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(1995) 01 MP CK 0070

In the Madhya Pradesh High Court

Case No : M.A. No''s. 166 and 204 of 1991

New India Assurance Co. Ltd. APPELLANT

Vs

Ayesha Begum and Others RESPONDENT

Date of Decision : 17-01-1995

Acts Referred:

Motor Vehicles Act, 1939 — Section 110D

Citation : (1995) ACJ 587

Hon'ble Judges : Fakhruddin, J;D.M. Dharmadhikari, J

Bench : Division Bench

Advocate : N.K. Modi, for the Appellant; A.K. Shrivastava and B.N. Malhotra, for the Respondent

Judgement

D.M. Dharmadhikari, J.—This order, in appeal M.A. No. 204 of 1991 at the instance of New India Assurance Co. Ltd. u/s 110-D of the Motor Vehicles Act, 1939, against the award dated 30.4.1991 passed by Motor Accidents Claims Tribunal, Guna, in Claim Case No. 47 of 1989, shall also decide the appeal M.A. No. 166 of 1991 being an appeal preferred against the same award by Sunil Malhotra, the owner of the motor vehicle, held negligent and liable for the accident.

2. Facts in brief relevant for decision of these two appeals are: that the deceased Sayeed Khan was driving truck No. MBG 9036 being a duly employed driver by the owner of the said vehicle, Jalaluddin, respondent No. 8 herein. On 10.3.1989 the abovementioned truck while being driven by the deceased collided with the other truck No. MKH 7878 owned by Sunil Malhotra, respondent No. 5 (who is appellant in the connected appeal) and which was driven by Banshilal, respondent No. 6.

3. The Claims Tribunal on the basis of evidence on record held that the driver of truck No. MKH 7878, which was insured with respondent No. 7. National Insurance Co. Ltd., was solely negligent for the accident, in which Sayeed Khan lost his life being at the driving-wheel of the vehicle, truck No. MBG 9036. The

Claims Tribunal passed an award in the sum of Rs. 1,83,000 with 15 per cent per annum interest from the date of filing of the claim petition. The liability for the payment of compensation for the accident was jointly placed on the present appellant, New India Assurance Co. Ltd., which was insurer for the vehicle, truck No. MBG 9036, of which the deceased was the driver. Sunil Malhotra, respondent No. 5 herein, the owner of the vehicle, truck No. MKH 7878, was also held jointly liable. But the National Insurance Co. Ltd., respondent No. 7, was not imposed with any liability severally or jointly for payment of the award on the ground that probably because there was ''no insurance policy of truck No. MKH 7878, produced on record. The insurance policy of the alleged offending vehicle, MKH 7878, has now been produced by the National Insurance Co. Ltd. in this appeal and there is no manner of doubt that the said vehicle at the relevant time was insured with respondent No. 7. In this appeal a cross-objection under Order 41, Rule 22 of the CPC has been filed on behalf of National Insurance Co. Ltd. The insurer in respect of truck No. MKH 7878 opposed the present appeal of the New India Assurance Co. Ltd. in which a prayer has been made to impose entire liability for payment of compensation on the respondent No. 7, National Insurance Co. Ltd.

4. In the other connected appeal, M.A. No. 166 of 1991 was preferred by Sunil Malhotra, owner of truck No. MKH 7878, the contention is that the vehicle owned by him having been insured, in any case, the liability for payment of compensation should have been imposed jointly on National Insurance Co. Ltd., respondent No. 7.

5. The only ground urged by the learned Counsel appearing for the appellant, New India Assurance Co. Ltd., being the insurer in respect of truck No. MBG 9036, is that the Claims Tribunal having found the driver of truck No. MKH 7878 responsible for the accident, owing to the negligence of that vehicle, no award should have been passed even jointly against the present appellant, insurance company. The vehicle of which the deceased was the driver was not found negligent for the accident.

6. The learned Counsel appearing for the claimants opposed the appeal stating that the insurance policy concerning vehicle, truck No. MBG 9036, of which the deceased was the driver, was a comprehensive policy concerning risk of the death of the driver and the cleaner of the said vehicle. On behalf of the claimants, therefore, it is urged that a joint award was rightly passed against the present insurance company, concerning the truck No. MBG 9036.

7. We take up for consideration first the question of liability of the appellant, New India Assurance Co. Ltd. We find from the contents of the award of the Claims Tribunal that a clear finding has been reached on the basis of the evidence of Bhurelal. He was the cleaner on truck No. MBG 9036 and was travelling along with the deceased driver. The other vehicle which collided, i.e., MKH 7878, was found to have been driven rashly and negligently resulting in the accident. This finding was reached as the version of the above-named cleaner was not rebutted

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by the examination of Banshilal, the driver of the alleged offending vehicle, truck No. MKH 7878.

