
(2011) 04 MP CK 0072

In the Madhya Pradesh High Court

Case No : M.A. No"s. 2494 and 2407 of 2008

Laljiram

APPELLANT

Vs

Shyam Kumar and Others

RESPONDENT

Date of Decision : 25-04-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 149(1), 66
Penal Code, 1860 (IPC) — Section 279, 337, 338

Citation : (2012) ACJ 312 : (2012) 3 TAC 921

Hon'ble Judges : P.K Jaiswal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

P.K. Jaiswal, J.—Heard by consent. Both these appeals arise out of award dated 14.5.2008 passed by Member, Motor Accidents Claims Tribunal, Shajapur, in Claim Case No. 80 of 2007, whereby the learned Tribunal awarded a sum of Rs. 1,67,000 as compensation to the claimant and directed that the driver, owner and insurer are jointly and severally liable to pay the amount of compensation. Miscellaneous Appeal No. 2407 of 2008 has been filed by the insurance company on the ground that at the time of the accident, offending vehicle, i.e., dumper bearing registration No. MP 13-E 2385 was not having any permit, which is a breach of condition of insurance policy and insurance company is not liable to pay the amount of compensation. The learned Tribunal has committed an error in not exonerating the insurance company from the payment of compensation.

2. Miscellaneous Appeal No. 2494 of 2008 has been filed by the claimant for enhancement of compensation. The material facts of the case are that on 4.11.2006, the claimant Laljiram was travelling in a tractor-trolley along with other persons and was coming back to Ujjain. The tractor was parked at the side of the Jeythalnala Pipliya Road. At that time the non-applicant No. 2 Aditya Singh Dodiya, driving the dumper bearing registration No. MP 13-E 2385 rashly and negligently dashed against said tractor from behind due to which the trolley

turned turtle, the claimant and other occupants of the trolley sustained injuries. F.I.R. was lodged with the Police Station, Ghatia. Investigating Officer after investigation filed a charge-sheet against the non-applicant No. 2 Aditya Singh Dodiya, for commission of offence punishable under sections 279, 337 and 338 of the Indian Penal Code.

3. In the claim petition it was alleged that in the accident, claimant Laljiram sustained grievous injuries and was admitted in hospital at Ujjain from 5.11.2006 to 14.11.2006 and then for further treatment he was admitted at Saluja Nursing Home from 15.11.2006 to 21.11.2006, where he was treated and his left leg was amputated below knee. It was alleged that at the time of accident claimant Laljiram was aged about 30 years and was earning Rs. 50,000 to Rs. 60,000 per annum. He was working as contractor and was mainly doing work of digging of wells and was also working as labourer along with other labourers. Tribunal assessed his income at Rs. 1,400 per month, i.e., Rs. 16,800 per annum. The learned counsel for the appellant drew my attention to the statement of Laljiram, AW 2, Kehsar Singh, AW 4, and submitted that due to amputation of his left leg below knee, he cannot do the work of labour and his loss of income is to the extent of 100 per cent. In respect of income, except Exh. P70 and statement of AW 4, no other cogent document has been filed to prove the exact income of the injured. Laljiram, AW 2, in para 6 of his cross-examination has deposed that he was taking the work of digging of wells and was doing labour contract job and his earning was Rs. 8,000 per month. It is also contended that prior to the date of accident he had dug the wells of Premnarayan, Mangilal, Lakshminarayan, Devilal, Bapulal, Hariprasad and Ishwar Singh. Taking into consideration the statement on record and the material documents filed by the claimant, it is duly proved that he was doing the work of digging wells with the help of other labourers and was earning Rs. 90 to Rs. 100 per day. As per para 13 of the cross-examination of Laljiram, AW 2, it can be very safely held that he was earning Rs. 2,700 per month, i.e., Rs. 90 per day. As per serial No. 20 of Schedule I of Workmen's Compensation Act, 1923, the percentage of disability is 50 per cent. As per evidence on record, before the accident the nature of work of the claimant was to take contract for digging of wells. From the evidence it has also come on record that claimant was also doing the work of digging of wells along with other labourers. Due to amputation of left leg below knee, the permanent physical or functional disablement is around 50 per cent, but looking to the fact that the claimant was also working as a labourer the actual loss of earning capacity may virtually be 100 per cent, as he is unable to do the work of labourer.

4. On the other hand, it is submitted by learned counsel for the insurance company that as per paras 6 and 13 of the statement of AW 2 he used to take the contract of digging of wells and complete the same by hiring labourers and, therefore, no loss of 100 per cent earning capacity. He further submitted that due to physical disablement of the appellant he may not do the work of digging of wells in the same spirit as he used to do prior to the accident and his loss of earnings is 50 to 60 per cent. The Supreme Court in the case of Raj Kumar Vs.

