

(2000) 03 MP CK 0083

In the Madhya Pradesh High Court

Case No : M.A. No. 156 of 1999 and others

Kunwariya Bai

APPELLANT

Vs

Mohan Lal and Others

RESPONDENT

Date of Decision : 28-03-2000

Acts Referred:

Citation : (2002) ACJ 77 : (2000) ILR (MP) 1453 : (2000) 2 MPJR 373 : (2000) 3 MPLJ 501

Hon'ble Judges : Bhawani Singh, C.J.; A.K. Mishra, J

Bench : Division Bench

Advocate : Sameer Seth, for the Appellant; N.S. Ruprah and A.K. Pathak, for the Respondent

Judgement

Bhawani Singh, C.J.

This group of 12 appeals (M.A. No. 156 of 1999: Kunwariya Bai v. Mohan Lal; M.A. No. 168 of 1999: Jugan Bai v. Mohan Lal; M.A. No. 169 of 1999: Mehtaruram Sahu v. Mohan Lal; M.A. No. 170 of 1999: Brij Bai v. Mohan Lal; M.A. No. 182 of 1999: Gwaldas Sahu v. Mohan Lal; M.A. No. 183 of 1999: Rukmani Bai v. Mohan Lal; M.A. No. 207 of 1999: Noharlal v. Mohan Lal; M.A. No. 208 of 1999: Ratanlal Devangan v. Mohan Lal; M.A. No. 209 of 1999: Deen Dayal Yadav v. Mohan Lal; M.A. No. 210 of 1999: Sukhram Sahu v. Mohan Lal; M.A. No. 220 of 1999: Biravan Bai v. Mohan Lal; and M.A. No. 237 of 1999: Manra-khan v. Mohan Lal) is proposed to be decided by this common order, since all of them arise out of the same accident.

The claimants and some other persons had gone to Abhanpur to take part in the martyr day rally in Matador with registration No. MP 24-C-0267. After function, all the claimants went to Mothipar. The respondent No. 1, Mohan Lal, was driving the vehicle rashly and negligently with the result Matador hit the truck with registration No. C-11/8052 from behind at a high speed. The impact was so severe that the Matador struck with the truck in such a way that it was carried to some distance by the truck. The accident resulted in death of Jamunabai,

Mehtaruram while 11 persons sustained personal injuries. Consequently, claim petitions were filed before the Motor Accidents Claims Tribunal, Raipur (for brevity "M.A.C.T.").

The allegation is that the vehicle Matador was being driven rashly and negligently by the driver Mohan Lal, which resulted in accident. It was insured with Oriental Insurance Co. Ltd. The respondents resisted the claim and denied that the accident was result of rash and negligent driving. It was also stated that the driver did not possess valid driving licence and that it was a goods carriage with permission to carry one driver and four coolies, while 30 persons were travelling in this vehicle at the relevant time. However, the insurance company has admitted that the Matador hit the truck from behind and it got tagged with the truck and it was carried to some distance resulting in loss to Matador and injuries to the persons.

On the pleadings of the parties, the M.A.C.T. framed certain common issues, which are as follows:

- (1) Whether the non-applicant No. 1 was, driving the motor vehicle No. MP 24-C-0267 rashly and negligently dashed against the truck No. C-11/8052?
- (2) Whether the vehicle No. MP 24-C-0267 was being used in violation of policy?
- (3) Relief and costs?

On the above issues, the finding is that rashness and negligence on the part of the driver was not proved and the vehicle was not being used against the conditions of the policy, since it was not produced. However, all these claim petitions have been dismissed by the M.A.C.T. on the basis of the finding against the issue No. 1.

We have heard the learned Counsel for the parties and perused the records. It is contended that it was a goods vehicle to carry driver with four coolies, but the driver was carrying 30 persons. This plea is untenable because the policy has not been produced by the insurance company, therefore, it is liable to be rejected.

The second contention is that the appellant has not proved the rashness and negligence on the part of the driver of Matador rather there is variation in the pleadings and evidence. We consider this question carefully.

