
(1992) 08 MP CK 0024
In the Madhya Pradesh High Court
Case No : M.A. No. 333 of 1992

New India Assurance Co. Ltd.

APPELLANT

Vs

Niraj and Another

RESPONDENT

Date of Decision : 11-08-1992

Acts Referred:

Citation : (1993) 1 ACC 354 : (1993) ACJ 1278

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

Bench : Single Bench

Advocate : A.K. Dhupar, for the Appellant; Rajpal, for the Respondent

Judgement

R.D. Shukla, J.—This appeal is directed against the award dated 18.7.1990 of the Vth Motor Accidents Claims Tribunal, Indore, passed in Claim Case No. 191 of 1987, whereby the respondent No. 1 (here) has been awarded a compensation of Rs. 37,523 with an interest of 12 per cent per annum from the date of filing of petition before the learned Tribunal, i.e., 11.2.1986 with a further direction of all the payments to be made by the insurer (appellant here).

2. The brief history of the case is that the claimant-respondent No. 1 filed a claim petition before the learned Tribunal on 11.2.1986 with the assertion that he was travelling as a passenger in a tempo No. MPN 8177, on 6.11.1985 at about 4.30 p.m. when it met with an accident. He sustained injuries on his hand which has caused permanent partial disability. He claimed Rs. 72,800/- in all. The respondents denied the claim. However, learned Tribunal found that the vehicle was driven negligently and as such awarded the amount as above.

3. This appeal has been filed by the insurance company on the ground that the liability of the insurance company is limited to the amount stipulated in the insurance policy, i.e., Rs. 10,000/- per passenger and any amount in excess is required to be paid by the owner and driver.

4. As against it learned counsel for the respondent has submitted that as per the condition of the policy maximum amount of Rs. 50,000/- has been fixed and,

therefore, the insurance company is liable to the tune of Rs. 50,000/- and since the amount is less than the said amount the insurance company has been rightly made liable for the payment. The respondent-claimant has further filed a cross-objection with a prayer that interest of 18 per cent instead of 12 per cent ought to have been awarded.

5. There is no dispute as to the accident, negligence and the amount of compensation. It is to be seen as to whether the liability of the insurance company (appellant here) is limited to Rs. 10,000/- only or it is liable to make payment of the whole amount. This is an admitted fact that the accident occurred on 6.11.1985, i.e., before amendment in the Motor Vehicles Act. Of course, the appeal has been filed after coming into force of the present Act.

6. On a perusal of the document Exh. D-I, it appears that extra premium was paid by the insured and thereby the statutory liability was enhanced up to Rs. 10,000/- in respect of one person and Rs. 50,000/- in respect of any number of claims in connection with such vehicle arising out of one accident, which reads as follows:

In consideration of an additional premium of Rs. 132/- but such indemnity is limited to the sum of Rs. 10,000/- in respect of any one person and subject to the aforesaid limit in respect of any one person to Rs. 50,000/- in respect of any number of claims in connection with any one such vehicle arising out of one cause.

7. Thus, because of the additional payment this statutory liability stands enhanced from Rs. 5,000/- to Rs. 10,000/-. This matter was dealt with by their Lordships of the Supreme Court in a case reported in *M.K. Kunhimohammed v. P.A. Ahmedkutty* 1987 ACJ 872, para 13 of judgment reads as follows:

(13) Having regard to the statute as it stood prior to the amendments by Act 47 of 1982 we hold that the insurer was liable to pay up to Rs. 10,000/- for each individual passenger where the vehicle involved was a motor cab and up to Rs. 5,000/- for each individual passenger in any other case. The judgment of the Kerala High Court against which this petition is filed has followed the above construction. We do not find any ground to interfere with it. This petition is, therefore, dismissed.

8. Learned counsel for the respondents, on the basis of a case reported in *Motor Owners' Insurance Co. Ltd. v. Jadavji Keshavji Modi* 1981 ACJ 507, has submitted that the liability of Rs. 50,000/- will extend in respect of death or injuries suffered by each one. This was a case of third party risk and not a passenger travelling in a motor cab. Here, in this case the claimant was travelling in a motor tempo and, therefore, the term of insurance policy will come to the rescue of insurance company. The learned counsel for the appellant then submitted a case reported in *Kunwarji Vs. Nisarkhan*, In that case also since the insurance company had filed the policy it was held that its liability cannot be fixed beyond what has been covered in the policy. In view of the discussions

above, this appeal deserves to be allowed.

9. So far as cross-objection filed by the claimant-respondent is concerned, it may be observed that the learned Tribunal granted interest at the rate of 12 per cent per annum only. It has been contended by the counsel for the respondents that looking to the present rate of interest prevailing in the market he is entitled to an interest of 18 per cent per annum. That submission of the counsel for the respondents appears to be justified. The rate of interest deserves to be enhanced.

10. It may be clarified here that present situation in the case arises because of the unamended Motor Vehicles Act. After the recent amendment in the Motor Vehicles Act, the position and extent of liability of the insurance company has entirely changed.

11. As a result this appeal partly succeeds. The appellant insurance company is made liable for payment of Rs. 10,000/- and the interest thereon at the rate of 18 per cent per annum from the date of the claim petition till the date of payment. The rest of the amount of award shall be paid by the respondent No. 1, the owner of the tempo, with interest at the rate of 18 per cent per annum from the date of claim petition till the date of realisation.