
(2010) 10 MP CK 0080

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 536 of 2008

Manish

APPELLANT

Vs

Ansar Ali and Others

RESPONDENT

Date of Decision : 04-10-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 165(1), 166, 173

Citation : (2012) ACJ 1192 : (2011) 3 TAC 251

Hon'ble Judges : Prakash Shrivastava, J

Bench : Single Bench

Judgement

Prakash Shrivastava, J.—Arguments heard finally with the consent of Learned Counsel for the parties.

This appeal u/s 173 of the Motor Vehicles Act, 1988 has been filed against the Award dated 29th September, 2007 passed by the Motor Accident Claims Tribunal, Indore, in Claim Case No. 7 of 2006.

2. On 23rd July, 2007 the Appellant was travelling in his Qualis car No. MP04 F-7007 which had met with an accident by a Tanker No. MP-04-K-6723 due to rash and negligent driving of the Tanker. The Appellant had received injuries in the accident and the Qualis car of the Appellant was damaged therefore, he had filed Claim Petition before the Tribunal seeking compensation for the injuries received by him and the damage suffered "by the car.

3. The Motor Accident Claims Tribunal by the impugned award dated 29th September, 2007 held that since the part of the compensation amount in respect of the damage to the Qualis car was received by the Appellant from the Insurance Company of the car without any objection, therefore, he is not entitled for any compensation amount on this account. The Tribunal found that the Appellant had suffered permanent disability to the extent of 10% on the left hand and has awarded Rs. 40,000 on account of permanent disability, Rs. 37,000 on account of the actual medical expenses, Rs. 3,000 on account of loss of

income during the treatment period and Rs. 2,000 on account of physical and mental pain and suffering. Thus, the Tribunal awarded a sum of Rs. 77,000 alongwith the interest at the rate of 7% from the date of filing of the application.

4. Learned Counsel appearing for the Appellant submitted that the Tribunal has committed an error in rejecting the claim for the damage suffered by the Qualis car and has further committed an error in awarding the lower compensation amount under the different heads.

5. Learned Counsel appearing for the Insurance Company supporting the award submitted that the amount awarded by the Tribunal does not suffer from any error and no interference on this account is required.

6. So far as the issue of compensation for the damage to the Qualis car is concerned the Appellant has filed Ext. P-188 to Ext. P-192, which indicate that the Appellant had paid Rs. 4,58,000 for repair of the Qualis car No. MP-04-F-7007. The PW-6 Rajesh Kumar the Senior Assistant of the Oriental Insurance Company, with which the above Qualis car was insured, has stated that as against the estimate of Rs. 5,04,800 as per the Surveyor's report the Appellant was paid Rs. 3,21,467 for the damage suffered, which was received by the Appellant without any objection. Since the Appellant had received this amount from the Insurance Company of the Qualis car without any objection, therefore, the Tribunal has rejected the claim of the differential amount.

7. The Tribunal did not appreciate that the contract of the Appellant with Insurance Company of Qualis car was a separate contract and if some amount was received by the Appellant from the Insurance Company, it would not debar the Appellant from claiming differential amount from the Insurance Company of the vehicle, which had caused the accident. This Court in the matter of Ramchandra Vs. Niyaz Hussain and Others, , on considering the earlier judgment of the Supreme Court and the judgment of the Delhi and Allahabad High Courts has held that:

6. After hearing Counsel for the parties, the sole question arising for consideration before this Court is whether the Insurance Company of the offending vehicle is liable for payment of rest of the compensation towards damages even if he is admitted to have received his claim from the Insurance Company for the damage caused to his jeep. Section 166 of the Act provides that an application for compensation arising out of an accident of a nature specified in Sub-section (1) of Section 165 may be made, (a) by the person who has sustained the injury; or (b) by the owner of the property. Therefore, it is clear that a claim petition can be filed by the owner of the property against the offending vehicle also. In that case, if the vehicle is comprehensively insured, the owner of the vehicle may also claim compensation from his own Insurance Company for the loss of damage caused to the vehicle with which the vehicle is insured and may also claim compensation from the owner or insurer of the offending vehicle. Obviously, now it is clear that u/s 166 of the Act, the owner of

