

(2007) 04 MP CK 0063
In the Madhya Pradesh High Court

New India Assurance Co. Ltd.

APPELLANT

Vs

Smt. Kusumbai and Others

RESPONDENT

Date of Decision : 03-04-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 173

Citation : (2007) ACJ 2047 : (2007) 3 MPHT 371

Hon'ble Judges : Sanjay Yadav, J;A.K. Gohil, J

Bench : Division Bench

Judgement

1. Appellant-Insurance Company being aggrieved by the award passed on 31-1-2000, by the Additional Motor Accident Claims Tribunal, Gohad in Claim Case No. 15/99 has filed this appeal u/s 173 of the Motor Vehicles Act, 1988.

2. Brief facts of the case are that on 4-3-1998 one Munnasingh alias Indraveer Singh was going from Gohad Chauraha to Sikara via Mahgaon sitting in a Jeep No. MP-06-B-6279. At Birkhadi bus stand the said Jeep was stopped. He was crossing the road to ease himself. In the meantime one Metador bearing No. MP-07-G-1735 came from the side of Bhind, which was being driven by respondent No. 2. It was alleged that the driver of Metador was driving the said vehicle rashly and negligently hit the deceased Munnasingh while crossing the road, as a result of this accident, Munnasingh died on spot. The said Metador was owned by respondent No. 4 and insured with the respondent No. 5. Matter was reported to P.S. Gohad Chauraha, where crime was registered, matter was investigated and charge-sheet was filed. Deceased was also referred for post-mortem.

3. Claimants, those were the widow and two minor sons have filed claim petition for claiming compensation. In the claim petition it was contended that the deceased was aged about 30 years. He was engaged in the business of selling milk and he was earning Rs. 3,000/- per month. It was also stated that after deducting the expenses he was saving Rs. 2,000/- per month from the aforesaid business and claimed compensation of Rs. 10,10,000/- (Rupees ten lacs ten

thousand only). Before the Tribunal respondent Nos. 1 and 2 owner and driver of the vehicle remained ex parte. Respondent No. 3 Insurance Company denied that the age of the deceased was 30 years or he was engaged in the business of selling milk. It was further objected that the driver of the Metador was not having valid driving licence and he was driving the vehicle contrary to the terms and conditions of the Insurance Policy, therefore, the Insurance company is not liable for payment of compensation.

4. Before the Claims Tribunal issues were framed, evidence of both the parties were recorded and after considering the evidence on record, the Tribunal found that deceased died because of the rash and negligent driving of the Metador by its driver and the deceased was aged about 30 years. The Tribunal also found that he was not earning Rs. 3,000/- per month, i.e., Rs. 36,000/- per annum but he was earning Rs. 1,000/- per month, i.e., Rs. 12,000/- per annum and considered the dependency at Rs. 9,000/- per annum and applied the multiplier of "16" and awarded total compensation of Rs. 1,54,000/- (Rupees one lac fifty four thousand only) with interest at the rate of 12% per annum from the date of filing of the claim petition. Before the Tribunal, evidence was produced on behalf of the Insurance Company that the driver of the Metador was not having valid driving licence. The Insurance Company had examined one Rakesh Vajpayee, who was working in the office of R.T.O., Jhansi. His statement was recorded on commission. The aforesaid witness deposed that the copy of the licence which was produced by the claimants in the Court was not issued from their office of R.T.O., Jhansi and it was also deposed by him that it is a forged licence. Surveyor was also appointed by the Insurance Company for holding an enquiry about the driving licence and the same report was submitted by the surveyor to the Insurance Company that no such licence was issued by the R.T.O., Jhansi and licence of the driver was fake and forged and after considering the aforesaid evidence the Tribunal found that the driving licence of the respondent No. 5 Kanhaiyhalal Phatak, who was the driver of the Metador, was fake and forged and he was driving the vehicle on the basis of forged licence but held that though licence is forge and fake but Insurance Company is liable for payment of compensation and placed reliance on various decisions of the Supreme Court in case of Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan and Ors. 1987 ACJ 411, in which it was held that though the licence was fake the Insurance Company cannot absolve from its liability and recorded a finding that the Insurance Company is liable for payment of compensation. Against this finding the Insurance Company has filed this appeal. Cross-objections on behalf of the respondent Nos. 1 to 3 have also been filed for enhancement of compensation, which has been registered as M.C.P. No. 134/2000.

