
(2007) 02 MP CK 0017
In the Madhya Pradesh High Court

Direndra Singh Sengar

APPELLANT

Vs

Gopi Singh Kalicharan and Another

RESPONDENT

Date of Decision : 08-02-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2008) ACJ 2277

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajendra Menon, J.—Mr. Mahesh Haswani, Advocate for appellant. Mr. Arvind Agrawal, Advocate for insurance company, respondent No. 2. None for the owner of the vehicle, respondent No. 1, even though served.

2. This is claimant's appeal u/s 173 of the Motor Vehicles Act, for enhancement of the compensation awarded to him by Sixth Motor Accidents Claims Tribunal, Gwalior in Claim Case No. 49 of 1994, for the injuries sustained by the claimant in the said accident and on the basis of disability suffered in the accident, i.e., 40 per cent a sum of Rs. 35,000 is awarded as compensation. Inter alia, contending that the compensation award for disability of 40 per cent is very much on the lower side, this appeal has been filed for enhancement of the compensation.

3. Facts in brief necessary for disposal of the present appeal are that on 28.4.1994 at about 6 in the evening when the appellant was going on Koteswar Road, a tractor bearing No. CIG 4056 driven by respondent No. 1 in a rash and negligent manner dashed against the appellant as a result appellant suffered two fractures on both legs. Inter alia, claiming that the accident took place because of negligence of the driver of tractor, because of the accident appellant has suffered fractures in both the legs, he was hospitalised for about two months between 28.4.1989 and 17.6.1989, his left leg was operated upon, steel rods were implanted and because of the accident he has suffered 40 per cent

permanent disability, claim petition was filed. The appellant at the time of accident was only 12 years of age. On the basis of evidence and material that came on record finding recorded by the Tribunal is that the appellant did suffer in the accident, the accident took place because of rash and negligent driving of the driver of the vehicle, driver of the vehicle was responsible for accident and because of the accident appellant has suffered 40 per cent permanent disability and disability of the appellant is found to be proved on the basis of disability certificate, issued to the appellant by Assistant Collector, Gwalior on the basis of certificate issued by Civil Surgeon-cum-Chief Hospital Superintendent, District Gwalior, the said document is available on record, but no specific exhibit has been marked. The Tribunal has accepted this document and finding recorded is that appellant is disabled and he has suffered 40 per cent disability because of the accident, however, after holding him to have suffered 40 per cent permanent disability the compensation of Rs. 20,000 is awarded for the injuries sustained and Rs. 10,000 towards mental pain and suffering, Rs. 5,000 for medical expenses incurred, the total sum of Rs. 35,000 is awarded as compensation.

4. Mr. Mahesh Haswani, the learned Counsel for the appellant canvassed two questions in support of the appeal. First contention of the learned Counsel for the appellant is that the insurance company has been exonerated on the ground that on the date of the accident the driver of the tractor was not having valid licence. According to Mr. Haswani this finding of the learned Tribunal is unsustainable. Placing reliance on judgment of Supreme Court in the case of National Insurance Co. Ltd. Vs. Swaran Singh and Others, , Mr. Haswani argued that even if the driver was not having valid licence insurance company should have been directed to pay the compensation and thereafter recover the amount from the owner of the vehicle. Mr. Haswani further argued that merely because the licence is not renewed it cannot be construed that the driver is not authorised to drive the vehicle, accordingly he submits that in exonerating the insurance company from payment of compensation the learned Tribunal has committed grave error. Thereafter it was pointed out by Mr. Haswani that once the hospitalisation of the appellant for the period of two months from 28.4.1989 to 17.6.1989 is proved and it is also proved that he suffered 40 per cent disability, the Tribunal has awarded meagre compensation of Rs. 35,000 for the injuries sustained and pain and suffering is very much on the lower side, in doing so the learned Tribunal committed grave error. Inviting my attention to the Second Schedule to the Motor Vehicles Act, 1988 and principles contained for assessment of compensation Mr. M. Haswani argued that notional income of the appellant should have been assessed and, thereafter, by applying the proper multiplier compensation should have been calculated. Accordingly Mr. Haswani submits that in assessing the compensation the Tribunal has committed grave error and, therefore, he seeks for enhancement of the compensation.

