

(2009) 07 MP CK 0002
In the Madhya Pradesh High Court
Case No : M.A. No. 1866 of 2000

B.K. Filling Station

APPELLANT

Vs

Harishchandralal Shrivastava and Others

RESPONDENT

Date of Decision : 30-07-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 141, 149(2), 163A, 173

Citation : (2011) 3 TAC 233(1)

Hon'ble Judges : P.K. Jaiswal, J

Bench : Single Bench

Judgement

P.K. Jaiswal, J.—This appeal is filed by the owner of the vehicle against the award dated 12th May, 2000 passed by Motor Accident Claims Tribunal, Satna in Claim Case No. 6 of 1999, whereby the learned Tribunal awarded a sum of Rs. 3,60,000/- as compensation to the claimants, Respondent Nos. 1 and 2.

2. The Respondent Nos. 1 and 2 filed an application for compensation against the death of Anju Shrivastava aged about 19 years in an accident on 4th April, 1997. It was alleged that Anju was travelling in jeep bearing registration No. MP 24-D 5856. In the course of her journey, tanker bearing registration No. MP 19-8751 coming from opposite direction collided with the jeep resulting in death of Munnilal, driver of the said jeep, Anju Shrivastava and Sadhna Gupta, passengers of the said jeep. The tanker was owned by Appellant Bal Krishna Agrawal, driven by Munim Singh, Respondent No. 3 and insured by Respondent No. 4.

3. On the basis of evidence led by the parties, the Claims Tribunal awarded a total sum of Rs. 3,60,000/- for the death of Anju Shrivastava. The learned Tribunal exonerated the Respondent No. 6 Insurance Company of jeep bearing registration No. MP 24-D 5856 from its liability towards compensation.

4. Mr. R.K. Tiwari, the Learned Counsel appearing for the Respondent Nos. 1 and 2 raised a preliminary objection as to the maintainability of the appeal filed by

the owner and submitted that this appeal has been filed by the owner without depositing the mandatory sum as envisaged u/s 173 of Motor Vehicleless Act, 1988, as a pre-condition for preferring appeal and, therefore, deserves to be dismissed summarily on the ground of non-depositing the requisite amount as pre-condition for preferring an appeal.

5. On the other hand, Mrs. Amrit Ruprah, Learned Counsel for the Appellant drew my attention to order dated 26th July, 2002 by which this appeal was admitted and on stay this Court directed to deposit the balance amount of compensation with the Claims Tribunal within two months. She submitted that the Insurance Company, Respondent No. 5, deposited a sum of Rs. 50,000/- as interim compensation in compliance to order passed in an application u/s 140 of the Act and thereafter a further sum of Rs. 1,30,000/- had already been deposited. She further submitted that requirement of first proviso to Section 173 of the Act is deposit of minimum Rs. 25,000/- or 50 per cent of the amount awarded by the Tribunal whichever is less. Learned Counsel for the Appellant submits that in accordance with the provisions of Section 141 of the Act, the interim compensation for "no fault liability" awarded u/s 140 is to be taken into account for determining the quantum of compensation payable under the final award based on finding of fault or commission of tort by the owner and driver of the vehicle involved in the accident. She further submits that if the award of interim compensation merges in the final award and the payment already made under the former award satisfies the requirement of proviso to Section 173, the appeal cannot be held as not maintainable for want of requisite deposit. In support of the said contention, she drew my attention to a Division Bench decision of this Court in the case of Oriental Insurance Co. Ltd. Vs. Gopal Singh and Others, and Division Bench decision of Madras High Court in the case of P. Anwer Batcha and another Vs. Tamlarasai and 5 others, . In the case of Oriental Insurance Company Ltd. v. Gopal Singh (supra) the Division Bench has held the following in para 19 which reads as under:

(19) As we have held above, the proviso below Section 173 has to be reasonably construed by giving the full effect and meaning to all the words employed in its language. If meaning and effect is to be assigned to the expression "in the manner directed by the High Court" used in Section 173 of the Act, it can reasonably be held that the High Court in its discretion while entertaining the appeal, may direct that the interim compensation already paid in the Tribunal in a given case would be the requisite deposit. That was the course adopted by the High Court in these two appeals preferred by Insurance Company as is clear from the order dated 17th March, 1997 passed separately in each of the two appeals. By the orders passed in the appeal, the High Court on the statement made on behalf of the Insurance Company of depositing the interim compensation, admitted the appeals and stayed the recovery of the balance amount of compensation. In passing the two orders in the two appeals in the manner aforesaid, the High Court has consciously exercised its power under the first proviso to Section 173 of the Act and the preliminary objection to the

maintainability of the appeals raised by the Insurance Company is found to have no merit. Accordingly, we overrule the same.