the property can also file, a petition for claiming compensation for the damages to property. To answer the aforesaid question in the case of *Dr. A.C. Mehra v. Behari Lai*, 1998 A.C.J. 379 (Del.), the learned Judge of Delhi High Court was of the view that the amount paid by the Insurance Company is paid under a separate-contract between the owner and the insurer of the jeep. Tortfeasor cannot take advantage of the owner's contract with third party and the rule of subrogation is also not applicable in such cases and the right of the owner of vehicle to file claim petition against the offending vehicle is not barred. The Division Bench of Allahabad High Court while dealing with almost a similar question in the case of *Union of India v. Deoria Sugar Mills Ltd.*, 1980 A.C.J. 140: 1980 T.A.C. 332 (All.) , has also held that the Plaintiff having received part of damages from his own Insurance Company, he was also entitled to receive damages from the Railways. In that case, it was held that the compensation of the Insurance Company was that of an indemnity. The railway company which caused damage to the consignee, continues to be primarily liable for the damages sustained by the Plaintiff. It, not being a party to the contract of indemnity, cannot be absolved of its liability to pay the damages to consignor merely because the consignor had already received the money from the Insurance Company, under a contract of insurance. The Supreme Court also in the case of *Union of India (UOI) Vs. Sri Sarada Mills Ltd.*, , held that subrogation does not confer any independent right on underwriters to maintain in their own name and without reference to the persons assured an action for damages to the thing insured.

7. Therefore, from the aforesaid discussion and in the light of the decisions cited (supra), it is clear that the contract of the owner of the vehicle with its Insurance Company is a separate contract and if any claim is received under the said contract, the same cannot be treated as bar to claim compensation from the offending vehicle on the ground that some part of the money has already been received by the owner of the vehicle from its own Insurance Company."

8. Learned Counsel for the Respondent Insurance Company has placed reliance upon the judgment of the Supreme Court in the matter of *National Insurance Company Ltd. v. Sebastain K. Jacob*, reported in MACD 2009 (SC) 378 : 2009 (2) T.A.C. 617, but in that case the entire amount was claimed again and it was conceded that the claimant was entitled to the difference of amount.

9. Keeping in view the aforesaid position in "aw it is held that the Tribunal has committed an error in refusing to grant the differential amount to the Appellant. The evidence establishes that the Appellant had incurred the expenditure of Rs. 4,58,000 for rearing of the vehicle. As against this he was paid an amount of Rs. 3,21,467 from the Insurance Company of the Qualis vehicle, therefore, he is entitled to receive the differential amount of Rs. 1,36,533 (Rs. 4,58,000 - Rs. 3,21,467 = Rs. 1,36,533) from the Respondent Insurance Company.

10. So far as the compensation on account of the injury received by the Appellant in the accident is concerned, the Tribunal after appreciating the

evidence on record has rightly found that the Appellant had suffered 10% permanent disability in the left hand but the Tribunal committed an error in awarding a lump-sum amount of Rs. 40,000 under this head. Considering the permanent disability in reference to the whole body it is found that the Appellant has suffered 5% permanent disability in reference to the whole body. The Higher Secondary School Certificate examination mark-sheets of the Appellant is on record as Ext. P-182, which established that the Appellant was aged about 33 years at the time of accident, therefore, the applicable multiplier would be 16 in terms of the judgment of the Supreme Court in the matter of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, The income tax return of the Appellant for the assessment year 2003-2004 Ext. P-114 shows the income of the Appellant as Rs. 93,260 and the income tax return for the period 2005-2006 Ext. P-126 shows the income as Rs. 1,06,300/-. Thus, it is found that on the date of the accident the Appellant was earning Rs. 1,00,000/- per annum and keeping in view the 5% permanent disability, he has suffered loss of income of Rs. 5,000/- per annum and applying the multiple of 16 the total loss of earning comes to Rs. 80,000, which the Appellant is entitled to receive under this head. Keeping in view the extent of injuries suffered by him, his period of hospitalization and his income it is found that the Appellant suffered the loss of income of Rs. 10,000/- during the treatment period. He is also entitled to Rs. 10,000/- under the head of mental and physical pain and suffering and Rs. 5,000/- under the head of special diet and attendant charges. The Tribunal has rightly awarded Rs. 37,000/- under the head of actual medical expenses. Thus, the Appellant is entitled to a sum of Rs. 1,42,000/-. As against this the Tribunal awarded only a sum of Rs. 77,000/-. Thus, the amount (sic. claimant) is entitled to an enhancement of Rs. 65,000/- on account of injuries received in the accident. In addition to this he is also entitled to compensation of Rs. 1,36,533/- towards the differential amount of expenses for the repairing of his Qualis car which was damaged in the accident. The amount awarded by the Tribunal is enhanced by a sum of Rs. 2,01,533/-, which will bear interest at the same rate as awarded by the Tribunal.

11. The appeal is accordingly disposed off.

No order as to costs.