
(1985) 09 MP CK 0017
In the Madhya Pradesh High Court

Kusumlatabai and Others

APPELLANT

Vs

Satyendra Sjngh and Others

RESPONDENT

Date of Decision : 23-09-1985

Acts Referred:

Motor Vehicles Act, 1988 — Section 110D

Citation : (1985) 2 ACC 536

Hon'ble Judges : P.D. Mulye, J;K.L. Srivastava, J

Bench : Division Bench

Judgement

P.D. Mulye, J.—This judgment shall also govern the disposal of M.A. No. 1 85 of 1979 (The New India Assurance Co. Ltd. v. Smt. Kusumlata Bai and Anr.) as both these appeals are filed u/s 110-D of the Motor Vehicles Act against the same judgment and award dated 16th March, 1979 passed by the Member, Motor Accidents Claims, Tribunal, Ujjain in claim case No. 10 of 77.

2. M.A. No. 180 of 79 is for enhancement of compensation. These claimants had put up a claim for Rs. 2,50,000/-, but the learned Member of the Tribunal has awarded compensation to the extent of Rs. 38,400/- plus cost and interest at the rate of Rs. 6 per cent per annum. According to these claimants they are entitled atleast to a compensation of Rs. 1.00,000/-.

3. M.A. No. 185 of 79 has been filed by the Insurance Company on the ground that in respect of one and the same accident, even though there are independent claimants the total liability for payment of compensation for all the claimants cannot exceed Rs. 50,000/- in all. 2.

4. The learned Counsel for the Insurance Company Shri M.L. Dhupar in M.A. No. 185 of 79 frankly submitted that in view of the decision reported in Motor Owners" Insurance Company Limited Vs. Jadavji Keshavji Modi and Others, , whereby it has been held that the liability of the Insurance Company in respect of each person involved in one and the same accident is Rs. 50,000/- and not total amount of Rs. 50,000/- in respect of all the claimants involved in one and

the same accident. The grievance of the petitioner was that though in the present case compensation of Rs. 38,400/- has been awarded in another connected claim case No. 54 of 77 arising out of the same accident, filed by the legal representatives of the deceased Kishan Singh, a sum of Rs. 24,000/- together with cost and interest has been awarded to those legal representatives and if the compensation awarded in both these cases is clubbed together it exceeds Rs. 50,000/- and therefore, the liability of the Insurance Company could not be fastened beyond Rs. 50,000/- in both these cases. However, as stated at the outset the learned Counsel for the Insurance Company having frankly conceded the legal position, in view of the Supreme Court decision, he did not press his appeal No. 185 of 1979. Therefore, the appeal filed by the Insurance Company (No. 185 of 79) is dismissed as not pressed with no order as to costs.

5. Now we turn to the main appeal No. 180 of 79 filed by the claimant-appellants for enhancement of compensation which arises in the following circumstances: The appellant No. 1 Kusumlata Bai is a young widow of deceased Dr- Bbalcbandra Sharma. Appellant No. 3 Ku. Seema, appellant No. 4 Ku. Hansa appellant No. 5 Rajkumar and appellant No. 6 Girish are the minor children of deceased Dr. Bhalcbandra Sharma and appellant No. 2 Durga Bai is the mother of the deceased.

6. Truck number MPI-3094 was owned by respondent No. 1 Satyendra Singh on the date of the accident and respondent No. 2 Balvir Singh was the driver of the said truck who caused the fatal accident while driving the said truck on 31-1-77. The said truck was insured with respondent No. 3 the Insurance Company.

7. Dr. Bbalchandra Sharma was a private Ayurvedic Medical Practitioner at village Narwar, District Ujjain but was staying with his family at Ujjain. On 31-1-77 the deceased Dr. Bhalchandra was proceeding on his motor cycle number MPE-3265 from Narwar to village Patkhanda to see a patient. While he was so proceeding on the road at about 1.30 p.m. respondent No. 2 Balvir Singh, the driver of the truck came from behind in a rash and negligent manner and dashed against the motor cycle which was being driven by Dr. Bbalchandra from its backside, with the result that Dr. Bhalchandra Sharma died instantaneously on the spot as a result of the injuries sustained by him. Similarly one Shrikrishna Singh who was also riding on the pillion of the said motor cycle was also seriously injured as a result of which he also died in the hospital.

