(2003) 08 MP CK 0005

In the Madhya Pradesh High Court

Case No : M.A. No. 1273 of 1996

Imtiyaj Ahmad and Another — APPELLANT

Vs

Oriental Insurance Co. Ltd. and Others — RESPONDENT

Date of Decision : 05-08-2003

Acts Referred:
Motor Vehicles Act, 1988 — Section 149(2)

Citation : (2004) 2 ACC 423 : (2004) ACJ 267

Hon'ble Judges : Bhawani Singh, C.J;Shantanu Kemker, J

Bench : Division Bench

Advocate : Anil Lala, for the Appellant; Sanjay Agrawal and S.K. Dwivedi, for the Respondent

Judgement

Bhawani Singh, C.J.—This appeal at the instance of the owner and driver of the offending vehicle, is directed against the award of the Motor Accidents Claims Tribunal, Mudwara (Katni), in M.A.C.T. Case No. 117 of 1991, dated 18.9.1996.

2. Briefly stated, on 11.6.91, Rajendra Kumar Sharma (deceased) was going with his daughters Sushma and Dipoo on the moped to his village Dhunwara. At about 5.15 p.m. when he was driving his moped on the left side at normal speed, at railway crossing, Kuchgawan, Imtiyaj Ahmad, the driver of truck No. MIJ 9037 came driving it rashly and negligently and hit the moped, as a result Sushma and Dipoo fell left side while Rajendra Kumar Sharma was stuck in the truck and dragged to a distance. Having been called by the people, truck driver stopped the vehicle, talked to the people and ran away with the truck. Rajendra Kumar Sharma suffered injuries to head, stomach, back, hand and feet, as a result of which he died on the spot while Sushma and Dipco also got many injuries.

3. Matter was reported at Police Station, Vijayraghogarh and Crime No. 59 of 1991 u/s 304A, Indian Penal Code was registered and driver arrested. Truck owner and driver are proceeded against besides the insurance company for causing accident and payment of compensation.

4. Rajendra Kumar Sharma (deceased) left behind his mother, wife and 8 children. Allegation is that accident took place due to rash and negligent driving of the truck by the driver. Deceased was wireman with Asbestos Cement Company, drawing Rs. 1,934.92 p.m. besides bonus, Sunday allowance, leave allowance, gadget allowance, canteen allowance, travel allowance, quarter allowance, etc., approximately Rs. 31,908.64 p.a. He was 40 years old at the time of accident. Compensation for 40 years loss Rs. 15,76,320 is claimed apart from some other items the total being Rs. 36,11,320.

5. Claim has been opposed by the respondents. It is stated that the deceased was driving moped negligently. The claimants have not produced evidence of being legal heirs of the deceased nor about his age. The insurance company pleads that the driver did not possess valid driving licence and owner and insurance company of truck have not been impleaded in the claim petition which is liable to be dismissed.

6. Accordingly, on the pleadings of the parties, the Claims Tribunal framed issues, permitted the parties to lead evidence and recorded that accident did not take place due to rash and negligent driving of moped by the deceased who was 40 years old. He was not responsible for the accident and claimants are his legal heirs. Finally, compensation of Rs. 1,52,000 has been awarded carrying interest at the rate of 12 per cent per annum from the date of application, etc. The award has been challenged by the owner and driver with regard to the finding of Claims Tribunal that insurance company is not liable to pay compensation because the driver did not possess a valid driving licence at the time of accident. The claimants have also filed cross-objections for enhancement of compensation.

7. Counsel for parties heard. Two questions fall for our consideration in this case, namely: (i) Whether driver possessed valid driving licence to drive the vehicle at the time of accident?; and (ii) Whether Claims Tribunal has awarded just compensation to the claimants? Reliance is placed on United India Insurance Company Ltd. Vs. Lehru and Others, (SC) and New India Assurance Co. Ltd. Vs. Savitri Parag and Others, and it is contended that burden to prove that driver did not possess valid driving licence at the time of accident lies on the insurance company. It has to prove it by production of legal evidence, namely; records from R.T.O. office and prove it through concerned staff. It is also submitted that liability for payment of compensation lies on the insurance company since it has not been proved that driver''s licence was not valid. From these two decisions, it is clear that insurance company failed to prove that insured violated condition of the policy, therefore, it cannot escape from liability to pay compensation. The driver possessed driving licence and insured was not expected to verify whether it was genuine or fake before handing over possession of the vehicle to the driver. Therefore, it cannot be said that the insured violated any condition of the policy. As such, insurance company cannot escape from liability to pay compensation to third party since insurance against third party is compulsory. Facts do not suggest that the owner violated condition of policy, therefore,

insurance company is liable to pay compensation to third party. The driver depends on driving licence No. 19694/M/86, Exh. D-2 and insurance company has not been able to demonstrate that it is not a valid driving licence, therefore it failed to discharge the burden. As such, it cannot be held that the driver did not possess valid driving licence at the time of accident. The licence possessed by the driver, Exh. D-2, was renewed by the Licensing Authority, Jhansi for the period from 14.3.1991 to 9.8.1998. The insurance company investigated the matter through its surveyor and the report has not been proved in accordance with law by production of proof from the office record on which the report is based. Therefore, the finding of the Claims Tribunal on this question is set aside and the insurance company is held liable to pay the compensation.

8. Next question is with regard to determination of age. The Claims Tribunal, in the facts and circumstances of the case, concluded that deceased was 40 years old at the time of accident on the ground that deceased had 8 children. This finding seems to be correct. Deceased was earning Rs. 1,735 per month and after deducting 1/3rd towards personal expenses, the dependency comes to Rs. 13,872 multiplied by 16, the amount comes to Rs. 2,21,952. Besides claimants are entitled to Rs. 7,000 for loss of expectancy of life, Rs. 5,000 for loss of consortium, Rs. 2,500 for loss to estate and Rs. 2,000 for funeral expenses. Therefore, just compensation awardable in this case comes to Rs. 2,38,452, holding the owner and driver of the vehicle jointly and severally liable, payable by Oriental Insurance Co. Ltd. with which the offending vehicle was insured, within 3 months, with interest at the rate of 9 per cent per annum on the enhanced compensation. The compensation is payable as under:

1. Sheel Kumari (wife) 50 per cent 2. Hemlata alias Ranni 5 per cent 3. Sushma 5 per cent 4. Dipoo 5 per cent 5. Rajni 6 per cent 6. Rashmi 6 per cent 7. Roobi 6 per cent 8. Bikkoo 6 per cent 9. Priti 6 per cent 10. Shanti Devi (mother) 5 per cent

Costs on parties.

