

(1995) 04 MP CK 0032
In the Madhya Pradesh High Court
Case No : M.A. No. 357 of 1987

Rama alias Shaheeda Bi

APPELLANT

Vs

Aabid Hasan and Others

RESPONDENT

Date of Decision : 05-04-1995

Acts Referred:

Citation : (1995) ACJ 1172

Hon'ble Judges : P.N.S. Chauhan, J;D.K. Jain, J

Bench : Division Bench

Advocate : V.P. Verma, for the Appellant; H.B. Agrawal, for the Respondent

Judgement

P.N.S. Chouhan, J.—Raju Seth, owner of jeep No. MBJ 8477, which was insured with respondent No. 3 while driving the same on 13.11.1983 met with an accident and died. Along with him Azad who was travelling in the same jeep also received fatal injuries and died. His father filed Motor Accident Claim Case No. 4 of 1984 before the Motor Accidents Claims Tribunal, Seoni, wherein the award for Rs. 1,44,000/- was passed with direction that Rs. 15,000/- out of it was payable by the insurance company which was the upper limit of its liability under, the agreement and the rest of the amount was payable by the widow of Raju Seth who has preferred this appeal challenging the quantum of compensation awarded and contending that the policy of insurance being comprehensive there was no upper limit of insurer's liability.

2. The claimant's case in brief was that his son Azad was travelling in the jeep for hire. The accident took place due to rash and negligent driving by Raju Seth. Azad was aged 30 years at the time of death earning Rs. 1,000/- per month. Assuming expectancy of his life till 60, a sum of Rs. 3,60,000/- was claimed for loss of dependency and Rs. 20,000/- as general damages for mental agony. Compensation was claimed from Raju Seth's widow, father and the company. The father pleaded that his son Raju Seth had separated from him prior to the accident and, therefore, he was not liable and thus repudiated the claim which was accepted by the Tribunal, that his son had separated from him long before

the accident and, therefore, the father was in no way liable. Widow's plea that her husband did not drive the jeep rashly and negligently and the accident was a vis major did not find favour with the Tribunal. However, it was held that the deceased was travelling not for hire but gratuitously and the insurance company was liable. Holding the income of the deceased Azad to be Rs. 1,000/- p.m., dependency was held to be Rs. 500/- per month and applying the multiplier of 30 on assumption that the deceased would have lived .till the age of 60, compensation was worked out at Rs. 1,80,000/- and after deducting 20 per cent for uncertainty of life a sum of Rs. 1,44,000/- was awarded out of which Rs. 15,000/- was ordered to be paid by the insurance company and the rest by widow of Raju Seth and Abdul Rajjak, father of Raju Seth.

3. Applicant's case was that his son was travelling in the ill-fated jeep from Jabalpur to Junnardeo after paying fare. Applicant's evidence as witness No. 1 is that his son was travelling gratuitously being friend of Raju Seth. There was no other evidence on this point. The learned Tribunal accepted the evidence of the applicant and held that deceased Azad was travelling gratuitously at the time of the accident. In view of the contra pleading in the petition, applicant's aforesaid version was not liable to be accepted. The admitted policy of insurance, Exh. D-1, contains the following limitation as to use:

Use only for social, domestic and pleasure purpose and for the insured's business. The policy does not cover use for hire or reward or for organised racing, pace making, reliability trial, speed testing, the carriage of goods (other than samples) in connection with any trade or business or use for any purpose in connection with the motor trade.

Thus, in view of the applicant's case that deceased Azad was travelling for hire, there was an admitted breach of the condition for use of the insured vehicle and the insurance company was liable to be absolved of its liability.

4. The Tribunal has been pathetically careless in handling this case. Deceased Azad left behind four minor daughters as per the petition and yet they were not impleaded in the case. The award was passed in favour of the applicant, father of deceased Azad, who, as per the petition, was 45 years of age at the time of its presentation. Considering the age the multiplier adopted was patently erroneous. Then, non-applicant No. 1 herself admitted in evidence that her father-in-law, non-applicant No. 2, was separate in estate from her husband. As such, there was no material for the finding that non-applicant Nos. 1 and 2 both were jointly liable. In view of the evidence of non-applicant No. 1, her father-in-law, non-applicant No. 2, is clearly absolved of liability in this behalf. Petitioner's age at the time of the accident was to be considered while determining the multiplier. Considering this aspect of the case multiplier of 15 appears to be just and proper. Thus, $\text{Rs. } 6,000/- \times 15 = \text{Rs. } 90,000/-$ appears to be proper amount of award.

5. In the result, this appeal is allowed thus: The award passed by the learned Tribunal is hereby set aside. The insurance company as also Abdul Rajjak, father

of late Raju Seth, are held not liable. An award of Rs. 90,000/- is passed in favour of respondent No. 1 against the appellant. This amount will carry 12 per cent per annum interest from the date of presentation of the petition till realisation. Costs as incurred.