The claim petitions disclose that the claimants were travelling in Matador when it struck with the truck. During recording of evidence, the claimants stated that at a particular spot, they had come out of the vehicle for answering the call of nature and while they were moving on the road side, the Matador driven by the driver came and hit them, so curiously that they were carried to a distance and that the vehicle ultimately struck against the truck. True, it may be that there is variation, but in substance, the position points out to the fact that the vehicle was driven rashly and negligently by the driver, which resulted in accident. Whether the claimants were inside the vehicle, when it struck against the truck

or whether they were moving on the roadside and the vehicle struck against them before it hit the truck, rashness and negligence on the part of the driver of Matador is writ large and this issue is clearly established in favour of the claimants and against the driver of Matador.

The fact of accident is also admitted by the insurance company when it states that it was Matador, which hit the truck from behind resulting in accident. Consequently, the finding recorded by the M.A.C.T. on this issue is erroneous and is liable to be set aside. It is held that the driver was driving Matador bearing No. MP 24-C-0267, rashly and negligently, which resulted in accident and death of Jamuna Bai and injuries to 11 persons. So far as the issue No. 2 is concerned, it has not been proved by the insurance company. Therefore, the finding recorded by the M.A.C.T. is confirmed. Even otherwise, carrying of gratuitous passengers is to be covered in the insurance policy as per decision of the Apex Court in the case of *New India Assurance Co. Ltd. v. Sat-pal Singh* 2000 ACJ 1 (SC), in which the Apex Court, in para 10, has observed:

The result is that under the new Act, an insurance policy covering third party risk is not required to exclude gratuitous passenger in a vehicle, no matter that the vehicle is of any type or class. Hence, the decisions rendered under the old Act vis-a-vis gratuitous passengers are of no avail while considering the liability of the insurance company in respect of any accident which occurred or would occur after the new Act came into force.

Having decided the submissions advanced before us by the learned Counsel for the parties, we proceed to decide the compensation amount in individual cases.

Misc. Appeal No. 156 of 1999: Kunwariya Bai v. Mohan Lal

The claimant was travelling in the vehicle at the relevant time and due to accident, she sustained injuries. She was taken to D.K. Hospital, Raipur, for treatment. She states that she suffered injuries in the right leg due to this accident, besides the injuries to chest and waist. Fracture has not been proved, though she remained confined in the hospital for 15 days. The M.A.C.T. has come to the conclusion that the claimant did not suffer any fracture, but received simple injuries. The claimant claimed that she was earning Rs. 35 per day and due to this accident, she suffered loss of Rs. 40,000. She also claimed Rs. 5,000 for mental pain and suffering and some amounts for suffering besides others. After appreciating the evidence, the M.A.C.T. assessed Rs. 1,000 towards medical expenses, but no award has been given due to the finding on issue No. 1.

We have considered the whole matter. In our opinion, the claimant should be entitled to lump sum amount of Rs. 10,000 with interest at 8 per cent per annum from the date of application till payment.

Misc. Appeal No. 168 of 1999: Jugan Bai v. Mohan Lal

The claimant was travelling in the vehicle. Due to this accident, she received serious injuries and was taken to D.K. Hospital, Raipur, for treatment. Her pelvic

bone was fractured. She received injuries in the chest resulting in severe pain. After treatment in D.K. Hospital, looking to her condition, she was shifted to City Hospital, Raipur, where she remained from 1.6.1994 to 25.6.1994, i.e., 25 days. The treatment continued after release from the hospital. She states that she feels pain while sitting. She lost her earning capacity due to this accident. Before it, she used to earn Rs. 35 per day. After the accident, she remained in bed for about two and half months. In this accident, she received injuries on various parts of her body. She claimed Rs. 50,000 for injuries, Rs. 5,000 for loss of earning, Rs. 10,000 for loss of earning capacity, Rs. 8,000 for medical expenses, Rs. 5,000 for mental agony and suffering and Rs. 5,000 for travelling expenses and attendant; total Rs. 83,000.