Ajay Kumar and Another, held that all injuries (or permanent disabilities arising from injuries) do not result in loss of earning capacity. The percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal, on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability). The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.

5. Here in the present case, the injured was taking contract for digging wells. His leg was amputated and his permanent disability is assessed at 65 per cent. After the accident the claimant can take the contract of digging of wells but he cannot work as labourer and, therefore, it cannot be said that his loss of future earning capacity is 100 per cent. Learned Tribunal, therefore, rightly assessed his loss of future earning capacity as 65 per cent, but committed an error in assessing his income at Rs. 1,400 per month. The income of injured-claimant is assessed at Rs. 2,700 per month, that is, Rs. 32,400 per annum. After deducting a sum of Rs. 11,340, the amount of loss of earning capacity will come to Rs. 21,060 (Rs. 32,400 - Rs. 11,340). At the time of accident the age of the deceased was 30 years. As per discharge ticket, Exh. P28, the age of injured at the time of accident was 30 years and, therefore, the learned Tribunal has rightly applied multiplier of 18. On applying multiplier of 18, amount of compensation comes to Rs. 3,79,080 (Rs. 21,060 x 18). After adding the amount of Rs. 5,000 towards pain and suffering and Rs. 33,000 towards medical expenses, the total amount of compensation comes to Rs. 4,17,080. After deducting the amount of Rs. 1,67,000, the amount already awarded by the Claims Tribunal, the amount of compensation is enhanced by Rs. 2,50,080 (Rs. 4,17,080-Rs. 1,67,000). The enhanced amount shall carry interest at the rate of 7.5 per cent per annum from the date of filing of the petition till its realization.

6. In Miscellaneous Appeal No. 2407 of 2008, it is submitted by the learned counsel for the insurance company that on the date of accident, i.e., on 4.11.2006, the dumper bearing registration No. MP 13-E 2385 was not having valid permit to ply the dumper and the offending dumper was plying in contravention of the provisions of section 66 of the Motor Vehicles Act, 1988. As per statement of Gopal Somani, NAW 1, and Abhay Dhariwal, NAW 2, the permit to ply the offending dumper was issued from 11.11.2006 to 10.11.2011. Exh. P3 is report of the R.T.O. and Exh. P2 is verification report. Tiwari, the Investigating Officer, NAW 3, in his statement has deposed that by Exh. D4 he has given a letter to the District Transport Officer, Ujjain, in which the note is appended by the R.T.O. that for the first time permit was issued on 11.11.2006.

7. Thus, on 4.11.2006 the offending vehicle was not having any permit to ply the vehicle. In view of the law laid down by the Apex Court in the case of National Insurance Company Ltd. Vs. Nebh Raj and Others, [sic National Insurance Co. Ltd. Vs. Challa Bharathamma and Others, and decision of Madhya Pradesh High

Court in the case of Ram Sujjan Tiwari Vs. Sita Gupta and Others, the insurance company is not liable to pay the amount of compensation because on the date of accident the offending vehicle was not having any permit to ply the vehicle and vehicle was plying contrary to section 66 of the Motor Vehicles Act, 1988 and terms and conditions of the insurance policy.

8. Learned counsel for the appellant further drew my attention to the decision of the Apex Court in the case of United India Insurance Co. Ltd. Vs. K.M. Poonam and Others, wherein the Supreme Court has held that the liability of insurance company to make payment even in respect of persons not covered by the insurance policy continues under the provisions of sub-section (1) of section 149 of the Act, as it would be entitled to recover the same if it could prove that one of the conditions of the policy has been breached by the owner of the vehicle and directed the insurance company to deposit total amount of compensation awarded to all the claimants and the amount so deposited be disbursed to the claimants in respect to their claims with liberty to the insurance company to recover the amounts paid by it over and above the compensation amount payable in respect of the persons covered by the insurance policy from the owner of the vehicle as was directed in National Insurance Co. Ltd. Vs. Baljit Kaur and Others, , the Hon''ble Apex Court granted liberty to the insurance company by holding that the insurance company be entitled to recover the amounts paid by it in excess of its liability from the owner of the vehicle by putting the decree into execution. For the above-mentioned reasons Misc. Appeal No. 2494 of 2008 filed by the claimant and Misc. Appeal No. 2407 of 2008 filed by the insurer are allowed in part. The parties shall bear their own costs.