
(2012) 07 MP CK 0045

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 3533 of 2005 in Claim Case No. 210 of 2003

Makhan Singh

APPELLANT

Vs

Dinesh and Others

RESPONDENT

Date of Decision : 02-07-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 149(2), 173

Citation : (2012) 3 JLJ 329

Hon'ble Judges : S.R. Waghmare, J

Bench : Single Bench

Advocate : Dinesh Rathore, for the Appellant; S.V. Dandwate, for the Respondent

Judgement

S.R. Waghmare, J.—This is a claimant's appeal filed u/s 173 of the Motor Vehicles Act, 1988 for enhancement of the Award dated 30.9.2005 passed by the 1st Additional Member, Motor Accidents Claims Tribunal, Indore in Claim Case No. 210/2003 awarding a sum of Rs. 3,00,000/- with interest of 6% p.a. to the claimant. The Insurance Company has been exonerated and non-applicants No. 1 and 2 are liable for payment of the compensation as mentioned above. The question that arises for consideration in this appeal is whether the Tribunal had rightly exonerated the Insurance Company from their liability to pay the compensation and whether the Tribunal had erred in awarding the sum of Rs. 3,00,000/- to the appellant for the injuries sustained in the motor accident.

2. Briefly stated, the facts of the accident are that on 25.11.2002 the claimant filed a report at Police Station Lasudia, Indore that he was going home as a pillion rider on a motor cycle bearing registration No. MP09/JD-3660 and the motor cycle was driven by Gul Mohammad, the non-applicant No. 2. The motor cycle belonged to non-applicant No. 1 Dinesh, whereas non-applicant No. 2 rashly and negligently driving the motorcycle caused the accident 4 kms. to the East Bypass Road near Sardar Dhaba, Nipania and accordingly; since, the motor cycle slipped and appellant Makhan Singh fell from the same, as a result he received injuries on his head, face, chin, both eyes, ears, nose, both hands and

legs and in fact all over his body. The head injury was grievous in nature and he was referred to M.Y. Hospital and thereafter to Bhandari Hospital, Indore on the next day i.e. 26.11.2002. He remained in the hospital for almost one month. He lost vision of his left eye, whereas his right eye was also affected and there was also disfigurement of the face and he also suffered permanent disability. He filed claim case in the Tribunal claiming that he earned Rs. 6,000/- per month and due to disability suffered, claimed Rs. 5,00,000/ as compensation.

3. Non-applicant No. 1 Dinesh and non-applicant No. 2 Gul Mohammad remained ex parte in the Tribunal and non-applicant No. 3, the Insurance Company resisted the claim by denying all the allegations and the accident itself. Moreover, Insurance Company also denied ownership of the claimant regarding the vehicle and the registration available. Similarly the FIR was delayed by more than four months and the Insurance Company claimed that the claim was fraudulent. Besides the driver of the motor cycle did not have a legal and valid licence. The Tribunal had, however, held that non-applicant No. 2 Gul Mohammad was responsible for the accident due to rash and negligent driving and exonerated the Insurance Company and partly allowed the claim case by awarding Rs. 3,00,000/- to appellant to be paid by non-applicants No. 1 and 2 jointly and severally.

4. Non-applicants No. 1 and 2 remained ex parte and have not challenged the award and have not attended the present appeal also despite service.

5. Counsel for the appellant attacked the award mainly on the ground that the Tribunal had erred in exonerating the Insurance Company. He placed reliance on Parvez Ahmad and Others Vs. Jugal Kishore and Others, to state that when there was transfer of vehicle and the liability was disputed by the Insurance Company stating that the insured had transferred the vehicle before the accident, the apex Court had held that the insured was the owner of the vehicle and the Insurance Company was liable to pay the compensation awarded.

Counsel also placed reliance on United India Insurance Co. Ltd. Vs. Saroj Bai and Others, to state when no such ground has also been taken in appeal memo and contention that the insurance policy was brought on record and it is evident that liability of pillion rider was not covered, but since the claimant had no opportunity to meet this ground and to adduce evidence, the Court had held that Insurance Company could not be exonerated from the liability in the absence of proper pleadings.

Counsel further relied on Jugal Kishore and Another Vs. Ramlesh Devi and Others, to state that whether Insurance Company is liable has to be considered if the vehicle is being driven in breach of conditions contained u/s. 149(2); even then, the Court had held that the Insurance Company has to satisfy the award in favour of the third party and recover the amount from the insured. Counsel submitted that the award in the case was suitably enhanced since the disability had not been properly assessed.

