
(2017) 08 MP CK 0040
In the Madhya Pradesh High Court
Case No : 2067 of 2008

Raju @ Rajkishore @ R.K. Singh

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 21-08-2017

Acts Referred:

[Motor Vehicles Act, 1988](#), [Section 165](#),
[Section 165](#), [Section 166](#), [Section 166](#) - Claims Tribunals - Application for compensation

Citation : (2017) 08 MP CK 0040

Hon'ble Judges : Anjuli Palo

Bench : Division Bench

Advocate : Amrit Ruprah, S.K. Saini

Judgement

1. This appeal has been filed by the appellant/company against the award dated 17.03.2008, passed by learned Additional Motor Accidents Claims Tribunal, Dindori in M.C.C. No.7/2007, whereby the respondent/claimant has been awarded Rs. 32,859/- with interest @ 5% per annum.

2. In this appeal the Insurance Company has particularly challenged the findings of the learned Tribunal on the ground that the appellant has got a liability to indemnify the owner of the insured vehicle, when the insured vehicle causes accident resulting in death or injury to any third person, but when the insurer/owner, is himself the claimant then the claim application is not maintainable under Section 166 of the Motor Vehicle Act. Learned counsel for the appellant placed reliance upon the case law reported in M.P. State Road Transport Corporation and others Vs. Abdul Rahman and others [1997 (II) MPLJ 224] & Hemlata Sahu & others Vs. Ramadhar and another [2000 ACJ (I) 134].

3. The cross objection has been filed by the respondent/claimant on the grounds that the learned Tribunal wrongly awarded less compensation in favour of the respondent. No amount has been awarded on account of loss of income of the period of treatment and future treatment. Learned Tribunal has erred in

assessing the compensation without adopting multiplier system. The assessment of the compensation is not proper and reasonable, and deserves to be enhanced under the head of transportation, vehicle maintenance, agonies, discomforts, loss of income, loss of enjoyment and attendant expenses also. Therefore, the respondent/claimant prayed to enhance quantum of compensation of allowing cross-objection.

4. Learned counsel for the respondent/claimant opposed the contention of the appellant on the ground that such type of objection has not been raised in its written statement. Extra premium was paid by the claimant, hence, company is liable to pay compensation in favour of the claimant.

5. Learned Tribunal found that the claimant respondent sustained grievous injuries in his left hand. He has not sustained any kind of disability. The respondent/claimant has not established that Rs. 40,000/- was spent on his treatment. Hence, learned Tribunal awarded compensation to the tune of Rs.32,859/- in different heads.

6. Having heard learned counsel for the parties. Perused the record.

7. Under Section 165 of the Motor Vehicles Act, 1988 it is prescribed that the Claims Tribunal is meant for adjudicating upon claims for compensation arising out of the use of motor vehicle involving death/injury or property loss of a third party. No such Tribunal can adjudicate upon a dispute which is the result of a damage to oneself i.e. in a case where the vehicle owner driving his own vehicles suffers an injury.

8. In case of Dhanraj Vs. New India Assurance Company Ltd. & Anr. [(2004) 8 SCC 553] it is clearly held that the liability of the insurer does not extend to the owner of the vehicle and the claim application is liable to be dismissed. This has been followed in case of Oriental Insurance Co. Ltd. Vs. Jhuma Saha [AIR 2007 SC 1054], wherein it has been held that:- "liability of the insurer company is to the extent of indemnification of the insured against the respondent or an insured person, a third person or in respect of damages of property. Thus, if the insured cannot be fastened with any liability under the provisions of Motor Vehicles Act, the question of the insurer being liable to indemnify insured therefore, does not arise."

9. An application under Section 166 is based on the principle of negligence. In the absence of any negligence, no liability can be saddled in the instant case. It was pleaded by the claimant himself that while he was going on his motorcycle, suddenly a dog jumped before his bike. While trying to save the dog, the respondent/claimant fell down which caused the accident.

10. It is alleged by the respondent that the Insurance Company cannot escape from the liability of payment of compensation as Exh.P/1 Insurance Policy, by raising technical objections of provisions or forum while claims Tribunal is empowered to enquire the matter, for grant of benefit of compensation to

beneficiaries society and there is no any bar in the new added provisions in the Act.

