(2006) 12 MP CK 0034

In the Madhya Pradesh High Court

National Insurance Co. Ltd. APPELLANT

Vs

Jagdish Singh and Others RESPONDENT

Date of Decision : 06-12-2006

Acts Referred:

Citation : (2008) ACJ 246

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Judgement

Rajendra Menon, J.—This is an appeal of the insurance company assailing the award dated 7.2.2005 passed in the Claim Case No. 13 of 2004 by Motor Accidents Claims Tribunal, Morena awarding compensation of Rs. 3,64,015 to the claimants-respondent Nos. 1 to 5.

2. The claimants-respondent Nos. 1 to 5 are the parents and brothers of the deceased Murarilal who was a driver of the truck bearing No. MP 07-G 0630 earning Rs. 3,000 per month and died in an accident which took place on 22.2.2002 at 4.15 a.m. when a truck bearing No. UP 80-G 9651 owned by the respondent No. 6 and insured with the appellant driven in a rash and negligent manner dashed against the truck No. MP 07-G 0630 at Atlas Tiraha, Morena as a result Murarilal died on spot.

3. Inter alia, claiming compensation claim petition was filed. In the claim petition insurance company took a defence that the truck No. UP 80-G 9651 was being driven by Narendra and as Narendra did not have a valid driving licence, therefore, insurance company is not liable to pay any compensation. The earnings of Murarilal was also disputed. However, after holding that the driver of truck No. UP 80-G 9651, Narendra was not having a valid driving licence, learned Tribunal held the insurance company liable to pay compensation on the ground that the insurance company has not proved violation of the policy conditions and the insurance policy is also not filed. Thereafter assessing the income of the deceased to be Rs. 3,000 per month or Rs. 100 per day and after applying the multiplier 15 compensation has been awarded. It is further directed that

compensation shall be paid along with interest at the rate of 6 per cent per annum and in case compensation is not deposited within 45 days interest at the rate of 7 per cent per annum will be charged.

4. Mr. B.N. Malhotra, learned Counsel for appellant insurance company invites my attention to the insurance policy, Exh. Dl, available on record and statement of the Divisional Manager of the insurance company, DW 1, Ashok Kumar Singh and submits that once the policy of insurance was filed and it is established that driver was not having valid driving licence, imposing liabilities on the insurance company was unsustainable. That apart it is submitted by him that calculating compensation by assessing the income of the deceased at Rs. 3,000 per month is a perverse finding. It is also submitted by him that when the claimants are parents then multiplier after considering the age of the parents has to be taken and by considering the multiplier on the basis of age of the deceased, learned Tribunal has committed grave error. In support thereof he invited my attention to the judgment of the Supreme Court in the case of Asha and Others Vs. United India Insurance Co. Ltd. and Another, ; U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, and a Division Bench judgment of this Court in the case of Halkibai and Another Vs. Managing Director, Rajasthan State Road Trans. Corpn. and Another, and submits that the award is liable to be modified and the amount of compensation awarded is liable to be decreased and liabilities should be imposed upon the owner of the vehicle.

5. Refuting the aforesaid Mr. B.D. Verma, the learned Counsel for the respondent Nos. 1 to 5 submits that as the insurance company did not examine the driver and official of the Regional Transport Office and, therefore, the finding with regard to driver of the vehicle having no valid driving licence is a perverse finding, liable to be rejected. That apart placing reliance on the judgments by Punjab and Haryana High Court in the case of Sunder Pal Vs. State of Haryana, a Division Bench of this Court in the case of Damodar and Another Vs. Rajendra Singh and Others, and in the case of Jyoti Kaul and Others Vs. State of M.P. and Another, , Mr. B.D. Verma, Advocate, submits that the multiplier applied in the case is proper and no interference with regard to the quantum of compensation is warranted.