Finally, counsel relied on the judgment of Hon"ble Supreme Court in the matter of Pushpa @ Leela and others v. Shakuntala and others [Civil Appeal No. 6924 of 2005], whereby the apex Court had considered the case whether in the fact and circumstances of the case the liability to pay the compensation amount as determined by the Motor Accidents Claims Tribunal, was of the purchaser of the vehicle alone or whether the liability of the recorded owner of the vehicle was co-extensive and from the recorded owner it would pass on to the insurer of the vehicle. The apex Court has held that once a valid contract is entered into, only because of a mistake or otherwise, the name of the original owner has not been mentioned in the certificate of registration and/or the documents of hypothecation of the vehicle with the bank had still been continuing in his name, it cannot be said that the contract itself is void unless it was shown that in obtaining the said contract a fraud had been practiced. Not only the particulars of fraud had not been pleaded, but even no witness was examined on behalf of the appellant. It cannot, thus, be said that a case of fraud in the matter of entering into the contract of insurance had been made out by the appellant. Counsel contended that in the present case also the fraud has not been proved as alleged by the Insurance Company.

6. Counsel also stressed the fact that the Tribunal had erred in assessing the income of the appellant at Rs. 15,000/- p.a., whereas it should have been calculated at Rs. 6,000/- p.m. Similarly counsel submitted that the appellant should have been considered as third party whereas Tribunal had erred in considering the appellant as owner of the vehicle and non-applicant No. 1 Dinesh ought to have been considered as registered owner of the vehicle, whereas the Tribunal had exonerated him from the liability along with the Insurance Company; non-applicant No. 3. The appellant has been considered the owner of the vehicle only on the basis of a photo copy of the cover note produced by the Insurance Company and the Tribunal had also erred in considering the registration number of the vehicle. Witnesses Dinesh and Amit have sworn on affidavit that the transferred vehicle was bearing registration No. MP09/JD-3669, whereas the disputed vehicle in the accident was having MP09/JD-3669. None of the officers of the Insurance Company have also been examined by the Tribunal despite which the Insurance Company has been exonerated. Counsel submitted that the amount awarded was also meager under the circumstance considering the facts that the claimant had suffered 100% disability in the left eye and 50% disability as certified in the right eye also and multiplier of 15 only has been used; contrary to Schedule II of the Motor Vehicles Act. Moreover, the appellant has been taken for treatment first in the M.Y. Hospital and thereafter in Bhandari Hospital and he remained in the hospital for more than one month and he was in I.C.U. and unconscious. Moreover, a sum of Rs. 70,000/- has been awarded under the head of medical expenses which is inappropriate under the circumstance. Moreover no amount has been awarded regarding future loss. The loss of income has also been challenged as stated above. Hence, counsel prayed that the impugned Award be set aside and suitable compensation be awarded to

him.

7. Learned counsel for non-appellant No. 3-Insurance Company has fully supported the impugned Award and submitted that the liability of the Insurance Company has been completely exonerated on sound principles of law in accordance with the provisions of Motor Vehicles Act, 1988. Placing reliance on Oriental Insurance Co. Ltd. Vs. Sudhakaran K.V. and Others, , counsel contended that when no extra premium was paid covering risk of pillion rider; and death of the pillion rider had occurred; due to rash and negligent driving of scooter; the apex Court had held that pillion rider on a two-wheeler scooter cannot be treated as a third party; legal obligation u/s 147 of the Act cannot be extended to injury or death of pillion rider.

Relying on United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others, , counsel contended that death of pillion rider on a scooter when the vehicle met with accident and the scooter was insured under "Act only" policy which did not contain any endorsement on payment of additional premium; the apex Court had held that the third party was without intimation and the Insurance Company was not liable.

Finally, counsel contended that in the case of Jugal Kishore and others (supra), the Court had held that the Insurance Company was not liable if the vehicle was driven in breach of the conditions u/s 149(2) of the Act. However, it had only directed that the Insurance Company to first make payment of the award and recover the same from the insurer. Counsel prayed for dismissal of the appeal.