The M.A.C.T. has come to the conclusion that the claimant did not furnish evidence with regard to the serious injuries on person or the fracture of pelvic bone. Accordingly, M.A.C.T. treated all the injuries suffered by the claimant as simple injuries. An amount of Rs. 3,200 has been determined towards the medical expenses against claim of Rs. 10,000 against this head. We do not agree with the view so taken. It has been found that the claimant suffered injuries on her person in the accident on account of which she was treated in City Hospital by Dr. Shankar Dubey, whose certificate is Exh. P-1. It points out that the claimant remained admitted in this hospital for 25 days. In totality of circumstances to meet the ends of justice, lump sum amount of Rs. 15,000 is awarded to the claimant by way of compensation in this case with interest at the rate of 8 per cent per annum from the date of application till the date of payment.

Misc. Appeal No. 169 of 1999: Mehtaruram Sahu v. Mohan Lal

The claimants, in this case, are husband and adult children (sons) of deceased Jamunabai. The deceased was earning Rs. 35 per day. The M.A.C.T. has, on evidence, accepted the statement and settled the dependency at Rs. 583.33 per month. The deceased was 46 years old at the time of accident. By applying multiplier of 12, compensation of Rs. 84,000 has been settled in this case.

We have perused the evidence and findings recorded by the M.A.C.T. We confirm the findings of the M.A.C.T. with respect to dependency and multiplier. The claimants should be entitled to Rs. $583 \times 12 \times 12 =$ Rs. 84,000, Rs. 5,000 for loss of expectancy of life and Rs. 2,000 for funeral expenses, i.e., total Rs. 91,000 payable with interest at the rate of 8 per cent per annum from the date of application till the date of payment.

Misc. Appeal No. 170 of 1999: Brij Bai v. Mohan Lal

The claimant in this case has stated that she received injuries in this accident. Her ribs were broken. She received injuries on waist, thigh and other parts of her body. She was admitted in D.K. Hospital, Raipur, where she remained for 7 days, as per Exh. P-2. Exh. P-3 is a certificate from Dr. Vinayak Sen, which indicates that 8th rib of the claimant was affected, apart from other injuries on her person. She was also admitted in Shahid Hospital, Dalli Rajhara for 15 days, as per Exh.

P-4. This document also suggests fracture of 8th rib. The claimant has stated that her income was Rs. 35 per day and due to this accident, her capacity to earn was decreased for which exact loss could be said Rs. 50,000, Rs. 5,000 for loss of income, Rs. 5,000 towards loss of earning capacity, Rs. 5,000 towards medical expenses, Rs. 10,000 for mental agony and suffering to herself and relations and Rs. 5,000 towards travelling expenses, i.e., a total compensation of Rs. 80,000. The M.A.C.T. has assessed the medical expenses at Rs. 1,460. We find that the M.A.C.T. has not paid much attention to the medical evidence of the claimant. The account statement Exh. P-2 has to be taken for consideration. But the documents Exhs. P-3 and P-4 have not been considered and only a passing reference has been made. The fact remains that the claimant suffered rib fracture in this accident apart from other injuries on her person. Her statement is that she was incapacitated from earning due to this accident and she suffered mental pain and incurred huge expenses towards medical treatment and travelling, etc. It may be stated that the claimant has produced the accounts statement, Exh. P-2 from the City Hospital and Research Centre, Raipur, pointing out expenses of Rs. 1,460 for 7 days, but it has to be taken that she must have spent double the amount in Shahid Hospital, Dalli Rajhara, where she remained for 15 days. Therefore, Rs. 2,000 is given to the claimant for medical expenses in Shahid Hospital, Dalli Rajhara, taking the total to Rs. 3,460 towards medical expenses.

Turning now to the compensation, in the circumstances, a lump sum amount of Rs. 15,000 would be payable to the claimant with interest at 8 per cent per annum from the date of application till date of payment.

Misc. Appeal No. 182 of 1999: Gwaldas Sahu v. Mohan Lal

The claimant, in this case, states that he received serious injuries in this accident and he was admitted to D.K. Hospital, Raipur. There was bone fracture near wrist apart from head injury, which had to be stitched. There were other injuries and loss of blood. He remained in D.K. Hospital for primary treatment from 1.6.1994 to 7.6.1994 and then shifted to City Hospital, Raipur. His hand remained plastered for one month and after removal, it was found that there was bend in the bone. The treatment was continued, for which heavy expenses had to be incurred and in future as well. The claimant was 11 years old at the time of accident. He was studying in 6th class. He was a good student and his father wanted to send him for service. But due to this injury, his determination is minimized and capacity to earn decreased. The claimant claimed Rs. 50,000 for the injuries, Rs. 25,000 for loss of earning capacity, Rs. 8,000 for medical expenses, Rs. 10,000 for future treatment, Rs. 10,000 for loss of expectancy, Rs. 10,000 for mental agony and suffering to himself and relations and Rs. 5,000 for travelling expenses; total compensation of Rs. 1,08,000.