5. Mr. Arvind Agrawal, Advocate for the insurance company points out that in this case the licence in question was issued for the period not beyond 26.3.1986, after expiry of the licence the accident took place after about 3 years on

28.4.1989 and, therefore, in holding that the vehicle was driven by unauthorised person, Mr. Arvind Agrawal argued that the Tribunal has not committed any error. Mr. Arvind Agrawal, learned Counsel for the insurance company further points out that in this case owner of the vehicle and driver being same person, there is no question for recovery of the amount from the owner as he was the driver himself held liable for payment of compensation to claimant. In the absence of valid licence insurance company cannot be held liable for payment of compensation. Mr. Arvind Agrawal inviting my attention to the following judgments in the case of New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., and Malla Prakasarao v. Malla Janaki I (2006) ACC 300 and a judgment of Bench of this Court in the case of Rajabeti and Another Vs. Ramshri and Others, , sought for dismissal of the appeal.

As far as quantum of compensation is concerned Mr. Arvind Agrawal, submits that as proper compensation is awarded no case for enhancement is made out, accordingly he prays for dismissal of this appeal.

6. From the evidence and material that have come on record it is clear that the vehicle in question, i.e., tractor bearing No. CIG 4056 was registered in name of Gopi Singh, son of Ramaratan Singh, respondent No. 1. Records further indicate that he was also driving the vehicle on the said date and his licence bearing No. G 4311, old number 1891/72, was valid up to 26.3.86, finding recorded is that the respondent has failed to prove renewal of his licence after 26.3.1986. In that view of the matter, keeping in view the principles laid down in the judgment relied upon by Mr. Arvind Agrawal and the law enumerated by this Court it is clear that after the licence had expired the driver is not authorised to drive the vehicle and as the tractor was driven by an unauthorised person insurance company cannot be held liable for payment of any compensation. In that view of this, I find no error in the order passed by the Tribunal in this regard warranting interference. As far as principles laid down in the case of National Insurance Co. Ltd. Vs. Swaran Singh and Others, , is concerned, this is a case where the owner and driver are the same person, he was present before the court and once it is proved that he was not having valid licence it is not necessary to direct for payment of amount by insurance company and to give the opportunity to the insurance company to recover the amount from the owner. Principles laid down in the case of National Insurance Co. Ltd. v. Swaran Singh (supra) will not apply in the facts and circumstances of the present case, accordingly the first ground urged by Mr. Mahesh Haswani, being devoid of merit is rejected.

7. As far as second ground seeking enhancement of compensation is concerned, once the finding recorded is that claimant has suffered 40 per cent permanent disability then the compensation for disability has to be calculated in accordance with the provision of Second Schedule to the Motor Vehicles Act. Claimant being a 12 years old boy at the time of the accident it was proper to calculate the compensation assessing his notional income at Rs. 15,000 per year and by applying multiplier of 15, accordingly the compensation has to be calculated in

the following manner.

Notional income Rs. 15,000 per year; 40 per cent thereof will come to Rs. 6,000, this when multiplied by 15 would come to Rs. 90,000 to this a sum of Rs. 5,000 already awarded by the Tribunal for medical expenses and Rs. 5,000 as per Second Schedule for pain and suffering for grievous injury may be added, compensation would come to Rs. 1,00,000.

Accordingly this appeal is allowed, the compensation is enhanced to Rs. 1,00,000 as the insurance company is found to be exonerated, the entire enhanced amount of compensation shall be paid by the owner of the vehicle to the claimant along with interest at the rate of 6 per cent per annum from the date of filing of appeal till payment.

8. Accordingly, appeal is allowed and disposed of without any order so as to costs.