
(2010) 08 MP CK 0083

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 1935 of 2005

Kishore Gayre

APPELLANT

Vs

Shahid Shah and Another

RESPONDENT

Date of Decision : 09-08-2010

Acts Referred:

Constitution of India, 1950 — Article 142
Motor Vehicles Act, 1988 — Section 2(18), 92A

Citation : (2011) ILR (MP) 972 : (2011) 1 MPHT 196 : (2011) 2 MPLJ 201

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Judgement

N.K. Mody, J.

Being aggrieved by the award dated 27-1-2005 passed by MACT, Neemuch in Claim Case No. 51/2002, whereby claim petition filed by the Appellant was allowed and compensation of Rs. 2,90,000/- was awarded and Respondent No. 2 was exonerated, present appeal has been filed.

Short facts of the case are that Appellant filed a claim petition alleging that Respondent No. 1 owned a tractor bearing registration No. MPN-7627, which is insured with Respondent No. 2. It was alleged that on 17-10-99 Respondent No. 1 brought his tractor to the field of Appellant, which was attached with thresher for the purpose of cutting Soyabean crop lying in the field of Appellant. It was alleged that while the thresher was in operation because of mechanical fault right leg of the Appellant was crushed from the joint of thigh and ultimately it was amputated. It was alleged that the accident occurred due to negligence on the part of Respondent No. 1. It was prayed that petition be allowed and compensation be awarded. The claim petition was contested by the Respondents by filing separate written statement. In the written statement filed by Respondent No. 1 it was denied that the accident occurred in which Appellant sustained injuries. Liability of Respondent No. 1 was denied. In the written statement filed by Respondent No. 2 it was alleged that thresher is not a part of

the motor vehicle. It was alleged that Respondent No. 1 was not possessing valid driving licence and also offending thresher was not insured with Respondent No. 2, hence Respondent No. 2 was not liable for the alleged accident. It was prayed that claim petition be dismissed. After framing of issues and recording of evidence learned Tribunal allowed the claim petition and awarded compensation of Rs. 2,90,000/- and exonerated the Respondent No. 2, break-up of amount awarded is as under:

Rs. 6,000/- Towards medical expenses. Rs. 50,000/- Towards hospital expenses. Rs. 2,34,000/- Towards permanent disability. Rs. 2,90,000/ Total

Learned Counsel for the Appellant argued at length and submits that impugned award passed by the learned Tribunal is illegal, incorrect and deserves to be set aside. It is submitted that since the offending tractor was insured and the thresher was being operated with the help of tractor, which was insured with Respondent No. 2, therefore, Respondents are liable to pay compensation. For this contention reliance is placed on a decision in the matter of United India Insurance Co. Ltd. v. Smt. Anandi Devi, reported in III 2009 ACC 1753, wherein deceased sustained injuries in working on thresher machine and the thresher machine was operated by tractor, which was insured for agricultural purpose, this Court held that deceased being a third party in the accident, therefore, liability of Insurance Company covered with regard to payment of compensation. Further reliance is placed on a decision in the matter of United India Insurance Company Ltd. Vs. Sardari Lal and Others, , wherein tractor used for propelling wheat thresher and the labourer woman was collecting wheat grain under the thresher when the driver started the tractor, thresher came in motion and the woman got wrapped with the belt resulting in her death, Himachal Pradesh High Court held that accident arose out of use of tractor. It was also observed that tractor is not being plied on the road does not necessarily mean that an accident had not occurred arising out of the use of motor vehicle. Reliance is also placed on a decision in the matter of Oriental Insurance Co. Ltd. Vs. Savthanji Khodaji Thakor and Others, wherein Insurance Company sought to avoid liability on the ground that tractor was insured but not the thresher a Division Bench of Gujarat High Court held that Insurance Company is liable for payment of compensation. Reliance was also placed on a decision in the matter of P. Muse Khan and Others Vs. M. Gopala Krishnaiah and Another, , wherein accident caused by a lorry during the course of drilling in agricultural fields resulting in death of the deceased, Andhra Pradesh High Court held that the Insurance Company is liable for payment of compensation. On the strength of aforesaid decisions, Learned Counsel for the Appellant submits that learned Tribunal committed error in exonerating Respondent No. 2. So far as amount of compensation is concerned, Learned Counsel submits that in a case where leg was amputated from the joint, it is a case of 100% permanent disability. In the matter of United India Insurance Co. Ltd. v. Rajendra I 2010 ACC 444, wherein claimant was aged 21 years and right hand was amputated the compensation awarded by the Tribunal Rs. 2,06,000/- was enhanced by this Court to Rs. 2,75,000/-. In this case, accident

occurred when claimant while operating thresher fitted with tractor was insured, in the circumstances this Court further held that Insurance Company cannot avoid the liability to pay compensation. It is submitted that appeal filed by the Appellant be allowed and the findings relating to exoneration be set aside and the amount be enhanced.

