(2013) 10 MP CK 0148

In the Madhya Pradesh High Court

Case No : M.A. No''s. 1123 of 2009 and 1253 of 2009

Omkarnath Dwivedi — APPELLANT

Vs

Chandan Mahor and Others
 Chandan Mahor and Others Vs Omkarnath Dwivedi and Others — RESPONDENT

Date of Decision : 11-10-2013

Acts Referred:

Citation : (2013) 10 MP CK 0148

Hon'ble Judges : M.K. Mudgal, J

Bench : Single Bench

Advocate : R.P. Gupta in M.A. No. 1123/2009, Smt. Meena Singhal and Mr. A.K. Mangal, in M.A. 1253/2009, for the Appellant; R.P. Gupta, Advocate for respondent No. 1 in M.A. No. 1253/2009, Smt. Meena Singhal and Shri A.K. Mangal, Advocates for respondents No. 1 to 5 in M.A. No. 1123/2009, Shri B.K. Agarwal, Advocate for the respondent No. 7 in M.A. No. 1123/2009 and respondent No. 3 in M.A. No. 1253/2009, for the Respondent

Final Decision : Disposed Off

Judgement

M.K. Mudgal, J.—By this judgment both the appeals, M.A. No. 1123/2009 filed by the owner of the vehicle Shri Omkarnath Dwivedi and M.A. No. 1253/2009 filed by the claimants, arising out of the same impugned award dated 8.7.09 passed by the Third Additional District Judge cum Motor Accident Claims Tribunal (hereinafter referred to as the Claims Tribunal) in Claim Case No. 158/2008 are being decided simultaneously by a common judgment. Being aggrieved by the impugned award the owner of the vehicle has filed M.A. No. 1123/09 stating that the insurance company too was liable to pay the compensation awarded in the impugned order as the package policy covers all the liability of the passengers traveling in the vehicle. Nevertheless the learned tribunal erred in exonerating the insurance company without appreciating the nature of the policy and circular issued by the IRDA. The claimants have also filed M.A. No. 1253/2009 for enhancement of the amount of compensation. Besides, it has been stated that the insurance company too should be held responsible to pay the compensation.

2. The admitted facts are that the non-applicant No. 1 Omkarnath Dwivedi was owner of the vehicle No. M.P.07/B.A.0174 involved in the accident. The said vehicle was insured under package policy for the period from 22.2.06 to 21.2.07 by the insurance company I.C.I.C.I. Lombard/non-applicant No. 3. Bhupendra Singh Gurjar/non-applicant No. 2 was the driver of the said vehicle when the accident occurred.

3. The facts of the case in brief are that the deceased Rakha was going from Gwalior to Gaya on 19.12.06 alongwith her sons Chandan Mahor and Rajendra Mahor by vehicle Tavera No. M.P.07/B.A.0174 owned by Omkarnath Dwivedi-appellant of M.A. No. 1123/2009. The said vehicle being driven rashly and negligently by the driver Bhupendra Singh Gurjar/non-applicant No. 2 met with an accident with a tractor of an unknown number near Khaga check post, Fatehpur. Resultantly, Smt. Rekha Mahor sustained serious injuries and finally died succumbing to them. In this connection, the legal heirs of the deceased filed a claim petition for the compensation of Rs. 7,80,000/- alongwith 12% interest on it. The learned claims tribunal awarded the compensation in favour of the applicants of Rs. 3,27,500/- vide the impugned award dated 8.7.09 against the owner and driver of the vehicle. However, the insurance company was exonerated from the liability of the awarded compensation on the ground that the policy being third party policy does not indemnify the liability of the owner of the vehicle for the death of a person/persons traveling in the vehicle.

4. The learned counsel for the appellant/owner of the vehicle submits that the said vehicle had insurance under package policy by the insurance company/non-applicant No. 3 on the date of accident so the insurance company was also liable to pay the compensation awarded by the learned claims tribunal. The counsel placing reliance on the judgment Deepak Construction Co. Ltd. Vs. Rambabu and Others, and Amrit Lal Sood and Another Vs. Smt. Kaushalya Devi Thapar and Others, as well as tariff dated 16.11.09 issued by Insurance Regulatory and Development Authority has contended that the impugned award being contrary to the tariff issued by IRDA be modified so as to hold the insurance company liable to pay the compensation.

