

(2004) 11 MP CK 0051
In the Madhya Pradesh High Court
Case No : M.A. No"s. 151 and 152 of 1994

New India Assurance Co. Ltd.

APPELLANT

Vs

Ramanand and Others

RESPONDENT

Date of Decision : 24-11-2004

Acts Referred:

Citation : (2005) 3 ACC 766 : (2005) ACJ 1405

Hon'ble Judges : S.S. Jha, J;A.K. Gohil, J

Bench : Division Bench

Advocate : B.N. Malhotra, for the Appellant; R.K. Goyal and J.D. Suryavanshi, for the Respondent

Final Decision : Allowed

Judgement

S.S. Jha and A.K. Gohil, JJ.—The two appeals M.A. Nos. 151 and 152 of 1994 are heard together as both the appeals arise out of common award.

2. Contention of the learned counsel for appellant insurance company is that in the absence of any fault on the part of Matador insured with the insurance company, the Claims Tribunal has erred in fastening the liability upon the appellant insurance company. He incited attention to the finding recorded in para 13 of the judgment, wherein Claims Tribunal has recorded a finding that the truck was driven in a rash and negligent manner and it had dashed against Matador, which resulted into the death of Gayaprasad and Radhacharan, who were sitting inside the said Matador. Again in para 19 of the award finding is recorded that the accident is caused On account of rash and negligent driving by the truck driver. Counsel for the appellant submitted that the Claims Tribunal erred gravely in fastening the liability upon the driver of Matador. The counsel for the appellant submitted that in view of the finding recorded by the Claims Tribunal liability cannot be fastened upon appellant insurance company.

3. Mr. J.D. Suryavanshi, counsel for the respondent No. 9 United India Insurance Co. Ltd. submitted that since this is a case of contributory negligence, therefore,

insurance companies of both the vehicles are jointly and severally liable to pay the compensation. He supported the award.

4. Mr. R.K. Goyal, Advocate for the claimants submitted that he has filed cross-objection for enhancement of compensation.

5. Brief facts of the case are that on 23.6.1989 at about 1100 hours deceased Gayaprasad along with Radhacharan were travelling in Matador bearing registration No. CIW 6612 between Mehgaon and Bhind. Truck No. CIG 2234 was driven from the opposite direction from Bhind to Mehgaon. The vehicle was driven in a rash and negligent manner and this vehicle has dashed against the said Matador, which resulted into death of two passengers sitting in the said Matador. Thus, claimants have come forward with a case that truck was driven in a rash and negligent manner and it has dashed against Matador which caused death of two passengers travelling in Matador. The claimants have not come forward with a case that it is the case of contributory negligence of two vehicles. Appellant insurance company stated that there was no fault or negligence on the part of driver of Matador. Respondent No. 9 United India Insurance Co. Ltd. has denied the fact of accident in the reply but they have not pleaded in the reply that the liability of both the vehicles is joint and several and this is a case of contributory negligence. Respondent No. 9 has specifically pleaded that incident has occurred on account of fault of driver of Matador and it is specifically pleaded that there was no negligence on the part of truck driver and it has been prayed that United India Insurance Co. Ltd. be deleted from the array of defendants. Respondent No. 9 has nowhere pleaded that this is the case of contributory negligence and owner and driver of both the vehicles are jointly and severally liable with their insurance companies to pay the compensation.

6. Evidence is recorded before the Claims Tribunal. NAW 1 Rajeev has deposed that the truck was driven from Bhind to Gwalior and on account of some fault in diesel pump truck was stopped at that time and Matador dashed against the truck which was standing by the side of road and there was negligence on the part of Matador driver. Similar deposition has been given by NAW 2 Collector Singh. There is no evidence on the part of United India Insurance Co. Ltd. United India Insurance Co. Ltd. has not led any evidence to prove that the accident occurred on account of negligence of driver of Matador. Best witness to prove the negligence was driver of Matador, who has not been examined.