Learned Counsel for Respondent No. 2 submits that since the tractor, which was belonging to Respondent No. 1 was taken by the Appellant to his field and the operation was being made by the Appellant himself, therefore, Appellant is not entitled to claim any amount of compensation from Respondent No. 2. It is submitted that in the facts and circumstances of the case learned Tribunal has rightly exonerated Respondent No. 2. Learned Counsel for Respondent No. 2 placed reliance on a decision in the matter of Oriental Insurance Co. Ltd. v. Brij Mohan 2007 ACJ 1909, wherein labourer engaged to dig earth was sitting on earth loaded trolley attached to tractor and due to rash and negligent driving of tractor-trolley the laborer slipped and came under its wheels and sustained injuries, the Insurance Company sought to avoid its liability on the ground that trolley was not insured and tractor alone was insured and the vehicle was not being used for agricultural purpose for which it was insured, Apex Court held that since the tractor was being used for bringing earth from site of digging to brick-kiln for manufacturing bricks which is not agricultural work, therefore, Insurance Company is not liable. However, Hon'ble Apex Court in exercise of its extraordinary jurisdiction under Article 142 of the Constitution of India directed the Insurance Company to satisfy the award. Further reliance is placed on a decision in the matter of Thawri v. Harji 2007 ACC 188, wherein death occurred while deceased was repairing vehicle, which was not in motion as tractor was standing and trolley put on jack and jack slipped out and trolley fell upon, Rajasthan High Court dismissed the claim petition. Reliance is also placed on a decision of this Court in the matter of Ashok Varma v. Shivnath Singh 2007 (I) DMP 279, wherein tractor was not being used as a motor vehicle, as neither passengers nor goods were being carried on and thresher was merely operated by the motor of tractor, which was in a stationary position, this Court held that accident caused is not covered under the Act. It is submitted that in the facts and circumstances of the case appeal be dismissed.

From perusal of the record, it is evident that to prove the case Appellant has filed documents (Exhs. A-1 to A-27). Exhs. A-1 to A-25 are the documents relating to criminal case, while rest of the documents are relating to treatment of the Appellant. Appellant has examined himself as A. W. 1 and Radheshyam as A.W. 2. While Respondent No. 2 produced the documents and has proved the policy and has also examined Shahid Shah and Ravindra Mundra. From the evidence on record, it is amply proved that the thresher was being used by the Appellant in his field with the aid of the tractor, which was being owned by Respondent No. 1 and insured with Respondent No. 2.

In the matter of Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam

More, wherein collision between a truck and petrol tanker and the tanker turned turtle and thereafter after 4-1/2 hours of the accident the tanker exploded and caught fire resulting in injuries to and death of several persons assembled near it. In this case, contention was that at the time when explosion and fire took place the petrol tanker which was lying turtle was not suitable or fit for use on the road and hence was not a "motor vehicle" as defined in Section 2(18) of the M.V. Act. Hon"ble Apex Court held that petrol tanker though lying turtle was in "use" at the time of explosion and fire and the claimant is entitled to compensation u/s 92A of M.V. Act. It was further held that the word "use" in the expression "use of a motor vehicle" has a wider connotation and covers accidents which occur both when the vehicle is in motion and when it is stationary. It was further held that use of vehicle does not cease when it has been rendered immobile on account of breakdown or mechanical defect or accident. In the matter of Gayatri Bai and Another Vs. Ahmadji and Others, , wherein in a case where bus was stationary and driver and cleaner had raised the chassis over a jack for changing spring and jack slipped and conductor who was sitting by the side of the bus got pressed between mudguard and wheels sustaining fatal injuries and the Tribunal held that vehicle was parked and it was not in use and dismissed the claim application, Divisional Bench of this Court held that the accident arose out of use of vehicle giving the expression "use" an extended meaning and the claimants are entitled to compensation.

Since the accident occurred when the offending tractor was being used for being agricultural purpose, therefore, this Court is of the view that learned Tribunal committed error in exonerating Respondent No. 2. So far as amount of compensation is concerned, it appears that on number of heads no amount has been awarded by the learned Tribunal and on number of heads amount awarded is on lower side. In a case of amputation where leg of the Appellant was amputated from joint, in the opinion of this Court amount awarded to the Appellant is on lower side. In the opinion of this Court income of the Appellant ought to have been @ Rs. 3,000/- per month and keeping in view the injuries sustained by the Appellant and the fact that the Appellant is an agriculturist, Appellant is entitled for compensation on the basis of 100% permanent disability after applying the multiplier of 15. Appellant is entitled for the following amount:

Rs. 4,70,000/- Towards permanent disability. Rs. 10,000/- Towards medical expenses. Rs. 10,000/- Towards hospital expenses. Rs. 5,000/- Towards special diet. Rs. 5,000/- Towards transport. Rs. 5,000/- Towards attenders.
----- Rs. 5,05,000/- -----

It is true that in the memo of appeal the prayer is for compensation of Rs. 4,00,000/-, while in the claim petition filed before the learned Tribunal long back in the year 2001 prayer was for compensation of Rs. 6,94,000/-, therefore, this Court has not to misguide with what amount has been claimed but the Court has to examine what is the just compensation and while assessing the just compensation this Court can award more amount than it is claimed as laid down

by the Hon"ble Apex Court in the matter of Nagappa Vs. Gurudayal Singh and Others,

In view of this appeal filed by the Appellant is allowed and the amount awarded by the Tribunal Rs. 2,90,000/- is enhanced to Rs. 5,05,000/- holding that Respondents are liable to pay the compensation jointly and severally. Thus, the amount of award is enhanced by Rs. 2,10,000/-, which shall carry interest @ 8% per annum from the date of application. The amount awarded shall be deposited by the Insurance Company with the learned Tribunal and the learned Tribunal is directed to invest 80% of the said amount on long term fixed deposit in the name of Appellant in the nearest Nationalized Bank, in the area where the Appellant is residing, with the condition that the Bank will not permit any loan or advance. Interest on the said amount shall be credited on monthly basis in S.B. Account of Appellant, which shall be opened by the Appellant No. 1 from where Appellant can withdraw the amount as per her needs. However, on an application by the Appellant this condition could be modified by the learned Tribunal in exceptional circumstances, if made out by the Appellant.

With the aforesaid observations appeal stands disposed of.