(2007) 07 MP CK 0031

In the Madhya Pradesh High Court

Bhagwandas APPELLANT

Vs

Noor Mohammad and Another and Kashi Ram @ Pappu Ahirwar and Another RESPONDENT

Date of Decision : 09-07-2007

Acts Referred:
Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2007) 07 MP CK 0031

Hon'ble Judges : K.S. Chauhan, J;Arun Mishra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K.S. Chauhan, J.—These appeals arise out of the same award therefore they are being disposed of by the common order.

2. M.A. No. 825/2000 has been filed by the owner to set aside the award dated 31.03.2000 passed by II A.M.A.C.T., Tikamgarh in Claim Case No. 48/97 whereby the claim petition filed by Noor Mohammad for the death of his son Naim Khan caused in the motor accident has been partly allowed and the appellant is directed to pay the compensation of Rs. 1,13,000/-with interest at the rate of 12% per annum from the date of filing of the claim petition till realization.

3. M.A. No. 1251/2000 has also been preferred by the owner to set aside the same award passed in Claim Case No. 27/98 wherein the claim petition filed by Kashiram @ Pappu Ahirwar u/s 166 of the Motor Vehicles Act has been partly allowed and the appellant is directed to pay the compensation of Rs. 10,000/- with interest at the rate of 9% per annum from the date of filing of the claim petition till realization on account of the injuries sustained by him in the motor accident.

4. The facts of the claim case No. 48/97 are that on 3rd May, 1997 at 5:00 p.m. at Bharat Nagar, Bhagwandas Kada, the driver and owner of Tractor No. MP 15-F/1390 drove it rashly and negligently and dashed Naim Khan on account of

which he fell down in a well and succumbed to death on the next day in the Rajendra Hospital, Tikamgarh on account of the injuries sustained by him in this accident. This Tractor Trolley was insured with the New India Assurance Company Limited, Chhatarpur.

It was averred that Naim Khan, aged 16 years doing the labour work and earning Rs. 1,500/- per month. The claimant suffered a great loss on account of his death hence filed the claim petition claiming the compensation of Rs. 7,70,000/- to be awarded for the death of his son Naim Khan caused in the motor accident.

5. The facts of the claim case No. 27/98 are that the claimant used to work as a labour on the Tractor of Bhagwandas Kada at the time of accident. The accident occurred when he was loading the Muram in the Tractor. The driver drove the Tractor negligently as a result of which the Tractor and Trolley fell down in the well. The claimant sustained fracture in his left leg as well as the injuries on the other parts of his body. He remained hospitalized in Rajendra Hospital, Tikamgarh and incurred the treatment. He filed the claim petition for compensation of Rs. 2,00,000/-to be awarded for the injuries caused to him in the motor accident.

6. The driver-cum-owner did not file the written statement in claim case No. 48/97 but filed the same in another claim case No. 27/98 wherein he disputed the claim and liability mainly stating that the claimant of that case suffered the simple injury. The Tractor was insured with the insurer, therefore, he is not liable to pay compensation.

7. Insurer also filed the written statement in both the cases denying the claim and its liability mainly contending that the Tractor was insured for the agricultural purpose. The risk of the labourers to be carried on in this vehicle was not covered under the policy. No such premium was paid, there was breach of terms and conditions of the policy, therefore, insurer is not liable to pay compensation.

8. After appreciating the evidence, the tribunal found that the accident occurred due to rash and negligent driving by the driver of the offending vehicle resulting into death of Naim Khan and Kashiram @ Pappu Ahirwar received the injuries. The tribunal exonerated the insurance company and directed the appellant to pay the compensation of Rs. 1,13,000/-with interest at the rate of 12% per annum for the death of Naim Khan and Rs. 10,000/- with the same interest for the injuries sustained by Kashiram @ Pappu Ahirwar caused in the motor accident.

9. Being aggrieved by the award the owner filed the aforesaid appeals to set aside the award on the grounds mentioned in the memo of appeal u/s 173 of the Motor Vehicles Act.

10. In M.A. No. 825/2000 cross appeal was also filed by Noor Mohammad for enhancement of compensation for the death of his son Naim Khan caused in the motor accident on the grounds that inadequate compensation has been awarded.

