunal has partly allowed the claim petition of claimants and awarded a total sum of Rs. 3,26,626 with interest to claimants for the death of one Jagdish Giri. However, while passing the impugned award, the Tribunal exonerated the insurance company, NA3, from the liability arising out of accident. It is against this award, the owner and driver, NA1/2 have felt aggrieved and have accordingly filed this appeal. So far as claimants, R1 to R3, are concerned, they have filed the cross-objection (M.C.P. No. 2883 of 2004) dated 25.11.2004 under Order 41, Rule 22 of CPC claiming enhancement in the compensation awarded by the Tribunal. According to claimants, R1 to R3, what is awarded by the Tribunal is on lower side hence it should be enhanced.

2. So two questions arise in this appeal. First; whether the Tribunal was justified in exonerating the insurance company from liability arising out of accident? Second; whether Tribunal was justified in awarding a sum of Rs. 3,26,626 to the claimants for the death of Jagdish Giri?

3. Facts in brief are these:

It is a death case. On 17.5.2003, Jagdish Giri aged around 62 years, a retired government servant (teacher) died in vehicular accident when he was hit by tractor-trolley bearing No. MP 41-2536. It is this incident, which gave rise to filing of claim petition by his legal representatives (appellants herein) u/s 166 of the Act claiming compensation for his death. The claim petition out of which this appeal arises was filed against driver, NA1; owner, NA2 and insurer, NA3 of offending vehicle, i.e., tractor-trolley. It was contested by non-applicants. So far as insurance company, NA3 was concerned, they denied their liability by contending that since on the date of the accident, the insured vehicle was being used in contravention of the terms of the policy hence, no liability could be fastened upon the insurance company. In other words, the defence of the insurance company was that at the time of accident, the tractor-trolley was in fact being used for carrying water in tankers and since, this activity was not covered in the policy of insurance rather prohibited as is clear from policy, Exh. DI, no liability arising out of this accident could be fastened upon the insurance company. Parties adduced evidence. By impugned award, the Claims Tribunal partly allowed the claims petition of the claimants and accordingly awarded a total sum of Rs. 3,26,626. It was held that deceased spent a sum of Rs. 2,24,626 on his medical treatment. It was further, held that deceased's yearly income was Rs. 36,000. Deducting 1/2, the Claims Tribunal took Rs. 18,000 to be the sums for calculating the dependency and applying the multiplier of 5 awarded a total sum of Rs. 90,000 as compensation for the death of Jagdish Giri. In addition, sum of Rs. 12,000 was awarded towards conventional heads. This is how a total sum of Rs. 3,26,626 which was inclusive of compensation, medical expenses amounting to Rs. 2,24,626 and the conventional heads amounting to Rs. 12,000 came to be awarded. As observed supra, the Tribunal held that since the offending vehicle was being used for a purpose other than the purpose for which it was insured hence no liability can be fastened upon the insurance company. In consequence, the insurance company was exonerated from the liability which was confined only against driver/owner of the offending vehicle, NA1/2. It is against this award, the driver/owner, NA1/2, have filed this appeal contending that the Tribunal erred in exonerating the insurance company from the liability. According to the appellants, the liability should have also been fastened upon the insurance company. So far as claimants, R1/3, are concerned, they have filed cross-objection, M.C.P. No. 2883 of 2004 dated 25.11.2004, under Order 41, Rule 22 of CPC wherein it is prayed that the Tribunal has awarded less compensation. According to claimants, it should have been more hence the same be increased.

4. Heard Mr. Rajesh Lal, Advocate for the appellant and Mr. G.K. Neema, Advocate for respondent Nos. 1 to 3 and Mr. S.V. Dandwate, Advocate for respondent No. 4.

5. Having heard the learned Counsel for the parties and having perused the record of the case, we are inclined to dismiss the appeal whereas allow the cross-objection in part as indicated infra.

6. Coming to the issue relating to liability of insurance company, first perusal of the terms in the policy, Exh. PI, would clearly show that use of tractor-trolley/trailer for carrying water was not covered. It is clear from the evidence brought on record that tractor-trailer was being used at the time of accident for carrying water. We are, therefore, of the view that the Tribunal committed no error in recording a factual finding that vehicle in question was being used contrary to the terms of the policy. In this view of the matter, we concur with this finding and accordingly, uphold the same calling no interference.

7. In our view the Tribunal should have directed the insurance company, NA3/R3, to satisfy the awarded sum in favour of claimants because the deceased being third party, his interest should have been safeguarded. In other words, the insurance company should have been first asked to pay the awarded sum to the claimants and then recover the entire awarded sum from driver/owner, NA1/2 (appellants herein) in execution proceedings arising out of this very claim petition. To this extent, we are inclined to modify the impugned award at the instance of claimants-respondent Nos. 1 to 3, by allowing their cross-objection in which they have claimed this relief specifically.

8. Coming now to the question of enhancement of compensation, it has come in evidence that deceased was a pensioner and used to get Rs. 4,860 per month by way of pension from the State. Learned Counsel appearing for claimants has shown passbook issued by State Bank of India in the name of deceased which clearly mentions that deceased was getting Rs. 4,860 per month by way of pension from State. We, therefore, accept this evidence as being conclusive in nature for holding that monthly income of deceased was Rs. 4,860 by way of pension.

9. This makes the yearly income of the deceased at Rs. 58,320. It cannot be disputed that on the death of husband Jagdish Giri his wife would get some family pension as per pension Rules and hence we deduct Rs. 20,000 from Rs. 58,320 for determining the loss instead of taking whole of Rs. 58,320 to the loss. In this way, we get a sum of Rs. 58,320 - Rs. 20,000 = Rs. 38,000 (approx.). In other words, the loss can be taken as Rs. 38,000 to the dependency on the death of Jagdish Giri before making a deduction of V3rd. To this, we deduct around Rs. 8,000 for personal expenditure incurred by the deceased and accordingly we get a sum of Rs. 30,000 for calculating the actual loss to dependants. Applying the multiplier of 5 because the age of deceased was 62 years, we get a sum of Rs. 30,000 x 5 = Rs. 1,50,000. So far as compensation towards conventional heads such as funeral expenses, loss of love and affection, estate, consortium is concerned, we consider it just and proper to award in lump sum a total amount of Rs. 25,000. In this way, the claimants are held entitled to Rs. 1,50,000 + Rs. 25,000 = Rs. 1,75,000. Add to this a sum of Rs. 2,24,626 already awarded by Tribunal towards medical expenses makes a total amount of Rs. 1,75,000 + Rs. 2,24,626 = Rs. 3,99,626. In view of this, we consider it just and proper to award a total compensation of Rs. 4,00,000 so as to make the

amount of total compensation in round figure of Rs. 4,00,000.

10. In other words, the claimants are held entitled for a total sum of Rs. 4,00,000 by way of compensation for the death of Jagdish Giri.

11. The compensation awarded to the claimants is a just, reasonable and proper looking to the facts and circumstances of the case and taking into account the law laid down by the Supreme Court in these types of cases. Indeed in such cases, no fixed and any static formula is provided for determining the compensation and as such is required to be determined on the basis of evidence adduced and the relevant factors mentioned supra. It is on this basis the courts have to work out award of reasonable compensation.

12. Learned Counsel for the respondents cited some authorities for claiming enhancement. We have gone through these authorities. In our opinion and as observed supra, every case depends upon facts of each case and one can rely upon the cases for awarding compensation.

13. In this view of the matter, the appeal fails and is dismissed whereas the cross-objection is allowed in part. Impugned award is modified to the extent indicated in paras 7 and 10 of this order.

No costs.