The M.A.C.T. has come to the conclusion that the fracture is not proved, though injuries have been found. It is also found that the claimant remained in City Hospital for 7 days and thereafter in Shahid Hospital. It is also found that the

claimant did not suffer fracture injury, but he suffered simple injuries, for which medical expenses were incurred to the extent of Rs. 1,391.45. We have considered the evidence. There is no evidence justifying fracture injury. The proper course was to produce the medical certificate, which has not been done. No certificate from the doctor is on record. Therefore, it has to be taken that the claimant suffered simple injury in this accident. Consequently, lump sum amount of Rs. 10,000 is awarded inclusive of medical expenses to meet the ends of justice payable with interest at the rate of 8 per cent per annum from the date of application till the date of payment.

Misc. Appeal No. 183 of 1999: Rukmani Bai v. Mohan Lal

The claimant suffered injuries in this accident including fracture of pelvic bone. She remained in City Hospital & Research Centre, Raipur, from 1.6.1994 to 7.6.1994, as per Exh. P-2. The medical prescription, Exh. P-3 also confirms her statement about fracture of pelvic bone and other injuries on her person. The account statement, Exh. P-3 towards medical expenses for Rs. 1,960 for 7 days in City Hospital has been produced. Thereafter, she was admitted in Shahid Hospital, Dalli Rajhara, from 7.6.94 to 17.6.1994, as per Exh. P-1. But there is no such statement with regard to other hospital. However, it has to be taken that she must have paid medical expenses to other hospital also. Apart from fracture of pelvic bone, some injury was caused to the left eardrum of the claimant, as per report Exh. P-4. Consequently, in this case, reasonable amount of compensation is assessed at Rs. 20,000 with interest payable at the rate of 8 per cent per annum from the date of application till the date of payment.

Misc. Appeal No. 207 of 1999: Noharlal v. Mohan Lal

The claimant sustained injuries in this accident. There is fracture of pelvic bone as per report of City Hospital & Research Centre, Exh. P-1, Exh. P-2, Exh. P-3, Exh. P-4 and Exh. P-5. He also suffered injury in urethra, as per Exh. P-6, Exh. P-7 and Exh. P-8. The statement of accounts for medical expenses is Rs. 4,420 as per report of City Hospital, Exh. P-10. There are also vouchers Exh. P-12 to Exh. P-38 and statement of medical expenses of Rs. 4,204 is on record as Exh. P-11. The claimant suffered on account of this accident, be it physically or mentally or earning capacity. Therefore, the claimant would be entitled to compensation of Rs. 30,000 along with interest at the rate of 8 per cent per annum from the date of application till the date of payment. This amount would include medical expenses also.

Misc. Appeal No. 208 of 1999: Ratanlal Devangan v. Mohan Lal

The claimant states that in this accident, he suffered multiple fracture to 5th rib of right and left. He also suffered internal injury in the chest resulting in difficulty in breathing. He was taken to D.K. Hospital for primary treatment and thereafter shifted to City Hospital, where he remained up to 2.7.1994 and then to Sector 9 Hospital, Bhilai from 2.7.94 to 27.7.1994, i.e., 25 days. He was subjected to major operation. After spending two months in the hospital, the claimant was still