8. On considering the above submissions, the evidence available on record and the impugned judgment, I find that the Insurance Company has rightly been exonerated by the Tribunal mainly on the ground that the alleged motor-cycle stood registered in the name of the appellant Makhan Singh himself. Moreover, non-applicant No. 3 Insurance Company has proved that the appellant, the owner of the said vehicle has tried to sale of the same during the pendency of the appeal and the name of the plaintiff has not been challenged in the record of the R.T.O. So also there is a compromise between appellant and non-applicant No. 2 Gul Mohammad and hence the criminal proceedings were dropped on the basis of the compromise dated 16.6.2004 arrived at between the two parties and hence the nagging suspicion that there was conspiracy with the accused cannot be lost sight of. Similarly no extra premium has been paid and hence in the light of Jugal Kishore (supra), it is held that the insurer is not liable to the insured for payment of the compensation amount if there is any violation of breach of condition. However, the apex Court had directed that the Insurance Company should have to first pay the claim. Relied on New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., and recover the same from the insured. In view of the above, I do not find any reason to deviate from the said findings. The appellant is undoubtedly the registered owner of the said vehicle and the Tribunal has rightly exonerated the Insurance Company according to law. The Tribunal also came to the conclusion that the transaction between the appellant and non-

applicant No. 1 Dinesh did not appear to a genuine one and hence the registered owner, the present appellant Makhan Singh only shall be considered the owner of the disputed vehicle and the non-applicant Gul Mohammad was responsible for the injuries caused to the appellant; as well as payment of the entire compensation amount.

9. Considering the facts, the claimant-appellant sustained the following injuries according to the discharge ticket vide Ex. P-110 and according to Dr. Aditya Agrawal PW4 and Dr. Deepak Kulkarni, the claimant received head injuries and injuries to both the eyes, resulting in a depressed fracture in the skull as proved by the C.T. Scan report vide Ex. P-14 and also loss of 100% of his vision in the left eye which has been supported by the report of Dr. Aditya Agrawal. The appellant was also admitted in the I.C.U. in the Bhandari Hospital, Indore and took treatment for 23 days. The facial bone also along with depressed fracture on the skull indicates several fractures. However, the total disability only has been assessed 30% with regard to the total body. And the facial disfigurement, according to Ex. P-257, total 12% disability has been assessed. Consequently, the claimant has been granted Rs. 70,000/- for the bills that has been produced by him. For the 100% vision in the left eye, he has been granted Rs. 50,000/-; and for the pain and suffering Rs. 30,000/- has been awarded. A total amount of Rs. 1,50,000/- was awarded for the loss of income. Nominal income of Rs. 15,000/- per month has been assessed and deducting $\frac{1}{3}$ = Rs. 10,000/- per annum has been considered for the annual income of the appellant. Besides the claimant has been unable to prove that he was a contractor in the Ruchi Soya, Indore and since his age is admitted to be 35 years the multiplier 15 has been used by the Tribunal to arrive at the loss of income $10,000 \times 15 = 1,50,000/-$. Thus, total of Rs. 3,00,000/- has been paid by the Tribunal. However, manifestly the multiplier used under facts and circumstance ought to have been 17-18 as prescribed under Schedule II of the Motor Vehicles Act, 1988. In this respect the award is set aside and in place of multiplier 15 it is directed that the multiplier ought to be 18 and even if the notional income of Rs. 10,000/- per annum as prescribed under Schedule II of the Motor Vehicles Act, 1988 above is taken the amount would come to Rs. 1,80,000/-. Similarly, meager amount of Rs. 50,000/- has been awarded towards the permanent loss of vision in the left eye, which is enhanced to Rs. 1,00,000/- The medical expenses has rightly been fixed at Rs. 70,000/- according to the documents available on record: The amount under the pain and suffering is enhanced from Rs. 30,000/- to Rs. 50,000/-. Thus the claimant is held entitled to a total sum of Rs. 4,00,000/- (Rupees Four lacs only) as compensation for the injuries and permanent disability sustained by the claimant Makhansingh.

10. The compensation awarded to the claimants has to be just, reasonable and proper looking to the facts and circumstances of each case and taking into account the law laid down by the Supreme Court in these types of cases. Indeed in such cases, no fixed and any static formula is provided for determining compensation and the same is required to be determined on the basis of

evidence adduced and the relevant factors mentioned supra. It is on this basis, the Courts have to work out award of reasonable compensation. In this view of the matter, the appeal succeeds and is allowed in part. Impugned award is modified to the extent indicated above. The awarded sum of Rs. 4,00,000/- (Rupees Four lacs only) will carry interest at the rate of 6% p.a. from the date of application till realization. All other findings are upheld being not under challenge.

No order as to costs.