
(2001) 04 MP CK 0041

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 235/98

Oriental Insurance Company Limited

APPELLANT

Vs

Jamnabai and Others

RESPONDENT

Date of Decision : 17-04-2001

Acts Referred:

Motor Vehicles Act, 1988 — Section 146, 168, 171, 173, 2(34)

Citation : (2002) 2 ACC 52 : (2003) ACJ 127 : (2001) 4 MPHT 293 : (2001) 3 MPLJ 297

Hon'ble Judges : Bhawani Singh, C.J.; A.M. Sapre, J

Bench : Division Bench

Advocate : P. Meetha, for the Appellant; G.K. Neema, for the Respondent

Judgement

Bhawani Singh, C.J.

This appeal is directed against an award of Motor Accidents Claims Tribunal, Dhar in Claim Case No. 50/1997, dated 24-12-1997.

Claimants are wife, children and mother of deceased Umraosingh who was 32 years old at the time of accident which took place on 10-6-94 when he was hit by his tractor near a land where it was being taken by the driver who had been employed by Apa s/o Bhuwan. Claim of Rs. 22,88,500/- (Twenty two lakhs eighty eight thousand and five hundred) has been raised for the death of deceased who according to the claimants was earning yearly income of Rs. 1,00,000/- (One lakh). This vehicle was insured with the Oriental Insurance Company Limited 569/3, M.G. Road, Indore (M.P.). The allegation is that it was being driven rashly and negligently resulting in serious injuries on the person of the deceased who could not survive despite being taken to the Hospital. Due to his death the claimants have been rendered to suffer immensely domestically and financially. Owner and driver of the vehicle did not appear to answer the claim, therefore, proceeded ex-parte. The appellant stated that the accident took place at private place and not in public place therefore, Motor Vehicles Act is not applicable. Further, deceased was himself owner of the vehicle therefore, not entitled to

claim compensation. Above all, driver did not possess valid driving licence to drive the vehicle therefore, liability for payment of compensation cannot be rested on the appellant. The Claims Tribunal has come to the conclusion that on 10-6-1994 deceased was going from his house to the field slowly and on the left side but the tractor driven rashly and negligently hit him causing serious injuries resulting in death on 16-6-1994. The Claims Tribunal held that claim petition was maintainable and accident had taken place at public place and compensation of Rs. 2,72,000/- (Two lakhs and seventy thousand) has been awarded carrying interest at the rate of 12% from the date of application. Appellant is not satisfied with the award therefore, this appeal. Similarly, the claimants have filed cross-objection seeking enhancement of the compensation.

Heard the learned counsel for the parties and record perused.

Shri Pramod Meetha, learned counsel for the appellant forcefully contended that award is liable to be set aside against the appellant, since claimants cannot claim compensation for the death of deceased who himself happen to be the owner of the vehicle. Learned counsel placed reliance on Hemlata Sahu and Others Vs. Ramadhar and Another, and United India Insurance Co. Ltd. Vs. Valliammal, in support of the contention. This contention is opposed by Shri Neema learned counsel for the claimants. Counsel for the claimants drew our attention to decisions like The New India Assurance Company Ltd., Vijayawada Vs. Doredla Satyanarayana and others, ; Laliya Bai Vs. Ramesh and Others, and Chimajirao Kanhojirao Shirke and Another Vs. Oriental Fire and General Insurance Co. Ltd., . The first question to be considered in this case is, whether the place where accident took place, falls within the definition of "Public Place" u/s 2(34) of Motor Vehicles Act, 1988. The Claims Tribunal has come to the conclusion that the accident took place near the field owned by Shivgiri Maharaj. The definition of "Public Place" has to be construed liberally, broadly and pragmatically and not in a pedantic and narrow sense with a view to advance the cause of justice and not to defeat the same. Assuming, the vehicle may have crossed the "Public Place" to some extent, and was getting to the field of Shivgiri Maharaj, it can not be construed that the field of "Shivgiri Maharaj" was private place in the strict sense of the term. Generally, fields in villages may be owned and possessed by a particular land owner but that does not mean that no one can pass through the same unless there is a specific prohibition from doing so. We do not feel any difficulty in holding that the place where the accident took place was a "Public Place" and the contention to the contrary is liable to be rejected. Next question is whether the claimants are entitled to claim compensation for the death of the deceased who is stated to be the owner of the vehicle alongwith Apa. The case of Valliammal (supra) is not applicable to this case since it is distinguishable on facts. There deceased himself was driving the vehicle and his loss was not covered by the Policy. In Hemlata Sahu's case (supra). This Court exonerated the Insurance Company from the liability because evidence did not suggest payment of premium for the purpose of covering the risk of the owner himself. Therefore, this case is also distinguishable and would not be of any help to the

