(2013) 01 MP CK 0178

In the Madhya Pradesh High Court

Case No : M.A. Nos. 1848 and 2783 of 2009

Mahesh Singh and Another APPELLANT

Vs

Umesh Pandey and Another RESPONDENT

Date of Decision : 10-01-2013

Acts Referred:

Citation : (2014) 3 ACC 89 : (2014) ACJ 1014

Hon'ble Judges : J.K. Maheshwari, J

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

J.K. Maheshwari, J.—Assailing the award dated 30.1.2009 passed by the Addl. Motor Accidents Claims Tribunal, Rewa, in Claim Case No. 261 of 2007, M.A. No. 1848 of 2009 has been filed by the owner and driver assailing the finding of exoneration of the insurance company, while M.A. No. 2783 of 2009 has been filed by the claimants seeking enhancement of compensation allegedly contending that the injured has suffered permanent disability on account of comminuted fracture in tibia and fibula bones, however, the enhancement may be directed. On perusal of the record, it appears how the accident took place, negligence of the driver, injuries received by the claimant and other issues proving the same are not disputed, therefore, the said facts are not required to be stated in detail. However, the driver has filed the appeal on the ground that the exoneration of the insurance company is unsustainable because the insurance company has taken a premium for two employees without disclosing their posts (designation). However, the cleaner would fall within the said class of employees, therefore, the exoneration of the insurance company by the Tribunal holding that the risk of the cleaner is not covered under the policy, may be set aside and the finding of joint and several liability be recorded for payment of compensation, if any, awarded.

2. Mr. Vivek Baderia, learned counsel for respondent-claimant has contended that it is a case wherein the injured has suffered permanent disability and the

certificate as well as the statement of doctor is there, but the Claims Tribunal disbelieving thereupon stated that the certificate of the Board has not been produced, therefore, looking to the injuries received by injured-claimant, i.e., comminuted fracture of tibia and fibula for which he had undergone treatment for one year, the compensation of Rs. 68,534 is inadequate, which may reasonably be enhanced.

3. After hearing learned counsel for the parties and after going through the policy available on record and the statement of the Manager of the bank in para. 4 as well as the cross-objection, it is admitted that under the policy, premium for two employees were taken without specifying their designation. In the considered opinion of this court, under the risk of two employees the risk of cleaner would be covered because as per Motor Vehicles Act or under any enactment no provision has been shown indicating the fact that while insuring two persons working on a bus the policy will cover the risk only of driver and conductor. In absence of the aforesaid provision, the onus lies on the insurance company. Under these circumstances, the exoneration of the insurance company is set aside recording the finding of joint and several liability to pay the compensation against owner and driver.

4. Now coming to the point of enhancement of compensation. Looking to the injuries received by the injured-claimant, medical expenses and treatment for a period of one year, in the considered opinion of this court the compensation so awarded by the Tribunal deserves to be enhanced by Rs. 25,000. Accordingly, both the appeals are partly allowed. The finding of exoneration of the insurance company is set aside and it is directed that the owner, driver and the insurance company shall be jointly and severally liable to pay the amount of compensation so awarded by the Claims Tribunal as well as the enhanced amount of Rs. 25,000. The enhanced amount shall carry interest at the rate of 7.5 per cent per annum from the date of filing of claim petition till its realization. It is made clear here that the amount already deposited by the owner and driver may be returned back to them by the Claims Tribunal. In the facts of the case, parties are directed to bear their own costs.

