
(2010) 11 MP CK 0017
In the Madhya Pradesh High Court
Case No : M.A. No. 1459 of 2009

Budhe Singh

APPELLANT

Vs

Amman Khan and another

RESPONDENT

Date of Decision : 15-11-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2011) ACJ 2600

Hon'ble Judges : Prakash Shrivastava, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prakash Shrivastava, J.—This appeal is filed by the claimant u/s 173 of the Motor Vehicles Act, 1988, against the award dated 3.2.2009 passed by learned M.A.C.T., Kukshi, District Dhar in Claim Case No. 62 of 2008.

2. The appellant had suffered injury in a motor accident which had taken place on 14.2.2008. Accordingly, he had filed the claim petition before the Claims Tribunal. The Tribunal noted that the appellant had suffered permanent disability of 12.62 per cent in the right leg and disability in reference to the whole body was calculated as 4 per cent. Tribunal found the age of the appellant as 40 years and applied multiplier of 16. The Tribunal assessed the monthly income of the appellant as Rs. 2,000. Thus, the Tribunal awarded a sum of Rs. 15,360 on account of permanent disability suffered by the appellant. The Tribunal awarded a further sum of Rs. 700 under transportation charges, Rs. 1,500 for hospitalisation charges, Rs. 1,000 for the actual medical expenses, Rs. 2,000 for loss of income during the treatment period, Rs. 2,000 for special diet, etc. Thus, the Claims Tribunal awarded a sum of Rs. 22,560. Tribunal exonerated the insurance company on the ground that vehicle in question, i.e., the bus No. MP 09-S 3519 which had caused the accident was running without permit.

3. The learned counsel appearing for the appellant submitted that the Tribunal

has committed an error in exonerating the insurance company. He further submitted that the Tribunal has not looked into the complete evidence on record while assessing the permanent disability and while awarding the compensation.

4. As against this, learned counsel for respondent insurance company, supporting the award, submitted that the Tribunal has not committed any error in passing the impugned award. The Tribunal has rightly exonerated the insurance company and the amount awarded by the Tribunal is just and proper.

5. I have heard the learned counsel appearing for the parties and perused the record.

6. The record indicates that though the insurance company has taken the plea before the Tribunal that bus in question was running without permit but no evidence was produced by the insurance company to establish the said plea. It is not in dispute that the onus was on the insurance company to establish the breach of the policy condition and in terms of the judgment of the Apex Court in the matter of Kamala Mangalal Vayani and Others Vs. United India Insurance Co. Ltd. and Others, , it was for the insurance company to place on record the adequate material which could establish the plea that the vehicle was running without permit. The Supreme Court in the aforesaid matter has held that:

(4) As noticed above, the owner-cum-driver had remained ex parte. Once it was established that the vehicle was comprehensively insured with the insurer to cover the passenger risk, the burden to prove that it was not liable in spite of such a policy, shifted to the insurer. The claimants are not expected to prove that the vehicle had a valid permit, nor prove that the owner of the vehicle did not commit breach of any of the terms of the policy. It is for the insurer who denies its liability under the policy, to establish that in spite of the Comprehensive Insurance Policy issued by it, it is not liable on account of the requirements of the policy not being fulfilled. In this case, the insurer produced a certified copy of the proceedings of the Registering Authority and Assistant Regional Transport Authority, Bangalore dated 7.7.1990 to show that the application for registration of the vehicle filed by the respondent No. 3 was rejected with an observation that it was open to the applicant to apply for registration in the appropriate class. But that only proved that on 7.7.1990, the vehicle did not have a permit. But that does not prove that the vehicle did not have a permit on 27.7.1990, when the accident occurred. It was open to the insurer to apply to the concerned transport authority for a certificate to show the date on which the permit was granted and that as on the date of the accident, the vehicle did not have a permit, and produce the same as evidence. It failed to do so. The High Court committed an error in expecting the claimants to prove that the vehicle possessed a valid permit. We are of the view that there was no justification for the High Court to interfere with the judgment and awards of the learned Tribunal in the absence of relevant evidence.

7. In the present matter, the insurance company has examined only one witness,

i.e., Ashok Kumar Sharma, NAW 1, the Administrative Officer of the insurance company, but this witness has not specifically stated that the bus in question was running without permit. No investigation was done by the insurance company in this regard. There is no material on record showing that any inquiry was made by the insurance company from the concerned R.T.O. The Tribunal has placed reliance upon the notice, Exh. NA 2 which was a general notice given by the insurance company to owner of the vehicle to produce the relevant documents such as R.C. book, permit, fitness certificate, driving licence, etc. but from this notice and from the statement of Ashok Kumar Sharma, NAW 1, the burden of the insurance company is not discharged. There is no positive evidence on record on the part of the insurance company showing the breach of the policy condition or to establish that the vehicle in question was running without permit. The Claims Tribunal has committed an error in exonerating the insurance company on this ground. Thus, the finding of the Tribunal in this regard is unsustainable and is hereby set aside by holding that no breach of the policy condition has been proved by the insurance company and the insurance company is liable to satisfy the award.

8. So far as quantum of compensation is concerned, Dr. Awadhesh Swarnakar, AW 1, has stated that the appellant had suffered the fracture in the right knee and the left radius bone. The right knee of the appellant was operated. Doctor had given the permanent disability certificate, Exh. 41, which indicates that the appellant had suffered 43.69 per cent disability in the right leg and the permanent disability certificate further establishes the appellant had suffered 12.62 per cent permanent disability in the left hand. Thus, the total disability which was suffered by the appellant in different parts of the body comes to 56.31 per cent which in reference to the whole body comes to 20 per cent. The accident is of the year 2008. Considering the age of the appellant and the nature of work, it is found that Tribunal has committed an error in assessing the monthly income of Rs. 2,000 which ought to have been assessed as Rs. 3,000 per month (Rs. 36,000 per annum). Therefore, loss of income due to permanent disability comes to Rs. 36,000 x 20 per cent x 16 = Rs. 1,15,200 whereas the Tribunal has only awarded a sum of Rs. 15,360 under this head. Therefore, the amount awarded to the appellant in this head deserves to be enhanced by a sum of Rs. 99,840. The amount awarded under the other heads is just and proper. Thus, the amount awarded by Tribunal is enhanced by a sum of Rs. 99,840. The appellant is entitled to interest on the above amount at the same rate as awarded by the Tribunal which will be payable from the same date and on the terms as contained in the award of the Tribunal.

9. The appeal is allowed in part to the extent indicated above. No costs.