8. The present claimants as the legal representatives and dependants of the deceased, therefore, filed the claim petition. Similarly the legal representatives and dependants of deceased Shrikrishna Singh also filed separate claim petitions in which separate awards have been given as stated above.

9. The appellants in their claim petition condoned that deceased Dr. Bbalchandra Sharma at the time of his death was a young man of 27 years, that he had started his private medical practice a couple of years before 4. and during that period he had set up a good practice; that on account of the said accident the

father of the deceased died as a result of the shock sustained by him; that there is non-gravity in the family of the deceased up to 85 years and thus the deceased would have continued to earn at least till he attained the age of 65 to 70 years. The appellants, therefore, as dependants of the deceased have filed the present claim petition claiming Rs. 2,50,000/- by way of compensation.

10. The respondent No. 1 Satyendra Singh, the owner of the said truck did not dispute the ownership of the truck nor he disputed that on the relevant day of the accident respondent No. 3 Balvir Singh was driving the said truck as a driver in his employment and that the said truck was insured with the Insurance Company. However, the said respondent denied the factum of accident and also denied that the accident occurred on account of the rash and negligent driving by the truck driver. Respondent No. 2 did not file any written statement. The Insurance Company, namely respondent No. 3 also denied everything in their written statement except the fact that the said truck was insured with them.

11. The learned Member of the Tribunal, after considering the evidence and material on record as also the point of controversies raised therein, came to the conclusion that respondent No. 2 was driving the truck rashly and negligently at the relevant time as a result of which the said truck dashed against the motor cycle driven by Dr. Bhalchandra Sharma who died on the spot as a result of the said accident because of the injuries sustained by him. He also found that the appellants are the dependants of the deceased; that all the respondents are jointly and severally liable to pay the quantum of compensation which he awarded to the tune of Rs. 38,400/- plus cost and interest as mentioned above. The learned Member of the Tribunal, out of the aforesaid amount of Rs. 38,400/- awarded Rs. 3400/- appellant No. 2 Durga Bai, the motor of the deceased and awarded the balance amount of Rs. 35,000/- to all the other claimants-appellants.

12. At the hearing of these appeals none appeared on behalf of respondent Nos. 1 and 2, but only Shri M.L. Dhupad, learned Counsel for respondent No. 3, put in his appearance. Therefore, we have heard the learned Counsel for the appellants as also the learned Counsel for respondent No. 3, whose only submission was that under the terms of the Insurance Policy, the liability of the Insurance Company regarding compensation would not exceed Rs. 50,000/- in the present case.

13. learned Counsel for the appellants after taking us through the evidence submitted that though Balvir Singh the truck driver did not file any written statement, he has been examined in the present case in which he has clearly admitted that on the relevant day the said accident did take place. He also submitted that from the medical evidence of Dr. Kulkarni (PW 8) who conducted the postmortem on the dead body of Dr. Bhalchandra Sharma on the same day it has been clearly established that the deceased died as a result of the injuries sustained in the said accident. He also submitted that from the other evidence it has also been clearly established that the accident occurred on account of the

rash and negligent driving of the said truck driver. The learned Member of the Tribunal after considering the applicants evidence on this point which has been thoroughly discussed in paras Nos. 9 to 16 of his judgment, came to the conclusion that the accident occurred on account of the rash and negligent driving of the truck driver, as a result of which the deceased died on account of the injuries sustained by him. We see no reason to differ from the conclusion reached by him on these points, apart from the fact that the same has not been challenged before us by respondents Nos. 1 and 2.

