(2011) 04 MP CK 0001

In the Madhya Pradesh High Court

Case No : M.A. No''s. 2330 and 2372 of 2008

Radheshyam APPELLANT

Vs

Radhabai and Others RESPONDENT

Date of Decision : 08-04-2011

Acts Referred:

Citation : (2000) ACJ 1484 : (2012) 2 TAC 67

Hon'ble Judges : P.K. Jaiswal, J

Bench : Single Bench

Advocate : V.N. Palsikar, for the Appellant; M. Jain, Advocate for the Respondent No. 1 and Shri Pradeep Gupta and Shri Bhaskar Gupta, Advocates for the Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

P.K. Jaiswal, J.—M.A. No. 2330 of 2008 has been filed by the claimants seeking enhancement of compensation amount awarded by the Tribunal and M.A. No. 2372 of 2008 has been filed by the owner of the vehicle challenging the exoneration of the Insurance Company by the Claims Tribunal. These appeals have been filed against the award dated 30th April, 2008 passed by the Member Judge, Motor Accident Claims Tribunal, Shajapur, in Claim Case No. 17 of 2008.. Brief facts of the case are that on 11th, February 2007 at 2.45 p.m. in the afternoon deceased respondent was going with his friend Ramchandra, who was driving the tempo trax bearing registration No. M.P. 39-D-0406, for washing the vehicle tempo trax. When the vehicle reached at gram Mithaanpur near Goddess Dayalu Temple at A.B. Road, the driver of the tempo trax deceased Ramchandra, driving rashly and negligently lost control of the vehicle and fell into the well 150 ft. away from the road. Due to the aforesaid accident both Rajaram and Ramchandra died on the spot. The respondent No. 1 is the owner of the offending tempo trax bearing registration No. M.P. 39-D-0406 and respondent No. 2 is the Insurance Company from whom this vehicle was insured on the date of accident. The appellants are wife, father, mother, minor sisters and brother.

The appellant No. 2 father of the deceased is suffering from serious ailment of head. He is very weak and cannot do any work due to his physical weakness. The Tribunal assessed the monthly income of the deceased @ of Rs. 1,500/- per month and calculated the loss of income @ of Rs. 18,000/- per annum. He found that the age of the deceased at the time of accident was 21 years and applied the multiplier of 17 and calculated the sum of (18,000 x 17)= Rs. 3,06,000/- as loss of income. After deducting 1/3rd (1,0,2000) towards personal and living expenses of the deceased, assessed the sum of Rs. 2,04,000/- as loss of dependency of the appellants and on other conventional heads the Tribunal awarded Rs. 9,500/-. Thus, the Tribunal awarded a sum of Rs. 2,13,500/- alongwith the interest @ of 6% per annum from the date of application and exonerated the Insurance Company on the ground that at the time of accident Ramchandra driver of the tempo trax bearing No. M.P. 39-D-0406 was not having valid driving licence to drive the vehicle.

2. Mr. V.N. Palsikar, and Mr. M. Jain, learned Counsel for the claimants and owner of the vehicle submitted that the Tribunal has committed an error in exonerating the Insurance Company without appreciating that no licence was placed on record and was on the Insurance Company to prove that the driver had no driving licence to escape liability, mere non-production of the of the licence by the driver does not exonerate the Insurance Company.

3. On the other hand, Mr. Pradeep Gupta, Advocate for the Insurance Company supported the award passed by the Tribunal and submitted

that no error has been committed by the Tribunal in passing the impugned award and in exonerating the Insurance Company.

4. A perusal of the written statement filed by the owner of the offending vehicle before the Claims Tribunal indicates that the driver Ramchandra was having a valid licence to drive the vehicle. As per reply of Insurance Company driving licence was in the name of Ramchandra son of Khushilal was not having any valid licence and driving licence was in the name of Ramchandra son of Bansilal. Photo copy of the licence which has been relied upon by the Tribunal has not been proved by any of the party and it does not form the part of the record of the case containing Exhibited documents. No attempt was made by the Insurance Company before the MACT to prove that driver of the tempo trax was not having valid licence or he was driving the vehicle in violation of the policy conditions. The burden to prove that there was breach of the contract of Insurance was squarely placed on the shoulder of the Insurance Company. Further the RTO which issues the driving licence copy, the record of the licence issued by it have not been examined before the Claims Tribunal. The Insurance Company could not have got the evidence produced to substantiate his allegation. As per the reply it is the Insurance Company which complaints that there has been a breach of one of the important terms of the contract of Insurance as evidenced by the policy of insurance. If a breach of term of a contract permits a party to the contract to not perform the contract the burden is squarely on that party which complains of

