(1993) 01 MP CK 0032

In the Madhya Pradesh High Court

Case No : M.A. No. 42 of 1983

Murari Singh APPELLANT

Vs

Ritu Tuteja and Another RESPONDENT

Date of Decision : 27-01-1993

Acts Referred:

Citation : (1993) ACJ 784

Hon'ble Judges : R.D. Shukla, J

Bench : Single Bench

Advocate : Sujan Jain, for the Appellant; A.K. Dhupar and Saboo, for the Respondent

Final Decision : Allowed

Judgement

R.D. Shukla, J.—This appeal is directed against the judgment and award dated 30.9.1982 of the Third Motor Accidents Claims Tribunal, Indore, passed in Claim Case No. 52 of 1981 whereby while awarding Rs. 20,000/- as compensation to respondent No. 1 the limit of liability of respondent No. 2, New India Assurance Co. Ltd., has been fixed to Rs. 6,666/- only.

2. The brief history of the case is that appellant-non-applicant No. 1 was the owner of Tempo No. MPN 8181 and was driving the same on 4.10.1980. It was insured with non-applicant No. 2, i.e., respondent No. 2 here. Ritu, daughter of Jogendar Singh, was going in Tempo to the school. She fell down from the Tempo and sustained various injuries including fracture of third to ninth ribs, fracture of pelvis and injuries on forehead.

3. The claim was filed by respondent No. 1 through her father as guardian ad litem.

She has been awarded Rs. 20,000/- as compensation. However, it has been held that respondent No. 2, insurance company, is liable to pay Rs. 6,666/- only. Hence this appeal has been filed by the owner of the Tempo, appellant here.

4. The contention of the learned counsel for the appellant is that the liability of payment of insurance company is to the tune of Rs. 50,000/- in any one accident.

5. Counsel for appellant has further submitted that the compensation awarded is on higher side and it should not be more than Rs. 8,000/-.

6. As against it learned counsel for the respondents has submitted that the liability of the insurance company has rightly been fixed to the tune of amount referred to above. Learned counsel has, on the other hand, supported the award of compensation to the tune of Rs. 20,000/-.

7. This controversy has been decided by their Lordships of the Supreme Court in Motor Owners'' Insurance Co. Ltd. v. Jadavji Keshavji Modi 1981 ACJ 507 (SC), whereby it has been held that insurance company''s liability will extend to a sum of Rs. 20,000/- (now it is Rs. 50,000/- under the present policy, Exh. D-l) in respect of death by injury suffered by each.

8. Though a contrary view was taken in the case of M.K. Kunhimohammed Vs. P.A. Ahmedkutty and Others, and in that case limited liability of insurance company was affirmed. This controversy was raised before this court and has been decided by a single Judge (brother R.K. Verma, J., as he then was) in United India Fire & General Insurance Co. Ltd. v. Natvarlal 1992 ACJ 585 (MP).

9. The later case, i.e., M.K. Kunhimohammed Vs. P.A. Ahmedkutty and Others, has been decided by two hon''ble Judges of the Supreme Court while Motor Owner''s Insurance Co. Ltd. Vs. Jadavji Keshavji Modi and Others, has been decided by three hon''ble Judges of the same court. It appears that this case was not brought to the knowledge of their Lordships who decided the M.K. Kunhimohammed''s case (supra). It has, therefore, rightly been held by brother R.K. Verma, J., that the case reported in Motor Owner''s Insurance Co. Ltd. Vs. Jadavji Keshavji Modi and Others, , being a decision by larger Bench ought to be accepted. I fully contribute to this view. In the opinion of this court, therefore, the liability of insurance company in this case would extend to the tune of Rs. 50,000/- for each person.

10. Now so far as the amount of compensation is concerned, the learned Tribunal has awarded Rs. 8,000/- towards expenses for medical treatment and Rs. 2,000/- as compensation for the permanent disability and has further awarded Rs. 10,000/- for mental shock, agony and suffering. Now so far as the expenses towards treatment are concerned, the same has been discussed in para 4 of the judgment of the learned Tribunal. Learned counsel could not assail it during the course of arguments. So far as the compensation for the permanent disability is concerned, the same is rather on the lower side.

11. The claimant Ritu sustained lacerated wound on her forehead, nearly seven ribs, third to ninth, were fractured and three ribs had double fractures. She had a fracture of pelvis, neck of left femur bone was also fractured. The blood had accumulated in the chest and urinary bladder. She had sustained abdominal

injury as well. She remained in hospital for a pretty long period. With these injuries she must have incurred physical weakness. With the extensive fractures referred to above, the physical infirmity may also continue for a longer period and, therefore, the total amount of Rs. 12,000/- towards pain, agony, suffering and infirmity appears to be correct which does not call for interference.

12. Earlier in the memo of appeal relief claimed was only for the compensation to the tune of Rs. 10,000/-. However, learned counsel for the appellant thereafter filed an amendment and the amendment was allowed and he was permitted to pray for relief of the amount of compensation to the tune of Rs. 50,000/- and, therefore, enhancement beyond Rs. 10,000/- is also being taken into consideration.

13. As a result, the appeal succeeds and it is directed that the respondent No. 2, i.e., the New India Assurance Co. Ltd., shall pay whole of the amount of compensation awarded by learned Tribunal with interest at the rate of 12 per cent per annum. Counsel''s fee Rs. 400/-, if certified.