(2006) 01 MP CK 0113

In the Madhya Pradesh High Court

Case No : M.A. No''s. 36 and 50 of 1998

Nilabai APPELLANT

Vs

Rameshwar Giri and others RESPONDENT

Date of Decision : 23-01-2006

Acts Referred:

Citation : (2006) 2 MPLJ 225

Hon'ble Judges : Arun Mishra, J;A.P. Shrivastava, J

Bench : Division Bench

Advocate : R.P. Gupta, for the Appellant; Shriniwas Gajendrayadkar, for the Respondent

Final Decision : Allowed

Judgement

Arun Mishra, J.

These appeals arise out of common award dated 29-9-1997 passed by MACT, Shivpuri in claim cases No. 67/92 and 29/92.

Two separate claim petitions were filed by the claimants claiming compensation on account of death of Shri Rameshchandra Sharma and Shri Sanjay Yadav. They were traveling in truck (D.D.L. 1536) along with their goods. Shri Rameshchandra Sharma was going from Pithampur to Hathras along with his goods in the said vehicle. Shri Sanjay Yadav was a servant along with him. The said truck met with an accident when it dashed the rear side of other stationed truck. Truck was driven as per the claimants in rash and negligent manner by Shri Rameshwar Giri. Truck was owned by M/s Aayshar Motor Ltd. and insured with New India Assurance Company Ltd.

In claim case No. 29/92 filed on account of death of Shri Rameshchandra Sharma it was averred that deceased was employed as Plant Manager in Rajsheel Kohar Foam Products Pvt. Ltd. Pithampur. He had obtained better employment in a Pvt. Company in the capacity of Plant Manager. He was going to Hathras along with his goods and servant in order to join at Delhi. He was earning Rs. 4,800/- per month. Compensation of Rs. 11 lacs was claimed.

In claim case No. 67/92 relating to death of Shri Sanjay Yadav it was claimed that deceased used to earn Rs. 700/- per month. His age was 18 years. Compensation of Rs. 2,50,000/- was claimed.

Owner and driver of the vehicle remained ex parte.

The insurer New India Assurance Company Ltd. in the written statement contended that vehicle was driven by driver in violation of terms and conditions of policy of insurance, hence, insurer was not liable to make indemnification. Driver was not holding valid and effective driving licence, hence, claim petitions be dismissed.

Learned Claims Tribunal has found that the driver of the truck was negligent, owing to which the truck met with an accident and Shri Rameshchandra Sharma and Shri Sanjay Yadav sustained injuries and died. In case of death of Shri Rameshchandra Sharma lump sum compensation of Rs. 50,000/- has been awarded whereas in the case of death of Shri Sanjay Yadav compensation of Rs. 50,000/- has been awarded along'' with interest @ 12% per annum from the date of filing of claim petition till realization. The claimants have preferred these appeals for enhancement of compensation and also for saddling the liability on the insurer.

Shri R. P. Gupta, Learned Counsel for the appellants in both the cases has submitted that income of the deceased has not been assessed; compensation awarded is highly inadequate. Considering the income of the deceased suitable compensation be awarded by applying multiplier method. He has fairly stated that it is a case where there was breach of terms and conditions of insurance policy. Accident took place in the year 1992, as such insurer can be given liberty to recover amount from insured in the light of the decision of Sri Pramod Kumar Agrawal and Another Vs. Smt. Mushtari Begum and Others, .

Shri Shriniwas Gajendrayadkar, Learned Counsel for respondent No. 3, insurer; has submitted that insurer has been rightly exonerated; it was not permissible before the amendment in the Motor Vehicles Act to carry the owner with the goods. He has placed reliance on the decisions of the Apex Court in New India Assurance Company Ltd. v. Asha Rani and Others, (2003)2 SCC 223 and in Oriental Insurance Company Ltd. Vs. Devireddy Konda Reddy and Others etc. etc. and Jogi Subbamma and Others etc. etc., to submit that insurer is not liable to make the payment of compensation.

First we come to the question of quantum of compensation in both the appeals.