5. The learned counsel for the claimants also supports the arguments advanced by the learned counsel for the owner of the vehicle and further submits in M.A. No. 1253/2009 filed by the claimants for enhancement of the award that award of Rs. 3,27,500/- is on the lower side as only Rs. 5000/- has been awarded towards love and affection to the appellants. The said amount is very meagre considering the number of children of deceased. The counsel further urged that the amount awarded for funeral expenses is also not proper. The learned counsel placed reliance on the judgments Rajesh and Others Vs. Rajbir Singh and Others, and Vimal Kanwar and Others Vs. Kishore Dan and Others, .

6. Per contra on behalf of the insurance company learned counsel has submitted that the vehicle was insured only for the third party risk cover. The deceased who was traveling in the said car was not the third party for the purpose of the policy.

The vehicle was registered for personal use and it was hired on rent for pilgrimage to Gaya against the registration of the vehicle which was meant for private use only. Therefore, the insurance company is not liable to pay the compensation awarded by the learned claims tribunal. The counsel further pleads that the findings of the tribunal being based on proper reasonings do not require to be interfered in. To bolster his submissions, the learned counsel has relied upon the judgment which are referred in para 19 of the impugned award.

7. Arguments were heard and the record was perused.

8. On behalf of the insurance company, the statements of Anirudh Devraj (NAW2) and Puneet Jain (NAW3) were produced under Order 18 Rule 4 of C.P.C. and they have proved the schedule cum policy certificate Ex-D/2. Both the witnesses have deposed in their chief examination that the said vehicle was insured under private car package policy for the period from 22.2.06 to 21.02.07. On perusal of the said statements, it has come on record indisputably that the vehicle Tavera No. M.P.07/B.A.0174 stood insured on the date of occurrence under the package policy. The witness Puneet Jain (NAW2) did not come forward to the court for cross-examination. Hence his statement produced on affidavit has no significance.

9. On behalf of the owner, the insurance cover note Ex-D/1 has been produced on record. However, the witness, Anirudh Devraj (NAW3) has denied in para 6 and 7 of his statement during the cross-examination that the policy cover note Ex-D/1 was issued by his insurance company and further stated that the insurance company had issued the certificate cum policy schedule Ex-D/2 which is a photocopy. The witness (NAW3) has admitted in para 9 that the Ex-D/2 was reproduced from the computer by Puneet Jain who had certified this document but Puneet Jain did not turn up before the court to certify the said document whereas he has produced his statement of chief examination under Order 18 Rule 4 of the C.P.C. The witness Anirudh (NAW3) has no personal knowledge about the Ex-D/2 and he has deposed in his statement only by mere reading of the document. To prove the Ex-D/2 the original record was not brought before the court nor was the person produced who had signed the alleged document Ex-D/2. The witness has deposed in para 19 of his statement that in Ex-D/2 where the number written of the cover note at place E to E is the same as mentioned in the cover note Ex-D/1 which is an original document and it has been issued by the insurance company. Since the cover note was issued by the insurance company, it was obligatory on its part to prove the fabrication of Ex-D/1 but it was not done so. Hence consideration of the aforesaid evidence leads to the conclusion that the policy cover note Ex-D/1 was issued by the insurance company/non-applicant No. 3 and the document Ex-D/2 produced by the insurance company is a suspicious document on that basis no advantage can be given to the insurance company.

10. It is evident from the Ex-D/1 that the vehicle M.P.07/B.A.0174 was insured by the insurance company/non-applicant No. 3 under package policy. The IRDA

has issued a circular dated on 16.11.09 wherein it has been provided that the risk of the occupants traveling in private car is covered in package policy. The said issue has been taken into account by this court in the case of Deepak Construction Co. Ltd. Vs. Rambabu and others (supra). This court has held that no extra premium has to be paid by the owner of the vehicle for covering the risk of the fellow passengers as per the package policy.

