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(2018) 07 MP CK 0195

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No.349 OF 2010

Iffco Tokio General Insurance Company Ltd. APPELLANT

Vs

Smt. Nannibai & Ors RESPONDENT

Date of Decision : 23-07-2018

Acts Referred:
Motor Vehicles Act, 1988 — Section 7, 14, 173(1)

Citation : (2018) 07 MP CK 0195

Hon'ble Judges : Anand Pathak, J

Bench : Single Bench

Advocate : B.K.Agrawal, Smrati Sharma, Jitendra Sharma

Final Decision : Dismissed

Judgement

With consent, heard finally.

Appellant/Insurance Company has preferred this Appeal under Section 173(1) of the Motor Vehicles Act, 1988 against the award dated 25/11/2009

passed by Additional Motor Accident Claims Tribunal, Sheopur in Claim Case No. 13/2009, whereby, a total compensation of Rs. 1,83,000/- has been

awarded to the claimants/wife and daughter of deceased Abdul Bashir, who died in road accident dated 04/01/2009.

Precisely stated facts of the case are that on 4/1/2009, at about 7 am while deceased Abdul BashirÂ was going on his bicycle and reached near

Shepur â?" Pali Road, Katredy bridge, it is alleged that driver of offending vehicle Bolero Jeep No. M.P.30 G-0402 by driving the same in rash and

negligent manner dashed the bicycle from behind, due to which deceased sustained grievous injuries in his head and thighs and died on spot. Claimants

therefore, filed a claim case claiming compensation of Rs. 51,60,000/-, in which by impugned award, the Tribunal has awarded a compensation of

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Rs.1,83,000/- and Insurance Company was held liable for payment of amount under award.

The appeal has been moved on behalf of Insurance Company assailing the findings arrived at by the Claims Tribunal, whereby, Insurance Company

has been held liable for payment of amount under compensation, whereas, as per learned counsel for the Insurance company the driver of the

offending vehicle was having LMV licence and therefore, was not authorized to drive jeep, a commercial/ transport vehicle. He also raised submission

regarding contributory negligence of the deceased.

Respondents No. 1 and 2 have also preferred crossobjections under Order XLI Rule 22 CPC vide I.A.no. 9735/2010 for enhancement of

compensation on the ground that learned Claims Tribunal erred in assessing the income of the deceased at Rs. 2,000/- per month whereas, he used to

earn Rs. 9,000/- per month by running his shop. It is further submitted that multiplier applied by Claims Tribunal is also on the lower side as looking to

the age of deceased who was not more than 50 years of age at the time of incident, it should be 13 instead of 11 as applied by Claims Tribunal.

As regards contentions of learned counsel for the Insurance Company, learned counsel for the claimants submits that in light of recent decision of

Hon'ble Apex Court in the matter ofÂ Mukund Dewangan Vs. Oriental Company Limited, (2016) 4 SCC 298, the same is no more res integra.

Learned counsel for the Insurance Company submits that learned Claims Tribunal has fastened the liability of payment of amount of compensation on

Insurance Company, jointly and severely whereas, the owner and driving of the offending vehicle were liable to make the payment of amount under

award as the driver of the offending vehicleÂ was having licence of driving light motor vehicles on the date of incident and therefore he was not

having valid driving licence to drive the jeep.

He relied upon the judgment rendered by the Apex Court in the case of Oriental Insurance Company Vs. Angad Kol reported in 2009(1) TN MAC

242 (SC) and submits that definition clause of the act does not exclude LMV but it includes both passenger and goods carrying light motor vehicle.

Further the Section 14 which deals in currency of driving licence specifically stipulates that a licence to drive a transport vehicle would be issued for 3

years. Section 7 of the motor vehicle act stipulates that no person shall be

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granted a learner licence to drive a light motor vehicle for at least one year.

Meaning thereby that the vehicle may be LMV, Motor Cycle, MGV, HGV, MPV & HPV can be transport or may not be transport & for them the

driving licence validity period can be given for transport or for non-transport purpose. But as per definition clause, MGV and above category are itself

transport vehicle.

According to learned counsel for Insurance Company, the State Government / RTO where the driving licence has been specifically issued for LMV

(non-transport), will cover LMV Transport vehicle automatically, is the question and for that unless Form-6Â is amended, to make it more meaningful

by inserting a category for LMV, (non-transport) and LMV (transport) the uniformity cannot be attained. According to him, central motor vehicles

rules also needs amendment. He also raised the point that the Apex Court has referred the judgment of Mukund Dewangan (supra) to the larger

Bench, therefore, it cannot be applied over the fact situation of the case.

According to him, a special endorsement to drive transport vehicle is required in the licence and in absence of such endorsement, the claims Tribunal

has rightly fastened the liability for payment of compensation over Owner and Driver of the offending vehicle.

He also submits that licence was verified and it was found that licence of driver was without endorsement, however, he could not dispute the legal

position that case ofÂ Mukund Dewangan (supra) would be applicable.

He further submitted that the amount of award as awarded by the Claims Tribunal is just and proper and same has been awarded after appreciation of

pleadings of parties.

Heard learned counsel for the parties.

The Hon'ble Apex Court in the matter of of Mukund Dewangan (supra) in para 46 (iv) has held as under:â??(iv) The effect of amendment of Form 4

by insertion of â??transport vehicleâ? is related only to the categories which were substituted in theÂ year 1994 and the procedure to obtain driving

licence for transport vehicle of class of â??light motor vehicleâ? continues to be the same as it was and has not been changed and there is no

requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive

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transport vehicle of such class without any endorsement to that effect.â??

In the case of Oriental Insurance Company Ltd. Vs. Sanju Bai and Ors., 2016 ACJ 1000, the Full Bench of this Court has held that if the correctness

of view expressed in the judgment of Apex Court has been doubted and the question is referred to the larger Bench of the Apex Court, nevertheless,

it is well settled that so long as the decision of the Apex Court on the point is in force, the same is still a binding precedent for all the subordinate

Courts until overturned by a larger Bench. Mere fact that issue has been referred to the larger Bench of the Apex Court, cannot be a basis to ignore

the decision of the Apex Court cited on a subject which is still holding the field. Therefore, the ratio of Mukund Dewangan (supra) operates as binding

precedent of this Court.

In light of such legal pronouncement, there remains no cavil of doubt that finding as regards liability so arrived at, by the Claims Tribunal is in

accordance with law and need no interference.

As regards I.A.No. 9735/2010, cross-objection preferred by the claimants/ respondents No. 1 and 2, in the opinion of this Court, Claims Tribunal did

not err in assessing the income of deceased and applying the multiplier of 11 in absence of any documentary proof regarding income and age of the

deceased, therefore, cross-objections preferred by claimants are hereby rejected and consequently I.A.No. 9735/2010 is dismissed.

In view of the forgoing discussions, the appeal filed by Insurance CompanyÂ fails and is hereby dismissed.

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