5. We have heard the learned Counsels for the parties and perused the evidential findings recorded by the Tribunal. So far as the appeal filed by the Insurance Company is concerned, learned Counsel for the appellant submitted that he would be satisfied if the liberty is granted to the Insurance Company to recover the aforesaid amount from the owner of the vehicle.

6. In case of National Insurance Co. Ltd. v. Kusum Rai and Ors. 2006 (2) TAC 1 (SC), Supreme Court after considering the provisions of Section 149 of the Motor Vehicles Act, 1988 held that it is the duty of the insurer to satisfy the judgments and award against persons insured in respect of third party risks. The same question came up for consideration in case of Oriental Insurance Co. Ltd. v. Nanjappan and Ors. 2005 SCC (CLJ) 148, that the Insurance Company may pay the awarded amount to the claimants and recover the same from the owner of the vehicle and in case of New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., , Supreme Court further held that the Insurance Company cannot get rid of its third party liability as the said question arises only between the owner of the vehicle and the Insurance Company. Insurance Company can pay the amount and can recover the same from the owner of the vehicle. In case of Kusum Rai (supra), the Supreme Court has further clarified that for the recovery of the aforesaid amount the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer.

7. In the light of the aforesaid undisputed legal position on record the appeal of the Insurance Company is disposed of with a direction that the Insurance Company shall pay the amount to the respondents/claimants and shall have liberty to recover the same from the owner of the vehicle.

8. As regard the cross-objections filed on behalf of the claimants are concerned, there is no dispute that the deceased Munnasingh was involved in the business of selling milk and he was aged about 30 years and the wife and two minor sons were dependent on him. Kusumbai (P.W. 1) in her statement, stated that her husband was having she buffaloes and was engaged in the business of selling of milk and he was also engaged in the agriculture work. He was enjoying good health and after deducting expenses he was saving Rs. 2,000/- per month from this business. He was also getting income from agricultural produce. She has also produced the copy of account Exh. P-7, in which her husband was maintaining the account. Sovaran Singh (P.W. 3) supported the statement of the wife of the deceased and has deposed that deceased was involved in the business of selling milk and he was having she buffaloes and he was also engaged in the agricultural activities and he was giving education to his children. It was also stated that deceased was also educated up to 9th class and was also having 3-4 Bighas of land.

9. Tribunal has discarded the aforesaid evidence on the ground that for the agricultural income the copies of the Khasra entries were not produced on record and no documentary evidence was produced to prove that he was engaged in the business of selling milk and only considered the income of the deceased as Rs. 1,000/- per month from selling of milk. Learned Tribunal has not considered this aspect of the matter that as per the Second Schedule appended to Motor

Vehicles Act, 1988, the income of Rs. 15,000/- per annum has been considered for the non-working persons. Schedule may not have the legal effect but at least is a good guide to assess the compensation. From the evidence on record this fact is clear that the deceased was a working person. He was involved in the business of selling milk and was also having agricultural land therefore, in the matter of a working person the income of the working person, may be as daily wager, can be considered as Rs. 60 to 70 per day. In this case the accident took place in the year of 1998. In that year also a casual worker was getting wages between 60-80 rupees per day. Therefore, considering the overall facts and features of the case the income of the deceased can safely be held at Rs. 2,000/- per month and Rs. 24,000/- per annum. After deducting 1/3 amount towards the personal expenses the amount of Rs. 16,000/- per annum can be considered towards dependency. There is no dispute about the age of the deceased which was around 30 years. The learned Tribunal has applied multiplier of "16". In the present case, multiplier of "17" would be applicable for the age group between 30-35 years. Therefore, we apply the multiplier of "17" and assess the amount of Rs. 2,72,000/- as compensation. We further assess a sum of Rs. 28,000/- for the various other heads like loss of estate, loss of consortium, loss of love and affection, funeral expenses etc. etc. and determined the total compensation as Rs. 3,00,000/- (Rupees three lacs only) for which the claimants would be entitled.

10. Considering the totality of the facts and circumstances of the cases and cross-objections filed in MCP No. 134/00 under Order 41 Rule 22, CPC are allowed. The amount of compensation is enhanced from Rs. 1,54,000/- to Rs. 3,00,000/-. The aforesaid enhanced amount shall also carry interest at the rate of 6% per annum from the date of filing of the cross-objections, i.e., 7-8-2000. The enhanced amount including interest shall be deposited in the name of respondent Nos. 1 to 3 in a fixed deposit in some nationalized bank and claimants would get yearly interest thereon. Under the facts and circumstances of the case parties are directed to bear their own costs.