
(1998) 07 MP CK 0057
In the Madhya Pradesh High Court
Case No : M.A. No. 402 of 1994

National Insurance Co. Ltd.	Vs	APPELLANT
Naushad and Others		RESPONDENT

Date of Decision : 30-07-1998

Acts Referred:

Evidence Act, 1872 — Section 64, 65, 66

Citation : (1999) 2 ACC 331 : (2001) ACJ 589

Hon'ble Judges : Shambhoo Singh, J;B.A. Khan, J

Bench : Division Bench

Advocate : V.V. Dandwate, for the Appellant; Sharma, for the Respondent

Judgement

Shambhoo Singh, J.—This appeal is directed by the non-applicant insurance company against the award dated 17.6.94 passed by 12th Additional Motor Accidents Claims Tribunal, Indore, in Claim Case No. 5 of 1993 whereby compensation of Rs. 7,70,000 was awarded with interest at the rate of 12 per cent per annum.

2. It was not in dispute that in the night of 3/4.9.1989, a Tempo bearing registration No. MBF 2433 met with an accident resulting in the death of Shelendra, the husband of respondent-claimant No. 3 and father of respondent No. 4 and son of respondent-claimant Nos. 5 and 6.

3. The case of the claimants was that in the night intervening 3/4.9.1989, the deceased Shelendra Gupta was going on his scooter. When he reached M.G. Road near Gurudwara (Indore), the respondent No. 2 came there driving the aforesaid Tempo rashly and negligently and hit Shelendra Gupta, as a result of which he died on the spot. At the time of incident the age of the deceased Shelendra was 29 years. He was serving in Drug India Private Limited, Ghata-Billore, on the salary of Rs. 3,300 per month. The claimants filed claim case for award of compensation of Rs. 21,80,000 as under:

For the loss caused to claimant Nos. 2 and 3 Rs. 18,00,000 For loss to claimant

Nos. 3 and 4 Rs. 3,00,000 For loss of consortium Rs. 30,000 For mental agony and pain Rs. 50,000

The claimant Nos. 2 and 3 absented themselves and were proceeded ex parte. The appellant-respondent No. 3 resisted the claim and averred that the accident occurred due to rash and negligent driving of the scooter by the deceased himself. It was also pleaded that the liability of the insurance company was limited to Rs. 50,000. The Tribunal after recording evidence held that the accident occurred due to rash and negligent driving of the aforesaid Tempo. It negatived the plea of the appellant that its liability was limited up to Rs. 50,000 and awarded Rs. 7,70,000 and directed the appellant to pay the same with interest at the rate of 12 per cent per annum. Hence, this appeal by insurance company.

4. Mr. Dandwate, learned counsel for the appellant insurance company, submitted that the Tribunal committed error in holding that the liability of the insurance company was unlimited. He submitted that the insurance policy, Exh. D-3, makes it clear that the liability of the insurance company was limited to Rs. 50,000. Mr. Sharma, the learned counsel for the respondents-claimants, submitted that the appellant did not file the insurance policy with its reply before the Tribunal. A carbon copy of the policy, Exh. D-3 was filed after recording of the evidence of parties. He contended that Exh. D-3 is not an original policy. The insurance company failed to lead secondary evidence for proving the same and under these circumstances, the learned Tribunal rightly held that the appellant failed to prove that its liability was limited up to Rs. 50,000.

5. We considered the arguments advanced by counsel for both sides. From the perusal of the record of the Tribunal, it appears that the copy of policy was filed before the Tribunal and was marked as Exh. D-3. The appellant also examined San-deep, its official, who deposed that Exh. D-3 was carbon copy of the original insurance policy. But when we peruse Exh. D-3 we find that it is not carbon copy of the original. It does not appear to be a copy made from the original. It also does not contain the signature of authorised person. The portion C to C "11 passengers" and D to D "a driver" are written with ink and bear no initial or signature of the writer. It is not proved that Exh. D-3, the alleged carbon copy was made by one uniform process and, therefore, the same is not primary evidence. The appellant failed to examine the officer who prepared this document. It is true that Exh. D-3 bears the endorsement "certified copy" but the officer who compared it with its original and attested it as certified copy, has not been examined. A Division Bench of Punjab and Haryana High Court in the case of Oriental Fire & General Ins. Co. Ltd. v. Chandrawali 1989 ACJ 419 (P&H), under similar circumstances where a copy of the insurance policy was filed, held that such a copy was not admissible in evidence. According to Section 64i of the Evidence Act, document must be proved by primary evidence. As stated above, Exh. D-3 is in the nature of secondary evidence. It could be given in evidence in any of the following cases set out in Section 65 of the Evidence Act.