7. In the absence of examination of any witness by the owner of Matador and the driver, the Claims Tribunal has committed an error in believing the statement of the claimants that accident has been caused by the truck, which resulted into death of two passengers travelling in Matador. The Claims Tribunal has committed an error in recording a finding that the truck driver is responsible for the accident and accident occurred on account of rash and negligent driving by the truck driver and there is no fault on the part of driver of Matador.

8. No evidence has been led by the driver and owner of Matador. The best person

to narrate about the nature of accident was the driver of Matador. The witnesses have categorically said that Matador has dashed against the truck, therefore, there was fault on the part of Matador in causing the accident. Driver and owner of Matador are equally liable.

9. As regards the liability of appellant insurance company is concerned, counsel for the appellant company submitted that Matador was insured as transport vehicle is not insured for carrying the passengers.

10. Since the vehicle is a transport vehicle, therefore in the light of the judgment in the case of National Insurance Co. Ltd. Vs. V. Chinnamma and Others, , insurance company is not liable to pay the compensation. Vehicle was driven against the policy of insurance. Even otherwise insurance company has insured the vehicle for transportation and the third party risk does not include the gratuitous passenger. Therefore, on account of accident, insurance company is not liable to indemnify the owner and driver of the vehicle.

11. It is an admitted position that both the deceased were gratuitous passengers in the transport vehicle, i.e., Matador. The policy of insurance, Exh. D-1, is on record. The type of body is shown as loading vehicle and insurance policy is for public carrier permit. The premium has been paid for third party risk but no premium has been paid for the gratuitous passengers. Therefore, appellant insurance company is not liable to indemnify the owner of Matador vehicle (insured) and the owner and driver of Matador are jointly and severally liable along with owner and driver and insurance company respondent No. 9 to pay the compensation. The appellant insurance company has deposited some amount, which may be recovered by it from the owner of Matador, i.e., insured of appellant insurance company.

12. We have considered the cross-objection filed by claimants in M.A. No. 151 of 1994. In the evidence it is mentioned that the deceased was running a hotel and was earning Rs. 150 per day. Munni Devi, widow of the deceased has deposed that her husband was earning Rs. 6,000 to Rs. 7,000 per month from the hotel business. She admitted in para 4 of her cross-examination that Gayaprasad had daily income and even out of season when hotel had no income then also deceased was paying her Rs. 4,000-5,000 per month. She admitted that for 3 months business was slack. In para 5 she has admitted that she had knowledge that income of her husband is Rs. 4,000-5,000 per month but this fact is not mentioned in her application. The Claims Tribunal, therefore, considered the evidence about the income and has determined the income at Rs. 1,500 per month. Claims Tribunal has held that from the hotel business profit will be only Rs. 50 per day. For arriving at this figure there is no evidence on record. Therefore this evidence cannot be looked into.

13. Considering the facts of the case and the tendency of exaggerating the income it may safely be held that deceased was running a hotel by the side of national highway. Even if the income is around Rs. 4,000-5,000 per month, there

was no income practicality in four months per year as admitted by Munni Devi. Therefore, income is determined at Rs. 3,000 per month. On this amount it can safely be presumed that deceased spent Rs. 1,000 per month upon himself and remaining Rs. 2,000 were spent by him upon the members of the family. Therefore, yearly dependency is determined at Rs. 24,000. Deceased was 40 years of age at the time of accident, therefore, multiplier of 16 will be applicable in this case. Applying the multiplier of 16, claimants will be entitled to compensation of Rs. 3,84,000. Over and above this amount, claimants will also be entitled for, further sum of Rs. 16,000 for damages under various heads; such as loss to estate, loss of love and affection, loss of consortium, etc. Thus, total compensation is determined at Rs. 4,00,000. Over and above this amount, the claimants will also be entitled to interest on the enhanced amount at the rate of 6 per cent per annum from the date of filing the appeal. As indicated above, the compensation shall be payable by the owner and driver of both the vehicles and insurance company of the truck.

14. As regards M.A. No. 152 of 1994 is concerned, we have already held and this appeal is also allowed in view of the discussion made out. However, in the absence of any cross-objection regarding quantum of compensation, we refrain to answer the question of quantum of compensation. This appeal is allowed. In the circumstances of the case there shall be no order as to costs.