11. We have heard the learned Counsel for the parties.

12. The learned Counsel for the appellant has submitted that there is contradiction in the statement of the claimant and witnesses. The evidence has not been appreciated in the proper perspective. It was not proved that the accident occurred due to rash and negligent driving by the appellant. The tribunal has erred in holding that the tractor was not being used for agricultural purpose. The excessive amount of compensation has been awarded. The vehicle was insured with the insurance company and there was no any breach of policy, therefore, the award be set aside.

13. On the other hand, learned Counsel appearing on behalf of Noor Mohammad has submitted that the awarded amount is inadequate and hence the same be enhanced.

14. The learned Counsel for the Insurance Company has submitted that the vehicle was insured for agriculture purpose but the same was being used for carrying the Muram from well to construct the house. The deceased Naim Khan and Kashiram @ Pappu Ahirwar were sitting on the Tractor. They were gratuitous passenger hence Insurance Company is not liable to pay compensation.

15. The main point for consideration in these appeals is that whether the tribunal has committed any illegality in holding the owner liable to pay such amount of compensation for the death of Naim Khan and the injuries sustained by Kashiram @ Pappu Ahirwar caused in the motor accident?

16. Noor Mohammad has deposed that his son Naim Khan died in the Tractor accident. He has filed the document Ex.P/1 to Ex.P/5 in support of his claim petition.

17. It is borne out from his evidence that he was not present at the spot, therefore, he has not witnessed the accident. What he is deposing before the tribunal is on the basis of the information given by Sakhawat Khan (AW2).

18. Sakhawat Khan (AW-2) has deposed that the driver of tractor drove it rashly and negligently and hit a cyclist and a boy on account of which they fell in the well.

19. Kashiram @ Pappu Ahirwar (AW-1) of claim case No. 27/98 has deposed that Bhagwandas Kada drove the Tractor speedily consequently it turned turtle and he fell down in the well. He has also submitted the document in support of his claim petition. In cross examination he has stated that he and Naim Khan were sitting on the Mudguard of the Tractor at the time when the Tractor and Trolley fell into the well. He has further deposed that there was nobody else except driver, Naim Khan and he himself.

20. Hannulal Ahirwar (AW-2) in this case has also deposed that the Tractor dashed against Naim Khan and Tractor fell down in the well consequently Kashiram @ Pappu Ahirwar received the injury.

21. Bhagwandas Kada (NAW-1) has stated that Naim Khan and Kashiram @

Pappu Ahirwar were coming on the way and he was driving the Tractor at the speed of 20-25 kilometer per hour. He tried to save them but their cycle dashed against the bumper of the Tractor. He applied the brake ultimately the Tractor and Trolly fell into the well and consequently they received the simple injuries.

22. No doubt there is variations in evidence with regard to manner and method in which this accident took place but the evidence of Kashiram @ Pappu Ahirwar seems to be more reliable. The reason is that he himself was injured in this accident and his presence cannot be doubted at that time. From his evidence it is clearly established that he and deceased Naim Khan were the labourers on that Tractor of Bhagwandas Kada. He was driving the Tractor at that time. They were sitting on Mudguard of Tractor. The driver drove the Tractor negligently, consequently it fell into the well and they received the injuries. Naim Khan succumbed as a result of injuries caused in this accident and Kashiram @ Pappu Ahirwar received the injuries. The tribunal has discussed this aspect in great detail and ultimately arrived at the conclusion that this accident was the outcome of rash and negligent driving of the offending vehicle by the driver resulting into death of Naim Khan and causing the injuries to Kashiram @ Pappu Ahirwar. There is no reason to disturb this finding of the tribunal hence we affirm this finding. Therefore, the contention of the learned Counsel of the appellant is not accepted that the claimants failed to prove that this accident occurred on account of the rash and negligent driving of the offending vehicle.

23. Noor Mohammad (AW-1) has deposed that his son Naim Khan started the work of Rikshaw Puller at the age of 10 years. Further he stated that he used to earn Rs. 2-3 thousands per month by doing the work in a truck. But on the evidence of Kashiram @ Pappu Ahirwar it is manifestly clear that he and deceased Naim Khan were working as labourer on the Tractor of Bhagwandas.