(a) When the original is shown or appears to be in the possession or power of the person, against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the court; or of any person legally bound to produce it, and when, after the notice mentioned in Section 66, such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason, not arising from his own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily movable.

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The appellant should have given notice to the owner to produce the original insurance policy and on his failure to do so, it could have produced its copy u/s 65, Evidence Act. The appellant also did not give notice to the owner and call upon him to admit it. No steps were taken by the appellant in this regard. Hence, Exh. D-3 is not admissible in evidence. If Exh. D-3 is excluded from consideration, there is no evidence on record to prove that the liability of the insurance company was limited to Rs. 50,000. We, therefore, hold that the appellant's liability is unlimited.

6. Now the question is whether the amount of compensation is on higher side. It has come in the evidence of Poonam, the widow of the deceased that the age of her husband Shelendra was 29 years. Sudhir Kumar, the father of the deceased also made the same statement. No evidence has been produced in rebuttal by the appellant. Therefore, in our opinion, the learned Tribunal rightly held that the deceased died at the age of 29 years. Mahesh Paped, CW 2, deposed that the deceased was serving in Drugs India Private Limited on the post of Chief Manufacturing Chemist and was drawing salary at the rate of Rs. 3,300 per month. He produced receipt A-1 passed by the deceased for receipt of his pay. From the above, it is clear that the deceased was earning Rs. 3,300 p.m. Learned Tribunal committed error in deducting Rs. 800 for the personal expenses of the deceased. As held by the Apex Court in case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , the personal expenses of deceased are generally taken to be 1/3rd of his earning. In our opinion, 1/3rd of the salary, i.e., Rs. 1,100 should be deducted for personal expenses of the deceased and, thus, the dependency would come to Rs. 2,200 per month. The Tribunal further committed error in selecting multiplier of 25. Their Lordships of the Supreme Court in case of Susamma Thomas (supra) selected multiplier of 12 in assessing dependency of the L.Rs. of the deceased aged about 39 years. In view of above and the decision of this court in case of State of Madhya Pradesh v. Ashadevi 1988 ACJ 846 (MP),

we think it proper to take the multiplier of 16 and by multiplying it with the multiplicand, the amount comes to Rs. 4,22,400. The Tribunal awarded Rs. 20,000 for loss of consortium to the widow. However, it did not award compensation to respondent Nos. 4, 5 and 6 (son and parents) for loss of love and affection. In such a situation, we do not interfere in this amount. On addition of Rs. 20,000, the amount of compensation comes to Rs. 4,42,400. In our opinion, this would be just and proper compensation.

7. In the result, the award passed by the learned Tribunal is modified and it is reduced from Rs. 7,70,000 to Rs. 4,42,400. The appellant insurance company shall pay a sum of Rs. 4,42,400 to respondents-claimants with interest at the rate of 12 per cent per annum from the date of filing of the claim petition, i.e., 2.1.1990 till realisation. Out of this amount Rs. 1,50,000 along with accrued interest be deposited in the name of respondent No. 4, Ashwarya, son of the deceased, in some nationalised bank in interest paying scheme in fixed deposit till he attains majority. Rs. 1,42,400 be paid to the widow, respondent No. 3. Rs. 75,000 out of this amount be deposited in her name in fixed deposit on the same terms as that of Ashwarya. Respondent Nos. 5 and 6 be paid Rs. 75,000 each with accrued interest. The respondent No. 3 would be free to draw interest accrued on the fixed deposit amount of respondent Nos. 3 and 4.

In view of the facts and circumstances, no order as to costs.