
(1997) 09 MP CK 0097
In the Madhya Pradesh High Court
Case No : M.A. No's. 291 to 293 of 1997

Munnalal

APPELLANT

Vs

Munnalal and Others

RESPONDENT

Date of Decision : 12-09-1997

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (1999) ACJ 210

Hon'ble Judges : Usha Shukla, J;S.K. Dubey, J

Bench : Division Bench

Advocate : Ashok Lalwani, for the Appellant; N.S. Ruprah, R.P. Jain and R.P. Agrawal, for the Respondent

Final Decision : Allowed

Judgement

S.K. Dubey, J.—The appellants are the claimants, who have filed these appeals aggrieved by the common award dated 22.11.1996 in Motor Accident Claim Case Nos. 47, 48 and 49 of 1989, passed by II Additional Motor Accidents Claims Tribunal, Murwara-Katni, district Jabalpur.

2. On 7.11.1988, deceased Munnibai, Kamla Bai and Vijay Kumar were travelling in Tempo No. MIK 7738, driven by Indra Kumar, respondent No. 4, owned by Pawan Kumar son of Mohanlal Shrivastava, insured with respondent No. 5. When the Tempo was near Peer Baba, on National Highway No. 7, truck No. MBK 7158, driven by respondent No. 1, owned by respondent No. 2 and insured with respondent No. 3, came from the opposite direction and collided with the Tempo, resulting in death of Munnibai, Kamla Bai and Vijay Kumar.

3. Against the owner, driver and insurer of the two offending vehicles, the husband of the deceased Munnibai, claimed compensation in Claim Case No. 47 of 1989 of Rs. 3,61,450, in Claim Case No. 48 of 1989, the legal representatives of the deceased Kamla Bai claimed compensation of Rs. 3,59,383, while in Claim Case No. 49 of 1989, the parents of the deceased Vijay Kumar claimed

compensation of Rs. 14,25,000. The Tempo driver Indra Kumar did not appear and was proceeded ex pane, while the owner of the Tempo contested the claim, but, during the pendency of the claim, he died. As he had no legal representative, hence, his name was deleted. The insurer of the Tempo and the owner, driver and insurer of the truck contested the claims. The Tribunal after appreciation of the evidence held that the accident occurred due to sole negligence of the truck driver. The Tribunal in all the three cases estimated the dependency at Rs. 200 per month, Rs. 2,400 per year, applied the multiplier of 16, to work out the amount of Rs. 38,400. In this for love and affection Rs. 3,000 and Rs. 1,000 for funeral expenses were further added, thus, a total amount of Rs. 42,400 was awarded as compensation, which was ordered to be paid by the owner and driver of the truck. The insurer of the truck was exonerated as the owner did not produce the policy and driving licence of the truck driver.

4. After notice of the appeal, the respondent No. 2 has filed cross-objection under Order 41, Rule 22, CPC challenging the finding of the Tribunal exonerating respondent No. 3 from its liability.

5. Having heard learned Counsel Mr. Ashok Lalwani for the appellants, Mr. R.P. Jain for respondent No. 2, Mr. R.P. Agrawal for respondent No. 3 in M.A. No. 293 of 1997 and for respondent No. 5 in all the appeals and Mr. N.S. Ruprah for respondent No. 3 in M.A. No. 291 of 1997 and M.A. No. 292 of 1997, we are of the opinion that the amount of compensation awarded in each case deserves to be enhanced and the finding of the Tribunal exonerating the insurance company deserves to be set aside.

6. The manner and the circumstances, in which the accident occurred, resulting in three deaths are not in dispute. The Tribunal's finding on the issue of negligence holding that the accident was caused due to sole negligence of the truck driver, has also not been challenged before us. Therefore, we first take up the finding of the Tribunal exonerating the insurer of the truck on the ground that the owner has neither produced the policy nor the driving licence. The Oriental Insurance Co. Ltd., the insurer of the truck in para 2 of its written statement specifically admitted that truck No. MBK 7158 belonging to respondent No. 2 was insured, which was valid from 26.2.88 to 25.2.1989. Therefore, it was the duty of the insurer of the truck to produce the policy to establish the defence that the driver of the truck was not holding a valid driving licence and this amounted to breach of condition of policy. The insurer was, therefore, not liable to pay any compensation or to indemnify the owner. It is well settled that when such a plea is raised by the insurance company, it has to discharge the burden by leading evidence that the driver was not holding a valid driving licence. In this respect see *Narcinva V. Kamat v. Alfredo Antonio Doe Martins* 1985 ACJ 397 (SC) and *Suresh Mohan Chopra Vs. Lakhi Prabhu Dayal and others*, .

7. As to quantum of compensation: Munnibai and Kamla Bai were labourers, therefore, even if the minimum wage of a labourer is taken into account at Rs.

600 per month and from that a deduction of 1/3rd is made, the dependency would come to Rs. 400 per month, yearly Rs. 4,800. Applying a multiplier of 16, as both were about 20 years of age, the amount would work out to Rs. 76,800. Munnibai was married. Therefore Munnalal, husband of Munnibai, would also be entitled to a conventional sum of Rs. 5,000 towards loss of consortium and also an amount of Rs. 2,000 for funeral expenses. Thus, in M.A. No. 291 of 1997 arising out of Claim Case No. 47 of 1989, the appellant would be entitled to compensation of Rs. 83,800. In M.A. No. 293 of 1997 arising out of Claim Case No. 48 of 1989, the deceased was not married, therefore, in addition to the amount of Rs. 76,800, the legal representatives would only be entitled to Rs. 2,000 for funeral expenses thus, in all Rs. 78,800.

8. In Claim Case No. 49 of 1989, the claimants were the parents who lost their only son Vijay Kumar aged 20 years. They had hoped that he would maintain them in their old age. He was a student of higher secondary and was also earning by typing job and thus was contributing to the family income. Therefore, in his case, Rs. 15,000 per year can be taken as his earning as in case of a non-earning member shown in Schedule II u/s 163A of the Motor Vehicles Act, 1988. From that 1/3rd is deducted, the dependency would come to Rs. 10,000. At the time of filing of the application for compensation the age of the father of the deceased was 50 years and mother was 45 years of age. Father died during the pendency of the claim case. His other legal representatives were brought on record. In the circumstances we take a multiplier of 10. The amount would come to Rs. 1,00,000. To that Rs. 2,000 is added towards funeral expenses. The total would come to Rs. 1,02,000, which the appellants in M.A. No. 292 of 1997 would be entitled as compensation.

9. The appellants in each case would be entitled to interest on the amount of compensation so awarded by us at the rate of 12 per cent per annum from the date of application till realization. As a result of above, respondent No. 3 is directed to deposit the amount in each case less the amount already deposited, if any, by it within a period of two months from the date of supply of certified copy, failing which the amount shall carry interest at the rate of 15 per cent per annum. On deposit, the amount shall be disbursed keeping in mind the guidelines laid down by the Supreme Court.

10. In the result, the appeals are allowed with costs. The award of the Tribunal in each case shall stand substituted as indicated hereinabove. Counsel for the appellants will get one set of counsel fee which is quantified at Rs. 2,000.