breach to prove that the breach has been committed by the other party to the contract. Not an iota of evidence has been led by the Insurance Company to show that the driver Ramchandra did not have a valid driving licence to drive the vehicle. Photo copy of the licence which has been relied by the Tribunal has not been proved any of the party and it does not form the part of the record of the case containing exhibited documents.

5. The Apex Court in the matter of Narcinva v. Kamat and Another v. Alfred Antonio Doe Martins and Others, reported in 1985 ACJ 397 : 1985 (2) T.A.C. 396, has held that non-production of the licence by the driver does not exonerate the insurance and the Insurance Company in such cases is liable to indemnify the award. In the case in hand no notice has been issued by the Insurance Company to the driver and owner of the vehicle nor any witnesses were examined on behalf of the Insurance Company to prove the fact that at the time of accident driver was not having any valid licence to drive the vehicle. Learned Counsel for the Insurance Company submitted that no licence was issued in the name of Ramchandra son of Bansilal. As per Ext. P/3 seizure memo the licence was in the name of Ramcharan son of Bansilal whereas the father name of Ramchandra is Khushilal. From the Exts. P/3 and P/4 it appears that name of the father is Bansilal @ Khushilal. As per reply of the Insurance Company the matter was not investigated by the Investigating Officer nor the Insurance Company relied upon the evidence of the Investigating Officer and did not summon the driver and no record from the Regional Transport Authority was produced. In my view, this evidence is not sufficient to discharge the burden which was cast on the Insurance Company. It did not summon the driver of the vehicle. No record from Regional Transport Authority has also been produced. In these circumstances, the Insurance Company has not discharged the burden cast upon it.

6. Thus, it is found that the Tribunal has committed an error in exonerating the Insurance Company on the basis of a photo copy of the licence which has not been proved and it does not form the part of the record of the case containing exhibited documents, therefore, the order of the Tribunal, exonerating the Insurance Company is set aside and it is held that the Insurance Company is liable to satisfy the award passed by the Tribunal.

7. In respect of quantum of compensation, it is submitted by the learned Counsel for the claimants that at the time of death deceased Rajaram was working as driver of tempo trax owned by Daulat Singh Sisodiya. Ext. P/9 is driving licence of Rajaram and Ext. P/8 is salary certificate issued by the said Daulat Singh Sisodiya (A.W.3). This witness in his statement has very categorically stated that deceased Rajaram was working with him and his salary was Rs. 3,200/- per month.

8. In view of the above unrebutted evidence, it can be safely said that the deceased was earning a sum of Rs. 3,200/- per month i.e. Rs. 38,400/- per annum. Looking to the size of the dependants of the deceased and in view of the law laid down by the Apex Court in the case of Smt. Sarla Verma and Others Vs.

Delhi Transport Corporation and Another, the deceased must be spending 1/4th towards personal and living expenses. After deducting 1/4th amount from the total amount of Rs. 38,400 the loss of dependency of the appellants comes to Rs. 28,800/-. Looking to the age of the deceased the multiplier of 17 would be applicable. On applying the multiplier of 17, the amount on the head of loss of dependency comes to (28,800x17) = Rs. 4,89,600. On the other conventional heads the appellants are entitled for a sum of Rs. 30,400/-. Thus, the total amount of compensation comes to (4,89,600 + 30,400) Rs. 5,20,000/-. On deducting the already awarded by the Tribunal the enhanced amount comes to Rs. 3,06,500 (5,20,000-2,13,500). The enhanced amount of Rs. 3,06,500/- shall carry the interest @ of 7.5% per annum from the date of filing of application till its realization.In the result, both the appeals are allowed in part to the extent as indicated hereinabove, but without any orders as to costs.