(2003) 01 MP CK 0109

In the Madhya Pradesh High Court

Case No : M.A. No. 1487 of 2001

Durgesh Kumar Yadav APPELLANT

Vs

Vimal and Others RESPONDENT

Date of Decision : 02-01-2003

Acts Referred:

Citation : (2003) 3 ACC 619 : (2003) ACJ 1374 : (2003) 1 JLJ 335

Hon'ble Judges : Bhawani Singh, C.J;S.L. Jain, J

Bench : Division Bench

Advocate : Sharad Gupta, for the Appellant; V.P. Verma, for the Respondent

Final Decision : Allowed

Judgement

Bhawani Singh, C.J.—This appeal is directed against the award of Motor Accidents Claims Tribunal, Jabalpur, in M.V.C. No. 825 of 2000, dated 21.8.2001, at the instance of the claimant seeking for enhancement of compensation and reversal of the finding as to liability to pay compensation.

2. Shortly stated, it may be recorded that the accident took place on 14.6.2000 when jeep bearing registration No. CIJ 9838, in which the claimant was travelling, turned turtle due to rash and negligent driving of the driver resulting in serious injuries to the claimant. C-5 and C-6 bones of vertebrae were fractured resulting in non-function of both the lower limbs and choking of urinary system. Massive treatment could not improve his condition; he lies in bed as a disabled person and is looked after by an attendant; lakhs of rupees he has spent on treatment and compensation of Rs. 21,50,000 has been claimed holding the driver and owner jointly responsible for payment of compensation with ultimate liability of the insurance company with which the vehicle was insured.

3. Both owner and driver did not contest the case and were proceeded ex parte, while the insurance company alleges that the jeep was insured for private use, but it was being used for hire and reward and, therefore, there was violation of the conditions of insurance policy; as such, the insurance company is not liable

to pay the compensation.

4. On the pleadings of parties, issues were framed and evidence recorded by the Claims Tribunal. It is held that the accident took place due to rash and negligent driving of the jeep by the driver resulting in serious injuries to the claimant, making him permanently disabled. With regard to compensation, Rs. 1,86,000 have been awarded. Liability for paying the same has been fixed on the owner and driver of the vehicle jointly and severally. Through this appeal, the award has been challenged by the claimant, both with regard to liability to pay compensation and quantum thereof.

5. Mr. Sharad Gupta, learned Counsel for appellant, drew our attention to the evidence in the case and submitted that the finding of the Tribunal that the claimant was travelling as fare paid passenger is unsustainable. As a matter of fact, there is clinching evidence suggesting that claimant was known to the driver of the vehicle and fare had not been paid. Reference to the statement of Sukhram, AW 2, is absolutely inaccurate, because it is not correct reproduction of his statement in the court where he has also said that he did not know the driver.

6. Giving consideration to the submissions, we find that claimant has categorically stated that he was known to the driver of the jeep and was, therefore, travelling by this vehicle. He has nowhere said that he paid fare to the driver for the travelling. Therefore, it cannot be said that the claimant was fare paid passenger. At the most, he was a gratuitous passenger and deemed to be covered by the insurance policy as per decision of the Supreme Court in case of New India Assurance Company Vs. Shri Satpal Singh and Others, . Moreover, the burden to prove this issue was on the insurance company which has failed to discharge it by production of satisfactory evidence, at least of the driver and owner of the vehicle. Therefore, having failed to discharge the burden, the conclusion is irresistible that there is no violation of the conditions of the insurance policy and the claimant was travelling by the jeep as a gratuitous passenger. This case is covered by the insurance policy and, therefore, owner and driver are liable to pay the compensation jointly and severally with the ultimate responsibility of the insurance company with which the vehicle was insured.

7. Having come to the conclusion aforesaid, we now turn to examine the question whether claimant has been awarded just compensation in this case. Counsel for parties have disagreement on this aspect. Mr. Sharad Gupta submits that grossly inadequate compensation has been awarded, while Mr. V.P. Verma submits that in the facts and circumstances of the case, just compensation has been awarded and, therefore, case for enhancement is not made out. We do not agree with this submission for reasons to be recorded hereafter.

8. Look at the nature of injuries suffered by the claimant in this accident. They have been discussed in para 13 of the award of the Claims Tribunal. Claimant suffered fracture of C-5 and C-6 vertebrae. His urinary tract is choked. Both the

lower limbs have become non-functional. He was treated in hospitals at Nagpur, Mumbai and Jabalpur, operated number of times and two rods inserted/ implanted. Obviously, he must have suffered great pain during this time and incurred heavy expenditure. That apart, continuously he lies on bed and looked after by an attendant. According to Dr. C.S. Singhai, AW 4, the claimant cannot be cured of the injuries suffered by him. The disability has been put at 80 per cent, but actually it is 100 per cent since the claimant is incapable of moving and earning. Mr. Sharad Gupta placed reliance on case of Grifan Vs. Sarbjeet Singh and Others, ; United India Insurance Co. Ltd. Vs. Ramesh Chandra and Others, , and submits that compensation be enhanced appropriately.

9. After taking into consideration the nature of injuries and extent of disability, existing and future loss, expenditure oh treatment and attendant, loss of prospects of marriage, age, claimant being the only son of the parents, etc., we are of considered opinion that there is case for enhancement of compensation.

10. Accordingly, this appeal is allowed. Award of Motor Accidents Claims Tribunal dated 21.8.2000 is modified and it is ordered that claimant shall be entitled to compensation as under:

(i) Permanent disability Rs. 2,55,000 (ii) Pain and suffering Rs. 50,000 (iii) Expenditure on treatment including future expenditure Rs. 1,50,000 (iv) Attendant Rs. 1,00,000 (v) Special diet Rs. 25,000 (vi) Loss of income, loss of future enjoyment of life, including loss of marriage prospects Rs. 30,000 (vii) Transport Rs. 4,000 _____________ Total Rs. 6,14,000 _____________

Accordingly, compensation of Rs. 6,14,000 is awarded to the claimant payable by the New India Assurance Co. Ltd. within two months with interest at the rate of 9 per cent per annum from the date of application till payment.

Costs on parties.