11. Learned counsel for the respondent placed reliance in the case of Dhanraj Vs. New India Assurance Company Ltd. & another reported in (2004) 8 SCC 553 and Ningamma Vs. United India Insurance Co. Ltd. reported in 2009 (13) SCC 710.

12. In the instant case, the claimant himself is the owner of the Hero Honda Splendor Motor Cycle bearing registration No. MP 52 B-0376, the said vehicle was insured for a period of one year (w.e.f. 01.06.2005 to 31.05.2006) for first party. According to the claim itself in paragraph-23 as a premium Rs.722/- and Rs.706/- was paid by the claimant to the Insurance Company. The appellant has not been taken any specific plea with regard to additional premium paid by the claimant for his personal injury also. In Insurance Policy (Exh. P/1), it appears in Schedule a premium of Rs.517.88/- has been paid by the claimant for his own damage. Learned counsel for the appellant also suggested that the Insurance Company was responsible up to a limit of Rs.1,00,000/-. The respondent himself failed to establish that any extra premium was paid by him to the Insurance Company.

13. C.P. Singh (N.A.W.) has been examined on behalf of the appellant, he has narrated that this case is not been covered under the third party accident; hence, not tenable under Section 166 of the Motor Vehicles Act. No suggestion has been given to him also that extra premium was paid by the claimant. Hence, Insurance Company/appellant is not liable to pay compensation for injuries caused to the claimant/owner of offending vehicle.

14. By the acceptance of extra premium, the risk of the owner shall be covered yet the claim as contemplated under Sections 165 and 166 of the Act would not be maintainable before the Tribunal and the real forum either would be the Civil Court or the Consumer Redressal Forum under the provisions of the Consumer Protection Act, 1984. According to conditions of the policy, if the premium was paid by the owner the policy covers owner's own risk up to limited liability of Rs.1,00,000/.

15. For this findings reliance is placed on the following cases:- New India Assurance Co. Ltd. Vs. Kendra Devi & others AIR 2008 SC 490, it is held that :- "The deceased being the owner-cum-driver and without additional premium, according to insurance policy, particularly, the schedule of premium which shows that part from liability to public risk owner has paid only for paid premium and without additional premium/ coverage for owner-cum-driver, the Insurance Company is not liable to pay any compensation for death of the deceased who was owner-cumdriver."

[See also M/s National Insurance Co. Ltd. Vs. Gujrat Kishan Mazdoor Panchayat decided on 15.03.2013, Sapna Vs. Oriental Ins. Co. Ltd. (2008) ACJ 490].

Hemlata Sahu & others Vs. Ramadhar & another, 2000 ACJ 134, it was held that :

"No evidence to show that any separate premium was paid for the purpose of covering risk of the owner himself. The Insurance Company is not liable to pay compensation for injuries caused to the owner/insured because insurance company insures liability of the insured and does not insure the insured; under comprehensive policy. The owner can only claim reimbursement of damage caused to the vehicle."

16. In similar condition in the case of United India Insurance Co. Ltd. Vs. Lakshmi, 1990 ACJ 390 (Madras), the Madras High Court held that : "The owner of the lorry or the insured having himself died in the accident, caused by his own driver and there being no liability on his part or on the part of his legal representatives, towards any third party, the insurance company's liability does not at all arise."

Similar view has been taken by the Bombay High Court in the case of United India Insurance Co. Ltd. Vs. Kantabai, 1991 ACJ 22 (Bombay) and similar view also has been taken by Allahabad High Court in the case of Oriental Fires & General Insurance Co. Ltd. Vs. Shankuntala Devi, 1991 ACJ 177 (Allahabad).

17. In the light of above principles, it is clear that under the Policy (Exh.P/1) Insurance Company covered the liability of third party and not the insured himself. Thus, this Court finds that the learned Tribunal wrongly awarded the compensation under Section 166 of the Motor Vehicle Act in favour of the claimant.

18. Hence, the appeal filed by the Insurance Company is allowed, impugned award passed by the learned Tribunal is hereby set aside. Thus, the cross-objection filed by the respondent is dismissed. It will be open for the Insurance Company to make recovery of the award amount, if paid to the claimant in accordance with law.