6. Here in the present case, out of total amount of Rs. 3,60,000/-, interim compensation of Rs. 50,000/- and a further sum of Rs. 1,30,000/- has been deposited by the Insurance Company on behalf of the Appellant. In the case of P. Anwer Batcha and another Vs. Tamilarasai and 5 others, , joint appeal was filed by Insurance Company and owner of the vehicle in which preliminary objection was raised that the insurer cannot maintain joint appeal alongwith owner or driver, if defense, on any ground u/s 149(2) of the Act is not available to it. The Division Bench held that the Insurance Company cannot maintain a joint appeal alongwith the owner or driver, since none of the defenses u/s 149(2) are available and thus dismissed the appeal by the Insurance Company as not maintainable whereas the owner of the vehicle was permitted to pursue the appeal. A preliminary objection was also raised that owner had not deposited the requisite amount, the appeal filed by owner is not maintainable. The Division Bench has held that since the insurer had deposited the said amount at the time of filing of the appeal only on behalf of the owner, rejected the said objection by holding that the appeal is maintainable.

7. Here, in the present case also the Insurance Company deposited a sum of Rs. 1,80,000/- on behalf of the owner. Under these circumstances first proviso to Section 173 of the Act is not attracted. The appeal filed by the owner is maintainable.

8. Learned Counsel for the Appellant drew my attention to the evidence on record and submitted that at the time of death the deceased was 19 years of age. The learned Tribunal found that accident had occurred because of rashness and negligence on the part of the driver of the offending tanker. It has been further found that the deceased was earning Rs. 2,500 /- per month, i.e., Rs. 30,000/- per annum but wrongly applied the multiplier of 18 because as per the averments made in the claim petition at the time of death, mother was 49 years of age. The Tribunal held that as per the evidence on record the deceased was Lab Technician and was running her lab as she was having Pathology Diploma, assessed her monthly income at the rate of Rs. 2,500/- per month. There is no oral or documentary evidence on record to prove that she was running her pathology lab. No detail has been given nor have claimants examined anyone to prove the said detail and monthly income of the deceased. Ext. P20 is diploma and Ext. P19 is certificate of Lab Technology. Ext. P18 is mark sheet of Higher Secondary. From all the above documents it is clear that she was a Lab Technician and, therefore, the income of Rs. 2,500/- as assessed by the Tribunal is just and proper. But, the learned Tribunal had wrongly applied the multiplier of 18 because at the time of accident the age of father and mother of the deceased were 58 and 49 years. As per the Second Schedule framed u/s 163A of the Motor Vehicleless Act, on the age-group of 45-50 the multiplier of 13 would be applicable. After deducting 1/3rd for her personal expenses, the annual

dependency of the Respondent Nos. 1 and 2 comes to Rs. 20,000/-. On applying the multiplier of 13 on this amount, the amount of compensation comes to Rs. 2,60,000/-. On other heads Respondent Nos. 1 and 2 are entitled for Rs. 2,000/- as funeral expenses. Rs. 8,000/- towards loss of love and affection and sudden death of claimant's daughter. Accordingly, the claimants are entitled to compensation of Rs. 2,70,000/- alongwith interest at the rate of 7 per cent per annum from the date of petition till the date of deposit and same shall be paid by the Insurance Company.

9. For the above-mentioned reasons, the appeal of the owner is partly allowed. The amount of compensation is reduced from Rs. 3,60,000/- to Rs. 2,70,000/- with interest at the rate of 7 per cent annum from the date of petition till the date of deposit and the same shall be paid by the Insurance Company. No order as to costs.

Appeal partly allowed.