(2000) 04 MP CK 0040

In the Madhya Pradesh High Court

Case No : M.A. No. 281 of 1998

Munni Bai (Smt.) and Others APPELLANT

Vs

Oriental Fire and General Assurance Co. Ltd. and Another RESPONDENT

Date of Decision : 11-04-2000

Acts Referred:

Workmens Compensation Act, 1923 — Section 2, 26, 38, 4A(3)

Citation : (2001) ACJ 1216 : (2000) 2 JLJ 318 : (2001) 1 LLJ 514 : (2000) 4 MPHT 110

Hon'ble Judges : Bhawani Singh, C.J;A.M. Sapre, J

Bench : Division Bench

Advocate : S.S. Kemkar, for the Appellant; S.V. Dandwate and A. Saraswat, for the Respondent

Final Decision : Allowed

Judgement

1. Admit. Heard finally since learned counsel for both parties are present and the matter requires immediate disposal.

2. This appeal is directed against the order of Commissioner for Workmen''s Compensation, Labour Court, Mandsaur dated November 6, 1998. The claimants are wife and five minor children of deceased Mohd. Tamil, who died on February 6, 1989 in the accident. He was truck driver of Respondent No. 2 in Truck No MBU-4651. He was receiving Rs. 1,500/- per month and was 36 years old, he was to receive Rs. 1800/- from the owner by way of arrear also. The claimants state that they served notice on Respondent No. 2 for compensation but he declined the request. Consequently, this claim has been preferred before the authority mentioned above on May 9, 1989.

3. Insurance Company, The Oriental Fire & General Assurance Company Ltd. appeared while respondent 2 the owner of vehicle did not appear to contest the claim, hence proceeded ex-parte. The Insurance Company has denied the responsibility for payment of compensation. It stated that insurance cover for

this vehicle, could not be traceable unless the number for that was given since it was receiving thousands of such insurance policies in various branches. Accordingly insurance of truck has been denied so also the responsibility for payment of compensation. The Workmen''s Compensation Commissioner came to the conclusion that deceased Mohd. Jamil died in this accident and the claimants were entitled to receive compensation. Accordingly the Insurance Co. has been exonerated from the liability for payment of compensation. The liability for payment of Rs. 1,60,784/- has been put on the owner of the truck. The award has been made payable with interest at the rate of 6% from the date of application till the date of order and thereafter at the rate of 12% till the date of realisation.

4. The appellants have grievance against this award hence this appeal. Shri S.S. Kemkar learned counsel for claimants submits that finding of Tribunal that the truck was not insured with the insurance company is liable to be set aside since there is evidence that the insurance company is liable to pay compensation in this case. It is also contended that u/s 4A(3) of Workmen''s Compensation Act, 1923 (for short the Act), the claimants are entitled to penalty also. Shri Sudhir Dandwate, learned counsel for Insurance Company submits that pursuant to the directions of this Court dated March 27, 2000, the Insurance Policy with respect to this vehicle has been received from his client and it is produced in the Court and marked as ''X''. Learned counsel submits that this vehicle is insured with the Oriental Fire & General Assurance Company Ltd. In view of this statement and the policy on record, it is absolutely clear that the truck in which Mohd. Jamil died, was insured with this company. Therefore, the liability to pay compensation is of the Insurance Company and not of the owner of the vehicle and the award passed is liable to be set aside. Second question in this case is whether it is a fit case where the Commissioner should have awarded penalty u/s 4A(3) of the Act. Shri S. Dandwate submits that the liability to pay penalty is of the owner and not of the Insurance Company in view of legal provisions. Learned counsel placed reliance on the decision in Noorjahan (Tmt) Vs. Sultan Rajia Tmt alias Thaju and Others, . We are in agreement with the learned counsel with respect to this contention. The Insurance Company is not liable to pay penalty which has to be borne by the owner of the vehicle. Shri Abhay Sarswat counsel appearing for owner of the vehicle submits that penalty may not be imposed on him since his client is not in position to pay the same. We find that the accident took place on February 6, 1989. The owner of the vehicle did not come forward to help the claimants when he was approached for payment of compensation. Instead of helping them he declined the request. The result; was notice had to be issued to him by the claimants through counsel on March 1, 1999. When there was no effect of that on him, an application to the Commissioner Workmen''s Compensation had to be preferred on May 9, 1989. Unfortunately proceedings took 9 years to reach final stage when the award was made on January 6, 1998. For these years the claim was not decided leaving the widow of deceased Mohd. Jamil to face difficult time alongwith her five minor children. Consequently this

background is enough to compel us to award penalty u/s 4A(3) of the Act calculated in terms of the provisions. Rs. 1,60,784/- shall be paid by the Insurance: Company alongwith interest at the rate of 6% from the date of application till the date of order i.e. January 6, 1998. Thereafter the interest shall be at the rate of 12% till the payment. The owner of vehicle Ibrahim shall be liable to pay amount of Rs. 58,392/- by way of penalty u/s 4A(3) of the Act. Parties shall pay the amount of award and penalty. Shri Sudhir Dandwate submits that Insurance Company would pay the amount awarded: alongwith interest within a period of two months. This statement is recorded and the amount be paid accordingly. The owner of the vehicle shall pay the amount within a period of six months; failing which the amount shall carry the interest at the rate of 10% from today i.e. April 1, 2000 till the date of payment. Perusal of the facts on record make out a case for award of cost in favour of the claimants. Apart from narration with respect to the conduct of the claimants, it is crystal clear that insurance company has not been straightforward in dealing with case of claimants. The claimants had filed photostat copy of the insurance claim before the Workmen''s Compensation Commissioner alongwith claim application. After the claimants were the widow and her five minor children. They could hardly know the intricacy and consequences of insurance policy and accident. How could she know that the vehicle was insured with this company. It was the duty of the Insurance Company to have found out the insurance policy atleast after it appeared in the case and the photostat copy was on the case file. It denied the insurance with respect to this vehicle in the written statement filed by it. It is good that the insurance cover is filed in this Court today after direction was issued to the insurance company by this Court. The cat is out of the bag. The vehicle is insured. Despite denial of the Insurance Company and proceedings before the Workmen''s Compensation Commissioner it is established that the vehicle was insured with it. The responsibility for delaying the proceedings has also to be shared by the Insurance Company. Consequently we are of the opinion that the Insurance Company should pay cost of Rs. 10.000/- (ten thousand). The appeal is allowed in terms as above and award is modified accordingly. The registry shall supply copy of this judgment to learned counsel for the parties within ten days.