suffering and spending huge amount for treatment. He was not in a position to move properly, though he was earning Rs. 40 per day. For this accident, he claimed total amount of compensation of Rs. 1,52,000 under different heads along with interest at the rate of 18 per cent per annum. The M.A.C.T. has come to the conclusion that the claimant was treated in Bhilai, Sector 9 Hospital and City Hospital also. He had spent a sum of Rs. 18,455.75 for treatment, as per vouchers, Exh. P-4 to Exh. P-47. The document, Exh. P-56, shows multiple fracture to the ribs of both sides, which is corroborated by Exh. P-65. From the evidence, it is not difficult to conclude that the claimant suffered serious injuries in this accident and had to take treatment in different hospitals for months, due to the injuries, it is obvious that he is not as fit as he had been before he suffered injuries. His earning capacity is affected. He suffered due to this accident and will continue to suffer in future as well. He states that he was a labourer earning Rs. 40 per day. He was 55 years old at the time of accident. There is no evidence of his longevity. In the totality of the circumstances, the compensation amount of Rs. 50,000 including medical expenses is assessed, payable with interest at the rate of 8 per cent per annum from the date of application till the date of payment.

Misc. Appeal No. 209 of 1999: Deen Dayal Yadav v. Mohan Lal

The claimant states that he suffered fracture of right side collar-bone in this accident and was confined to hospital. His right ear hearing is totally affected which has affected his marriage chances. However, he is not able to substantiate the statement of collar-bone fracture, therefore, it has to be taken that he suffered simple injury in this accident. The claimant claimed Rs. 1,10,000 as compensation under different heads. He was 20 years old at the time of accident. He was earning Rs. 60 per day by selling milk. Since no positive evidence has been given with respect to the serious injuries suffered by the claimant, a reasonable amount of compensation of Rs. 5,000 is awarded to him, payable with interest at the rate of 8 per cent per annum from the date of application till the date of payment.

Misc. Appeal No. 210 of 1999: Sukhram Sahu v. Mohan Lal

The claimant states that he suffered grievous injuries in right thigh, right collarbone, fracture of pelvic bone and other parts of his body. The fracture of pelvic is proved by the doctor of City Hospital, as per report, Exh. P-1, Exh. P-2, Exh. P-3, Exh. P-4, Exh. P-4/A and Exh. P-5. There is account statement of Rs. 3,700 Exh. P-6 for admission in the City Hospital from 1.6.1994 to 25.6.1994, i.e., 25 days. There are vouchers; Exh. P-8 to Exh. P-22 for Rs. 1,081.43. This fact suggests that the claimant suffered injuries pointed out in this accident, which are of serious nature. Obviously, he has suffered on account of these injuries at the time of accident and would continue to suffer for some time in future as well. Consequently, the compensation payable to the claimant, in this case, is Rs. 30,000 inclusive of the medical expenses with interest at the rate of 8 per cent per annum from the date of application till the date of payment.

Misc. Appeal No. 220 of 1999: Biravan Bai v. Mohan Lal

The claimant suffered injuries in right hand elbow, fracture of hip bone and other parts of her body. She was admitted in City Hospital & Research Centre, Rai-pur. She spent Rs. 1,360 towards treatment, as per Exh. P-2. She was 48 years old at the time of accident and she was earning Rs. 35 per day. The fracture has not been proved in this case nor expenditure beyond Rs. 1,360. Therefore, in the totality of circumstances, compensation of Rs. 5,000 is awarded to the claimant with interest at the rate of 8 per cent per annum from the date of application till the date of payment.

Misc. Appeal No. 237 of 1999: Manrakhan v. Mohan Lal

The claimant suffered multiple injuries to right tibia upper region, as per documents, Exh. P-16 to Exh. P-20. A sum of Rs. 1,439.80 is spent on medical treatment Exh. P-2 and vouchers for the same are Exh. P-3 to Exh. P-15. Hospital expenditure for 36 days from 1.6.1994 to 5.7.1994 is Rs. 4,200, as per statement of account Exh.. P-1, of City Hospital & Research Centre, Raipur. The claimant was 60 years old at the time of accident. He was labourer and was earning Rs. 40 per day. He claimed Rs. 97,000 as compensation under different heads. Looking to the nature of injuries, evidence and documents produced in this case, we are of the opinion that the claimant is entitled to lump sum compensation inclusive of the medical expenses of Rs. 25,000 payable with interest at the rate of 8 per cent per annum from the date of the application till the date of payment.

These appeals are accordingly allowed in part in terms aforesaid. The amount of compensation as aforesaid shall be paid to the claimants within a period of three months from today. The parties shall bear their own costs.