11. Having considered the evidence in the case, it leads to the conclusion that the learned claims tribunal has erred in exonerating the insurance company from the liability of paying the compensation to the claimants on behalf of the insurer/ owner of the vehicle Omkarnath Dwivedi. Therefore, it is held that the insurance company is liable to pay the compensation awarded in this case.

12. Now, the question under consideration is whether the compensation awarded by the learned claims tribunal is sufficient or not? In this regard, the learned tribunal has discussed the evidence and drawn the conclusion in para 24 to 28 of the impugned award. Indisputably, the deceased was a house wife and she had no source of income from any government or private office. In para 1 of the claim petition the income of the deceased around Rs. 3000/- has been stated by the claimants but no proper source of it was explicitly given in the petition despite that the learned tribunal has held the deceased''s income Rs. 3000/- per month.

13. So far as age of the deceased is concerned to prove her age not a single document has been produced on record by the applicants. The learned tribunal having discussed the evidence has determined the age of the deceased at more than 45 years in para 28 of the impugned award. The claimants have averred in the petition that the deceased''s age was about 42 years which does not appear to be prima facie correct as her children''s age are between 18 to 24 years as mentioned in the application. It was obligatory for the applicants to have produced a document such as voter list, ration card or any convincing document whereby the age of the deceased could have been proved but they have deliberately suppressed the document regarding the age of the deceased. Besides, age of the deceased is mentioned 50 years in the postmortem report Ex-P/4. On the date of postmortem there was no reason for the doctor of postmortem for writing the wrong age of the deceased. Though the said age has also been written approximately yet it has substance considering the age of her children. Thus, if is inferred that the conclusion drawn by the learned claims tribunal regarding the age of the deceased being based on proper reasonings is justified.

14. The learned tribunal after deducting the amount i.e. Rs. 1000/- of the total monthly income for the personal expenses of the deceased, the loss of Rs. 2000/- per month to the dependants, has been calculated in para 26 and 27 in the impugned award. The learned counsel submits that the learned claims tribunal has committed a mistake in assessing the loss of the claimants as the personal expenses of the deceased ought to have been deducted at 1/5th of her

monthly income because her legal heirs are five as mentioned in the petition. The said submission does not seem to be acceptable as all the applicants being major are not dependants of the deceased.

15. The learned claims tribunal has applied the multiplier of 13 years which also appears to be convincing as the age of the deceased has been found to be more than 45 years. Considering the said age as per the schedule a multiplier of 13 would be applicable. On the basis of which, the amount of loss of earning has been determined at Rs. 3,12,000/- apart from this Rs. 6000/- for ambulance conveyance, Rs. 2000/- for funeral, Rs. 5000/- for love and affection and Rs. 2500/- for loss of estate have been awarded. The total amount of compensation has been determined at Rs. 3,45,500/-. However, the amount of Rs. 5000/- awarded for love and affection is on lower side and considering the number of children Rs. 20,000/- is awarded. In the same manner Rs. 2000/- awarded for funeral expenses is also not proper. Hence Rs. 5000/- is awarded in this head. Therefore total Rs. 18,000/- is enhanced.

16. Considering the facts and recorded evidence, allowing the M.A. No. 1123/2009 filed by the owner of the vehicle, it is held that the insurance company I.C.I.C.I./non-applicant No. 3 is liable to pay compensation as awarded by the claims tribunal and the appellant may recover the amount deposited by him with the claims tribunal towards the award. The M.A. No. 1253/2009 filed by the claimants is partly allowed and Rs. 18,000/- is enhanced. Hence, the appellants/claimants shall be entitled to the total compensation of Rs. 3,45,500/- instead of Rs. 3,27,500/-. The enhanced amount of Rs. 18,000/- shall carry interest @ 6% from the date of application. The enhanced amount shall be deposited by the insurance company with the learned tribunal and learned tribunal is directed to disburse it to the appellants equally.

With the aforesaid modification, the appeal stands disposed of.