M.A. No. 50/98 has been preferred by the dependents of Shri Ramehschandra Sharma. Age of Shri Rameshchandra Sharma was above 35 years and below 40 years. He was working as plant Manager and used to be paid a sum of Rs. 2,500/- per month by Rajsheel Kohar Foam Products Pvt. Ltd. Pithampur which service he had resigned on 17-4-1992 as apparent from certificate (Ex. P. 4). He was also allotted residential quarter in the factory premises, as he had obtained the better employment in Delhi as apparent from appointment order (Ex. P. 3), he was appointed on the salary inclusive of all the perks at Rs. 4,800/- , further bifurcation is not available with respect to perks and the salary in the said certificate (Ex. P. 3) but the fact remains that deceased was appointed in Delhi and he was going to Hathras on the fateful day in the said truck while he had met with an accident, thus, factum of appointment order (Ex. P.3) which is stated by widow of the deceased, Smt. Karuna Sharma (C. W. 1), finds support from the circumstances enumerated in the case, thus, in our opinion in the absence of perks being separately specified, as the deceased was earning Rs. 2,500/- per month as apparent from certificate (Ex. P.4) with the previous employer, he must have been appointed at the salary of Rs. 3,000/- per month in Delhi, we exclude the remaining amount as that may be relating to perks, taking the income of salary at Rs. 3,000/- per month, 1/3rd amount as the amount deceased would have incurred on himself had he been alive, thus, the loss of monthly dependency comes to Rs. 2,000/- , annual loss of dependency comes to Rs. 24,000/- ; multiplier applicable in the age group of 35-40 years is that of 16 as widow and minor daughter are the claimants, we apply the aforesaid multiplier, thus, compensation on account of loss of dependency comes to (24,000 x 16) Rs. 3,84,000/- . In addition, the claimants are entitled for sum of Rs. 2,000/- for funeral expenses, Rs. 2,500/- on account of loss of estate, Rs. 5,000/- on account of loss of expectancy of life and Rs. 5,000/- is further awarded on account of loss of consortium to the widow. Thus, total compensation comes to Rs. 3,98,500/- (Rs. Three lacs ninety eight thousand five hundred). The compensation awarded by us to carry interest at the rate of 6% per annum from the date of filing of claim petition till realization. We hereby set aside the direction of the Claims Tribunal of making payment of interest at the rate of 12% per annum.

M. A. No. 36/98 has been preferred by Smt. Nilabai, the mother of Shri Sanjay Yadav. Admittedly, age of Shri Sanjay Yadav was 18 years, though he was a servant but he was drawing salary of Rs. 700/- per month but in our opinion it would be proper to at least assess the income which is prescribed for non-earning member in second schedule of Motor Vehicles Act considering the future prospects also which is Rs. 15,000/- per annum. Making 1/3rd deduction towards self expenditure, loss of annual dependency comes to Rs. 10,000/- . Multiplier which is applicable is that of 16 at the age of 18 years. Age of the mother has been mentioned in the claim petition is 38 years whereas in the deposition sheet it was recorded as 60 years. We assess the age in circumstances of the case as no finding has been given with respect to the age as 50 years; we apply the multiplier of 13 in order to award just compensation on account of death of Shri Sanjay Yadav, thus, compensation on account of loss of dependency comes to (10,000 x 13) Rs. 1,30,000/- . In addition, the claimant is entitled for sum of Rs. 2,000/- for funeral expenses, Rs. 2,500/- on account of loss of estate, Rs. 5,000/- on account of loss of expectancy of life, thus, total compensation comes to Rs. 1,39,500/- (Rs. One lakh thirty nine thousand five hundred). The compensation awarded by us to carry interest at the rate of 6% per annum from the date of filing of claim petition till realization. We hereby set aside the direction of the Claims Tribunal of making payment of interest at the rate of 12% per annum as that rate was not reasonable one at the time when award was passed.

Coming to the question of liability of the insurer, it has not been disputed at bar that both the deceased were traveling in the goods vehicle with their goods in the year 1992, risk of the owner traveling with goods in the goods vehicle has been covered by way of effecting amendment made in the year 1994, it appears that premium was also not realized by the insurer to cover the risk of the owner traveling with goods, hence, insurer was not liable. However, in the light of the decision of Sri Pramod Kumar Agrawal and Another Vs. Smt. Mushtari Begum and Others, in which the earlier decisions have been considered by the Apex Court. The claimant can recover the amount from insurer and insurer in turn can recover the amount from insured. The decision relied upon by Shri Shriniwas Ganjedrayadkar, Learned Counsel for insurer in New India Assurance Company Ltd. v. Asha Rani and Others is not authority on the proposition as laid down in Pramod Kumar case (supra) for similar reason, the other decision relied in Oriental Insurance Company Ltd. v. Devireddy Konda Reddy and Others (supra) is distinguishable. In the light of the decision of Pramod Kumar (supra), we have given the liberty to the claimants to recover the amount from the insurer apart from driver and owner and insurer in turn is at liberty to recover the amount from insured.

Resultantly, both the appeals are allowed in part accordingly. Liability is held to be of driver and owner, however, liberty is given to the claimants to recover the amount from insurer and insurer in turn is at liberty to recover the amount from owner in accordance with law. Parties to bear their own costs as incurred.