6. Having heard the learned Counsel for the parties at length and on perusal of the records it is seen that while considering the question of driver of the vehicle having valid driving licence in paras 6 and 13 of the award learned Tribunal has found that Narendra, driver of the truck No. UP 80-G 9651 was not having valid driving licence. It is found that in the documents seized by the police, the driving licence of Narendra is not seized. Accordingly, finding recorded is that the driver of the vehicle No. UP 80-G 9651 was not having a valid licence. However after holding so, liability is imposed upon the insurance company on the ground that the insurance company has not proved the violation of terms and conditions of the policy. This finding is wholly perverse and contrary to the materials and documents available on record. Available on record is the statement of Ashok

Kumar Singh, defendant witness No. 1, who was working as Branch Manager of National Insurance Co. Ltd., Morena, he has proved the Exh. D1 and Exh. D2 the report received from the office of the R.T.O. Both these documents indicate that the driver of the vehicle is not having a valid licence and there is violation of the policy conditions. In such circumstances holding the insurance company liable is clearly a perverse finding and is passed by totally ignoring the documents, Exh. D1 and Exh. D2 and statement of Ashok Kumar Singh, DW 1, accordingly the award so far as it holds the insurance company liable is unsustainable and is quashed.

7. It is held that as a driver of the vehicle in question No. UP 80-G 9651 was not having a valid licence liabilities to pay the amount of compensation is on the owner of the said vehicle Dharmendra Singh Tomar, respondent No. 6. However, in view of law laid down by the Supreme Court in the case of Lal Chand Vs. Oriental Insurance Co. Ltd., , it is directed that insurance company shall satisfy the award in the first instance and thereafter liberty is granted to the insurance company to recover the amount from the owner of the vehicle, respondent No. 7 by initiating requisite execution proceedings in accordance with law.

8. As far as the assessment of compensation is concerned, income of Murarilal is assessed at Rs. 3,000 per month, that is, Rs. 100 per day. This is a reasonable finding and the same is based on the statement of his father, claimant No. 1-Jagdish Singh recorded as PW 1 and income certificate issued by his employer as Exh. P10. Accordingly I find no error in the assessment of compensation after considering income of the deceased to be Rs. 3,000 per month. Even otherwise deceased was a driver of the truck and it can be safely concluded that he was earning Rs. 100 per day with other additional allowances.

9. However, while applying the multiplier of 15 the learned Tribunal has only considered the age of the deceased whereas the principle laid down in the case of Jyoti Kaul and Others Vs. State of M.P. and Another, is that for assessment of compensation in such cases the multiplier to apply has to be fixed considering the lower age of the parents. Even though in the case of Asha and Others Vs. United India Insurance Co. Ltd. and Another, relied upon by Mr. Verma, Advocate multiplier as per age of deceased has been considered but in this judgment it is further laid down that the facts and circumstances of each should be considered and then appropriate multiplier applied. It is seen in this case that the deceased Murarilal was unmarried, he was about 22 years old at the time of accident and the claimants are his parents who are aged 55 years and 53 years respectively and other claimants are brothers and two of whom Munesh and Brajmohan were major at the time of accident. In such circumstances the multiplier to be adopted is to be based on the age of the parents and not the age of the deceased. Accordingly, as the age of mother at the relevant time was 53 years, the multiplier to be adopted would be 11 to that effect, learned Tribunal has committed error in the matter of adoption of the multiplier. Accordingly the compensation is assessed as under:

Annual income of the deceased would come to Rs. 36,000 and after deducting 1/3rd for self expenses, dependency would come to Rs. 24,000 x 11 = Rs. 2,64,000, to this a sum of Rs. 2,000 towards funeral expenses and Rs. 2,500 for loss to estate are to be added, bring total compensation to Rs. 2,68,500.

10. Accordingly this appeal is allowed in part and the amount of compensation assessed is reduced from Rs. 3,64,015 to Rs. 2,68,500. The same shall be distributed among the claimants in the proportioned as indicated in para 24 of the impugned award. However interest on the amount of compensation shall be at the rate of 6 per cent per annum and direction to deposit interest at the rate of 7 per cent after 45 days being illegal, is also quashed. As already directed in para 7 above, insurance company the appellant herein shall satisfy the award at the first instance thereafter they will have liberty to recover the amount from the owner of the truck No. UP 80-G 9051, i.e., respondent No. 6.

Accordingly, this appeal is allowed in part and disposed of with the aforesaid modification to the award but without any order as to costs.