appellant. In Doredla Satyanarayan 's case (supra), it has been held that Insurance Company is liable to pay compensation for the death of owner of truck in case he happens to travel in the vehicle alongwith his goods. It would be appropriate to quote Paragraph 14 of the Judgment which explains the issue in comprehensive manner :

Let us take a case where the owner of a vehicle walking on a highway was knocked down by his own vehicle driven rashly and negligently by a duly appointed driver having a valid licence. Is it permissible for the insurer of the said vehicle to avoid its liability to satisfy the claim laid against it by his legal representatives on the ground that the policy of insurance does not cover owner's risk ? In our considered view, the answer could only be "no", particularly in the light of the principle enunciated in Skandia 's case 1987 ACJ 411 (SC). We have, therefore, no hesitation to add that the same principle will apply in all fours to the facts of the case in C.M. A. No. 1041 of 1990. In Laliya Bai's case, it has been held that the policy taken by the Insurance Company does not end with the death of the insured. It passes on successors alongwith benefits. Successors can claim the benefits including those which pertain to the death of insured. The decisions of Punjab and Haryana High Court in Kusum Sood and others case (supra) also supports the claim of the respondents [See also Chimajirao Kanhojirao Shirke and Another Vs. Oriental Fire and General Insurance Co. Ltd., . Facts of this case suggest that the deceased was owner of the vehicle alongwith Apa. Actually he was not travelling by vehicle. It was being driven by driver appointed by Apa and was injured when the tractor was being taken towards the land. Apart from the fact that insured does not stand excluded simply because he happens to be the owner of the vehicle, deceased in this case falls within the definition of third party. Further, the policy of insurance also supports the case of the claimants. Apart from the payment of normal premium towards damage of the vehicle, the deceased has paid Rs. 150/- against "Own Damages". Learned counsel for the appellant contends that this amount pertains to damage to the vehicle. This does not appear to be so, because for damages to the vehicle, an amount of Rs. 1,570/- has been paid. Explanation that payment of Rs. 150/- against "Own Damage" is towards basic premium is nowhere in the evidence recorded in the case and the tariff document shown to us for the first time does not change our assessment of the matter. For this reason as well we hold that the Insurance Company is liable to pay compensation for the death of Umraosingh.

The next question is the determination of just compensation. The deceased was 32 years old at the time of accident. According to the claimants the annual income of deceased was Rs. 1,00,000/- out of agriculture. He possessed 1.885 hectares of land in District Dhar. He possessed tractor for cultivation, which means, he could earn reasonable income out of agriculture. The Tribunal has assessed his income at Rs. 15,000/- per year. We think this assessment is completely erroneous. Annual income of Rs. 15,000/- is assessed in case of unemployed person as per Schedule 2 of Motor Vehicles Act, 1988. The claimants

have clearly mentioned about the income of deceased. As said, evidence discloses that he was cultivating land by use of tractor, therefore, it cannot be said that his annual income was Rs. 15,000/- per year. How can the family of 5 members survive on monthly income of Rs. 1,250/-. Therefore, the assessment of income by the Claims Tribunal is thoroughly inaccurate. It would be just and proper to make lumpsum enhancement of Rs. 78,000/- (Seventy eight thousand) in addition to what has been awarded by the Claims Tribunal in this case, towards the loss of income. The enhanced compensation shall carry interest at the rate awarded by the Claims Tribunal. The compensation be paid within two months from today.