(2009) 02 MP CK 0065

In the Madhya Pradesh High Court

National Insurance Co. Ltd. APPELLANT

Vs

Gulab Khan and Others RESPONDENT

Date of Decision : 12-02-2009

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2010) ACJ 1280

Hon'ble Judges : S.K. Gangele, J

Bench : Single Bench

Judgement

S.K. Gangele, J.—This appeal has been filed by the appellant insurance company u/s 173 of Motor Vehicles Act, 1988, against the award dated 5.11.2004 passed by the learned Second Additional Motor Accidents Claims Tribunal, Gwalior in Claim Case No. 21 of 2004 for modification in the award.

2. On 7.9.2003 claimant along with his family members had been going to his house in autorickshaw bearing registration No. MP 07-T 2476. Due to rash and negligent driving of the autorickshaw, it turned turtle and in the aforesaid accident the claimant received fracture injuries on his right hand, leg and other parts of the body. He was admitted at Maheshwari Nursing Home. Report of the accident was lodged at the police station and criminal case was also registered.

3. Claimant filed claim petition claiming total compensation of Rs. 6,85,000. Claims Tribunal has held that the accident occurred due to rash and negligent driving by the driver of the autorickshaw. Driver had valid driving licence and autorickshaw was insured by the insurance company. Hence, the owner, driver and insurance company are liable for payment of compensation. Claims Tribunal has awarded total compensation of Rs. 2,48,000.

4. Learned Counsel for the insurance company has submitted that the Tribunal has committed an error of law in fixing the liability on the insurance company. Contrary to this, the learned Counsel for the claimant has submitted that the award of the Claims Tribunal is as per law.

5. The claimant received injuries when he was travelling in autorickshaw bearing registration No. MP 07-T 2476. The claimant was admitted at Maheshwari Nursing Home and in his evidence he stated that on 7.9.2003, he was coming to his house in autorickshaw bearing registration No. MP 07-T 2476. Due to the rash and negligent driving by the driver, the autorickshaw turned turtle and he received serious injuries. He was admitted at Maheshwari Nursing Home and after sometime he was admitted in General Hospital. There was operation of one leg of the claimant. He was further treated by Dr. Prashant Lahari. Dr. Lahari in his evidence stated that the claimant was admitted in the hospital and there was fracture of right hip bone of the claimant. He performed the operation on 23.9.2003 and artificial steel hip joint was fitted to the claimant. Another witness, Dr. S.N. Tripathi who was working in Civil Hospital, Gwalior stated that he issued permanent disability certificate to the claimant. There was operation of right hip joint of the claimant and artificial hip joint was fixed to the hip of the claimant which is called orthoplasty. Due to the aforesaid operation, the claimant could not walk properly and there is 50 per cent disability to him. Looking to the aforesaid evidence of the case, in my opinion, Tribunal has awarded proper compensation to claimant after considering the nature of disability and expenses incurred by him in treatment.

6. With regard to liability of payment of compensation, the insurance company examined one Khemraj who was working in R.T.O. as Senior Assistant. He stated that the driver of the autorickshaw had light weight private vehicle licence. It was issued on 14.5.93 and valid up to 7.9.2004. As per the aforesaid licence driver was not authorised to drive commercial vehicle or transport vehicle. There was no endorsement in the driving licence that the driver can drive commercial vehicle. He was not authorised to drive commercial vehicle. It is also an admitted fact that the driver of autorickshaw had been driving commercial vehicle because autorickshaw was registered by R.T.O. for the purpose of transporting passengers registered as commercial vehicle. The Apex Court in the case of New India Assurance Co. Ltd. v. Roshanben Rahemansha Fakir 2008 AC J 2161 (SC) has held as under with regard to the necessity of holding proper driving licence for autorickshaw for carrying passenger:

(5)...We find that the same classification is maintained in the subsequent notification dated 5.11.2004 published in the Gazette of India, extraordinary, Part-II, Section 3 (ii) dated 5.11.2004 in exercise of the same powers under Sub-section (4) of Section 41 of the Act. The relevant entries therein read as under:

Transport vehicle Non-transport vehicle (1) xxx xxx xxx (2) xxx xxx xxx (i) to (iv) xxx xxx (i) to (iii) xxx xxx (v) Three-wheeled vehicles for (iv) Three-wheeled vehicles for transport of passenger/goods. personal use.

Hence, driver of the autorickshaw had no valid driving licence to drive autorickshaw.

It was a commercial vehicle and in such circumstances in my opinion, insurance company could recover the amount from the owner of the vehicle. The award of the Tribunal with regard to fastening absolute liability on the insurance company is contrary to law.

7. Consequently, appeal of the appellant is allowed to the extent that the insurance company shall pay the amount awarded by the Tribunal to the claimant and it could recover the same from the owner of autorickshaw, respondent No. 3.

8. With the aforesaid modification in award, appeal is disposed of accordingly. No order as to costs.