8. In view of the above finding there was no tortious liability for the payment of compensation in relation to vehicle, truck No. MBG 9036, of which the deceased was the driver. The learned Counsel appearing for respondent No. 7, National Insurance Co. Ltd., while arguing and pressing its cross-objections is right in pointing out that in case of comprehensive policy in any case the ''no fault'' liability and liability under Workmen''s Compensation Act for the persons employed on the vehicle cannot be avoided. Reliance is placed on Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, and Bhagwan Singh Vs. Guddi and Others, . In the instant case, at the relevant time the ''no fault'' liability in the case of death was Rs. 15.000/-. Since two vehicles were involved in the accident, as held in the cases aforesaid, the liability of the two insurance companies concerning two vehicles would be half and half. We find no hesitation, therefore, in relying on the decisions (supra) and holding that the present appellant, New India Assurance Co. Ltd., as there was comprehensive policy, cannot be absolved of its liability to pay compensation towards ''no fault'' liability at least to the extent of Rs. 7,500/-. The other contention advanced by New India Assurance Co. Ltd. in this appeal that no compensation should be awarded against it as no fault liability was not found on the part of the deceased driver, Sayeed Khan, on the insured truck No. MBG 9036, is worth acceptance.

9. We have heard the learned Counsel appearing for National Insurance Co. Ltd., respondent No. 7, which had insured the alleged offending vehicle, truck No. MKH 7878, the driver of which was found solely responsible for the accident. We have also heard the learned Counsel for National Insurance Co. Ltd. on its cross-objections and have also heard the reply of the learned Counsel appearing for the claimants. The learned Counsel appearing for respondent, National Insurance Co. Ltd., points out that it has reserved in terms of its policy the right to contest the claim, both on the question of negligence and quantum on behalf of owner of the insured vehicle. The attempt was made on behalf of respondent No. 7 to contend that there was contributory negligence on the part of the deceased, who was driver of the vehicle, truck No. MBG 9036.

10. The above argument cannot be accepted in view of the evidence and clear finding of the Claims Tribunal on the point. As has been discussed above, the cleaner, travelling along with the deceased driver on truck No. MBG 9036, was examined on the version of the accident and the said version was not rebutted as Banshilal, respondent No. 6, driver of the truck No. MKH 7878, did not enter the witness-box. The Tribunal, therefore, committed no error in reaching the finding that the driver of truck No. MKH 7878 alone was negligent, which had resulted in the accident.

11. It is next-urged on behalf of the respondent No. 7, National Insurance Co. Ltd., that looking to the age of the deceased, which was said to be between 40 and 50 years, the multiplier of 15 taken is on the higher side and it could not be

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more than 12. Lastly, it is urged that the rate of interest at 15 per cent per annum is also on the higher side as the normal rate of interest could not be more than 12 per cent per annum.

12. So far as the multiplier is concerned, we find no justification to interfere in the same as the wife of the deceased was unable to give the exact age of the deceased. It was found to be between 40 years and 50 years, therefore, the multiplier of 15 taken is not on the higher side. [See Hardeo Kaur and others Vs. Rajasthan State Transport Corporation and another, , wherein for the age of 36 year''s multiplier taken was 24.

13. We also do not find any justification to interfere in the rate of interest. 18 per cent per annum interest was awarded by this Court in Madhya Pradesh State Road Trans. Corpn. Vs. Anjani Chaturvedi and Others, . The learned Counsel for the claimants is also right in pointing out that the question of compensation is not liable to be disturbed as in determining the same several relevant heads such as loss of consortium and possible increase of salary of the deceased driver, were not at all taken into account.

14. In view of the discussion aforesaid, we only partly allow the present appeal filed by the New India Assurance Co. Ltd. and substitute the award of the Claims Tribunal by directing in its place that the liability of the appellant, New India Assurance Co. Ltd. being the insurer of the vehicle, truck No. MBG 9036, would be limited to Rs. 7,500/-payable as ''no fault'' liability for the accident in question. The cross-objections filed on behalf of the respondent No. 7, National Insurance Co. Ltd., is hereby rejected. By modifying the award of the Claims Tribunal we direct that the remaining amount of compensation and interest awarded by the Claims Tribunal shall be paid jointly by respondent No. 5, Sunil Malhotra, the owner of the vehicle, truck No. MKH 7878, and respondent No. 7, National Insurance Co. Ltd., the insurer of vehicle, truck No. MKH 7878. In the circumstances we make no order as to costs. It is pointed out by the learned Counsel for the parties that in terms of the order made by the award and the interim orders made by this Court during pendency of the appeal, different amounts of compensation have been deposited by the two insurance companies and some amount has also been paid to the claimants. The Claims Tribunal is directed to disburse the amount due to the parties in accordance with the directions made by us in this appeal above. There shall be no order as to costs.

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