14. The learned Counsel for the claimants-appellants after taking us through the evidence submitted that no doubt there is no uniformity in the testimony of the witnesses regarding the monthly income of the deceased and that some of them have even exaggerated the amount. He also submitted that in the claim petition itself the claimants had shown the monthly income of the deceased to be Rs. 650/- per month, whereas in her statement as PW 7 she has deposed that the monthly income of the deceased was Rs. 1200/- to Rs. 1300/- per month which was on the increase. In fact on the point of the monthly income of the deceased admittedly there are variations in the statement of PW 3 Shankerlal, who is the father-in-law of the deceased, PW 4 Govind Narayan, PW 5 Saiyad Nurul, and PW 6 Ibrahim, which has been considered by the learned Member of the Tribunal in his judgment from para 20 to para 24. However, he submitted that the learned Member of the Tribunal, even then has not found out what was the monthly income and in absence thereof has assumed the annual dependency at the rate of Rs. 2400/- per annum and after applying the multiplier of 16, he has awarded the compensation. He therefore, submitted that from the evidence of the witnesses examined by the appellants it would appear that the deceased was coming up well in his practice and the annual dependency should have been held at Rs. 4800/- and a multiplier of 20 ought to have been applied, considering the longevity in the family of deceased. He also submitted that the interest which has been awarded at the rate of 6 per cent should be increased to Rs. 12/- per cent per annum, in view of the current rate of interest.

15. However, it cannot be lost sight of the fact that the deceased had to support a big family and considering the fact that he was having good practice, it can be assumed that the dependency could come to Rs. 300/- per month and in our opinion the multiplier of 16, which has been applied by the learned Member of the Tribunal does not call for any further interference, though it was also submitted by the learned Counsel for the insurance Company that ordinarily a multiplier of 15 should be applied and uncertainties of life also be taken into consideration.

16. Thus after hearing the learned Counsel and after going through the evidence and material on record we are of opinion that the quantum of compensation awarded to the appellant is somewhat low, which deserves to be enhanced to some extent and after considering the facts and circumstances of the case the total compensation of Rs. 50,000/- would be just, proper and reasonable as the

claim for Rs. 1,00,000/- appears to be inflated.

17. In the result the appeal filed by the Insurance Co. i.e. No. 185 of 1979 is dismissed as not pressed with no order as to costs.

18. The appeal filed by the claimants-appellants (No. 180 of 1979) succeeds partly. The award given by the learned Member of the Tribunal is modified to the extent that instead of Rs. 38,400/- the claimant-appellants shall be entitled to claim a total compensation of Rs. 50,00/- from all the respondents, who are held jointly and severally liable for the entire amount. The appellants shall be entitled to claim interest on this amount of Rs. 50,000/- from the date of the application dated 13-5-77 till the entire payment is made. 14. at the rate of Rs. 12/- per cent per annum. If the appellants have already received the amount as per the award or a part thereof, then in that case it is only on the remaining principal amount that the appellants shall be entitled to interest at the rate of 12 per cent per annum.

19. Out of the total amount of compensation of Rs. 50,000/- (fifty thousand) the appellant No. 2 Durga Bai is entitled to receive Rs. 5000/- (five thousand) in person. Appellant No. 1 Kusumlata Bai is entitled to receive Rs. 25,000/- (twenty five thousand), in person, and the rest of the four appellants, who are minors, shall each be entitled to receive Rs. 5,000/- (five thousand), out of the remaining amount of Rs. 20,000/-. As appellant Nos. 3, 4, 5 and 6 are minors, the amount of their share (Rs. 5000/- each) shall be kept separately in fixed deposit in a Nationalised Bank in the name of the Tribunal for a period of 7 (seven) years for the time being and the interest accruing thereon from time to time shall be paid to appellant No. 1 Kusumlata Bai in person for the maintenance of the minor children. The minors on attaining majority shall be paid the principal amount of his/her share in person. If after the expiry of the period of seven years some of the minor claimants still remains to be minors, the amount of their share kept in deposit shall accordingly be renewed for the period till they attain majority.

20. As none appeared on behalf of respondents Nos. 1 and 2 and as the learned Counsel for the respondent, No. 3, namely the insurance Company bad to say nothing regarding the enhancement of compensation beyond the statutory liability of the Insurance Company, parties are directed to bear their respective costs of this appeal. The award is modified accordingly.