

(1985) 01 MP CK 0040
In the Madhya Pradesh High Court

Daya Bhai Patel and Co. and Another	APPELLANT
Vs	
Sunderbai and Others	RESPONDENT

Date of Decision : 16-01-1985

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A

Citation : (1985) 1 ACC 486

Hon'ble Judges : R.K. Verma, J;P.D. Mulye, J

Bench : Division Bench

Judgement

P.D. Mulye, J.—This order shall also govern the disposal of Misc. Appeal No. 113 of 1980, as both these appeals arise out of the same accident, in the claim petitions filed separately by different claimants u/s 110-A of the Motor Vehicles Act.

2. Misc. Appeal No. 112 of 1980 arise out of claim petition No. 13 of 1977 in which the claimants had put up a claim of Rs. 1,78,280/- though the learned Member of the Tribunal has awarded a total compensation of Rs. 60,000/- plus cost and interest at the rate of 6 per cent per annum from the date of the accident, i.e. 5-6-1977.

3. Misc. Appeal No. 113 of 1980 arises out of claim petition No. 12 of 1977 in which the claimants had put up a claim of Rs. 1,79,060/- though the learned Member of the Tribunal has awarded a total compensation of Rs. 56,640/- plus cost and interest at the rate of six per cent per annum from the date of the accident which took place on 5-6-1977.

4. Facts giving rise to these appeals, which are no longer in dispute and also proved on evidence, may be stated, in brief, thus: Appellant No. 1 M/s. Daya Bhai Patel and Co. are the owners of truck No. MPI-4189 of which on the relevant day of the accident, which took place on 5-6-1977 appellant No. 2 Najruddin was driving the same time. The said truck was insured with the respondent National Insurance Co.

5. On 5-6-1977 the deceased B.L. Tripathi, aged 32 years, an Engineer and deceased Narendra Kumar Sharma, aged 36 years, both of whom were Government Servants were proceeding on motor-cycle No. MPO-8776 from Jobat towards Jhabua. The said motor-cycle was driven by the deceased Narendra Kumar Sharma. The appellant No. 2, namely the truck driver was driving the said truck in such a rash and negligent manner between Jobat and Udaigarh that he lost his control and dashed against the motorcycle as a result of which the motor-cycle was dragged for about 25 ft. As a result of the said accident Narendra Kumar Sharma died on the spot and B.L. Tripathi who was seriously injured died on 8-6-1977 at the hospital where he was rushed for treatment.

6. In Misc. Appeal No. 112 of 1980 the claimants are the widow and minor children of deceased B.L. Tripathi. In Misc. Appeal No. 113 of 1977 the claimants are the widow and minor children of deceased Narepdra Kumar Sharma.

7. The appellants as also the Insurance Company contested both these claims. As both these claim petitions arose out of the same accident they were consolidated and with the consent of parties common evidence was recorded.

8. The learned Member of the Tribunal on the basis of the evidence and material on record came to the conclusion that the accident occurred on account of the rash and negligent driving by the truck driver. He also found that the said truck was insured with the respondent Insurance Company and after considering the evidence and material on record also thought it proper to award compensation as indicated above in both the claim petitions. Hence these appeals.

9. The learned Counsel for the appellants did not challenge the factum of accident as also the finding of the learned Member of the Tribunal that the accident occurred on account of the rash and negligent driving of the truck by the truck driver. It is, therefore, not necessary to reconsider the evidence on this point which has been considered in details by the learned Member of the Tribunal. The learned Counsel for the appellants also did not seriously challenge the quantum of compensation, which in our opinion, also appears to be just and reasonable considering the facts and circumstances of the case.

10. However, the learned Counsel for the appellants concentrated their arguments on the following points:

(1) It was urged that the learned Member of the Tribunal has committed an error in holding in both the cases that the liability of the Insurance Company out of the total compensation is to the tune of Rs. 25,000/- only. He, therefore, submitted that according to the terms of the Insurance Policy Ex. D-1 as also according to the decisions of the Supreme Court reported in Motor Owners" Insurance Company Limited Vs. Jadavji Keshavji Modi and Others, the liability of the Insurance Company ought to have been fastened to the tune of Rs. 50,000/-in respect of each victim who died in one and the same accident. He, therefore, submitted that the liability of the Insurance Company could not be restricted to the tune of rupees 25,000/-only and for the rest of the amount the appellants

alone could not be held liable as according to the learned Counsel out of the total compensation joint and several responsibility of the appellants along with that of the Insurance Company ought to have been fixed at Rs. 50,000/- in each case.

(2) He also submitted that interest ought to have been awarded from the date of the application claiming compensation and not from the date of the accident.

11. The learned Counsel for the respondents, in fairness did not dispute this fact that in view of the Supreme Court decision referred to above the liability of the Insurance Company arising out of one and the same accident in respect of each victim comes to Rs. 50,000/-. They also did not seriously dispute this fact that interest can be awarded from the date of the filing of the application and not from the date of the accident.

12. Thus, we are of opinion that the learned Member of the Tribunal has committed an error in restricting the liability of the Insurance Company to the tune of Rs. 25,000/- only out of the total compensation. We also find that the interest ought to have been awarded from the date of the filing of the application i.e. 17-10-1977.

13. In the result both these appeals succeed partly. So far as the compensation awarded in both these cases is concerned, in our opinion, the same being just and proper and reasonable no interference therewith is called for. But the award in both the cases is modified to the extent that the Insurance Company is held jointly and severally liable to the extent of Rs. 50,000/- in both the cases along with the appellants and the liability to pay the quantum of compensation exceeding Rs. 50,000/- in each case shall be that of the appellants only. To this extent the award in both the cases is modified. Similarly it is also modified to the extent that the claimants shall be entitled to claim interest not from the date of accident, but from the date of filing of the application i.e. 17-10-1977. The rest of the award in both the cases is maintained. Considering the facts and circumstances of the case parties are directed to bear their respective costs of both these appeals.