24. The tribunal assessed the monthly income of the deceased at Rs. 900/-and after deducting 1/3rd personal expenses on himself had he been alive the dependency worked out at Rs. 600/-, annually Rs. 7,200/-. After applying the multiplier of 15 the compensation worked out at Rs. 1,08,000/-. In addition to it Rs. 5,000/-awarded for the funeral expenses. Thus the total compensation Rs. 1,13,000/- has been awarded.

25. Although the tribunal has committed an error in applying the multiplier because Naim Khan, aged 14 years was unmarried and hence the multiplier ought to have been applied at the age of his father Noor Mohammad, aged 65 years. In case of death of child the reasonable and proper compensation ought to have been awarded as held by Apex Court in New India Assurance Co. Ltd. Vs. Satender and Others, . The Apex Court has laid down thus:

9. There are some aspects of human life which are capable of monetary measurement, but the totality of human life is like the beauty of sunrise or the splendour of the stars, beyond the reach of monetary tape-measure. The determination of damages for loss of human life is an extremely difficult task and

it becomes all the more baffling when the deceased is a child and/or a non-earning person. The future of a child is uncertain. Where the deceased was a child, he was earning nothing but had a prospect to earn. The question of assessment of compensation, therefore, becomes stiffer. The figure of compensation in such cases involved a good deal of guesswork. In cases, where parents are claimants, relevant factor would be age of parents.

12. In cases of young children of tender age, in view of uncertainties abound, neither their income at the time of death nor the prospects of the future increase in their income nor chances of advancement of their career are capable of proper determination on estimated basis. The reason is that at such an early age, the uncertainties in regard to their academic pursuits, achievements in career and thereafter advancement in life are so many that nothing can be assumed with reasonable certainty. Therefore, neither the income of the deceased child is capable of assessment on estimated basis nor the financial loss suffered by the parents is capable of mathematical computation.

13. Applying he principles indicated in Jasbir Kaurs case (supra) to the facts of the present case we think award of a sum of Rs. 1,80,000/-would meet the ends of justice. The same shall carry interest at the rate of 7.5% from the date of filing of petition till payment is made. Payment shall be made within a period of three months from today. Amounts, if any, already paid shall be adjusted from the aforesaid amount of Rs. 1,80,000/-.

26. Thus, in the facts and circumstances of the case, we do not deem it proper to disturb the finding regarding the determination of compensation by the tribunal in this case.

27. Although the cross appeal has been filed on behalf of Noor Mohammad but the same has not been seriously pressed.

28. On the foregoing discussion, no case for enhancement of compensation is made out, therefore, the cross appeal deserves to be dismissed.

29. Kashiram @ Pappu Ahirwar sustained the injuries. He has stated that he sustained the fracture in his left leg on account of this accident. He remained hospitalized in Rajendra Hospital till 15 days. The plaster was applied and he remained under plaster till six months. He suffered his income for that period. He has filed the M.L.C. report and other documents.

30. Keeping in view the injuries sustained by Kashiram @ Pappu Ahirwar the tribunal has awarded the compensation of Rs. 10,000/-which can not be said excessive in any manner.

31. Bhagwandas Kada (NAW-1) has deposed that he has the driving licence (Ex.D/3) for driving this vehicle. The Tractor and Trolley were insured on the date of incident. He has filed the policy Ex.D/4. On the basis of this evidence the argument of the learned Counsel for the appellant is that the driver was having the valid licence and there was no breach of terms and conditions of policy. The

vehicle was insured with insurer, therefore, the liability be saddled on the insurer to pay the compensation.

32. O.P.Maheshwari (NAW-2) has stated that this Tractor was insured for the agriculture purpose. The policy Ex.D/4-C was issued. According to this policy only the driver was authorized to sit and none else. The premium of Rs. 15/-was received. According to the policy if the vehicle was being used for other purposes than agriculture purpose then there was no liability of insurance company.

33. On the basis of evidence it is to be seen that there has been contravention of the terms and conditions of the policy issued by the insurer.

34. As it is manifestly clear that the deceased Naim Khan and Kashiram @ Pappu Ahirwar were sitting on the Mudguard and the vehicle was not being used for the agriculture purpose, therefore, there has been contravention of the terms and conditions of the policy hence the insurance company is not liable to pay compensation. The tribunal has rightly exonerated the insurer to pay the compensation.

35. We find no merit in these appeals and hence deserve to be dismissed.

36. Consequently, both the appeals fail and are dismissed accordingly. There shall be no order as to costs.