

(2001) 04 MP CK 0066
In the Madhya Pradesh High Court
Case No : M.A. No. 923 of 1998

Ramnath

APPELLANT

Vs

Prasanna Kumar Jain and Others

RESPONDENT

Date of Decision : 04-04-2001

Acts Referred:

Citation : (2003) ACJ 1011 : (2003) ILR (MP) 1025

Hon'ble Judges : Bhawani Singh, C.J.;Rajeev Gupta, J

Bench : Division Bench

Advocate : Sneh Mishra, for the Appellant; Amrit Ruprah, for the Respondent

Final Decision : Allowed

Judgement

Bhawani Singh, C.J.—This group of ten cases (M.A. No. 923 of 1998-Ramnath v. Prasanna Kumar Jain M.A. No. 924 of 1998-Parvati Bai v. Prasanna Kumar Jain M.A. No. 832 of 1998- Harishankar v. Prasanna Kumar Jain M.A. No. 833 of 1998-Sumitra Bai v. Prasanna Kumar Jain M.A. No. 834 of 1998-Har Prasad v. Prasanna Kumar Jain M.A. No. 886 of 1998-Laxman v. Prasanna Kumar Jain M.A. No. 887 of 1998-Praveen Kumar v. Prasanna Kumar Jain M.A. No. 889 of 1998-Geeta Bai v. Prasanna Kumar Jain M.A. No. 890 of 1998-Kali Bai v. Prasanna Kumar Jain and M.A. No. 891 of 1998-Laxman v. Prasanna Kumar Jain) are proposed to be decided by this judgment since they arise out of the same accident and common award dated 19.3.98 of the Motor Accidents Claims Tribunal, Sagar. Before dealing with the submissions advanced by learned Counsel for both the parties, brief narration about the accident taken from Parvati Bai v. Prasanna Kumar Jain (M.A. No. 924 of 1998) may be given.

2. On 7.5.1995, the minor Neelu (deceased), Rajendra (deceased) and injured Praveen Kumar, Bharat Kumar, Parvati Bai, Ramnath, Sumitra Bai, Pappu alias Har Narayan, Kali Bai, Jittu alias Jitendra, Har Prasad, Rani, Nikhil, Renu and Geeta Bai were going from Bhopal to Sagar through Tempo-Trax jeep No. MP 15-D 1679. Allegation is that the vehicle was being driven rashly and negligently as

a result of which it hit babool tree near police station, Rahatgarh resulting in serious injuries to the passengers out of whom, Rajendra and Neelu died. Accordingly, claim petitions were filed claiming compensation for the personal injuries and death of two occupants of the vehicle. Respondent Nos. 1 and 2 have filed joint written statement. They have admitted that the respondent No. 1 was the driver and respondent No. 2 the owner of the vehicle. They have denied that the vehicle was being driven rashly and negligently resulting in the accident. They have stated that the vehicle was insured with respondent No. 3. The injured and other persons were known to them, therefore, they were being carried without payment of fare. Therefore, they were not liable to pay the compensation and since the vehicle was insured with the insurance company, the liability was of the insurance company. The insurance company has not admitted the claim. It is stated that the vehicle was to be used for private purpose but it was being used for carrying passengers against payment of fare. Besides, it was carrying excess passengers. The driver did not possess valid driving licence, therefore, he committed breach of policy conditions. Hence, it was not liable to pay the compensation.

3. On pleadings of parties, the Claims Tribunal framed as many as eight issues. It came to the conclusion that the accident took place on 7.5.1995 when vehicle MP 15-D 1679 driven rashly by driver Prasanna Kumar Jain dashed against babool tree. As a result of this accident, Rajendra and Neelu died while Praveen Kumar, Bha-rat Kumar, Parvati Bai, Ramnath, Sumitra Bai, Pappu alias Har Narayan, Kali Bai, Jitendra, Har Prasad, Rani, Nikhil, Renu and Geeta Bai suffered injuries from simple to grievous. The Claims Tribunal also held the claimants were entitled to file claim petitions. It also found that the vehicle was being used for carrying passengers against payment of fare, thereby committing breach of policy conditions and the insurance company was not liable to pay compensation. The Claims Tribunal also exonerated the insurance company from payment of compensation since the vehicle was carrying excess passengers, driver and owner of the vehicle having committed breach of policy conditions. However, it could not be proved that driver Prasanna Kumar Jain did not possess valid driving licence at the time of the accident. Consequently, compensation has been awarded to the claimants carrying interest at the rate of 12 per cent per annum from the dates of claim petitions. This award has been challenged by the claimants through these appeals and it is submitted that compensation be enhanced and made payable by the insurance company.

4. There is no dispute that the accident took place, on 7.5.1995. This happened because the driver Prasanna Kumar Jain was driving the vehicle MP 15-D 1679 rashly and negligently and it dashed against the tree. This is clearly established from the evidence on record. There is also no dispute about the death of Rajendra and Neelu in this accident and injuries to other occupants mentioned in the preceding part of this judgment. Exact narration of the injuries suffered by the claimants would be mentioned while discussing the individual cases vis-a-vis their claim for compensation. The claimants are entitled to claim compensation

for the injuries suffered by them.

5. The allegation that the driver Prasanna Kumar Jain was driving the vehicle without valid driving licence has not been proved by the insurance company before the Claims Tribunal by production of his driving licence, therefore, this finding is against the insurance company and in favour of the driver. We are of the opinion that it is established that the driver was in possession of valid driving licence at the time of accident. Before discussing the issue Nos. 4 to 6, it is desirable to deal with the individual cases and decide whether compensation paid to claimants is reasonable or calls for enhancement as prayed:

(1) M.A. No. 924 of 1998: Parvati Bai v. Prasanna Kumar Jain

Parvati Bai states that in the accident, she suffered injuries to her head and waist. She was treated at District Hospital for ten days. Due to this injury, she suffered severe pain. Before the accident, she used to manufacture bidis and earn Rs. 17 per day but due to the accident, she could not do so for a year and thereafter could not manufacture bidis as much as she used to do before since due to pain in the waist she cannot sit for a long time. She was under treatment which continued even after her statement was recorded. Her hand was stiffened due to injuries she suffered. Dr. Nayak, P.W. 14, has stated that Parvati Bai had suffered injuries on her person. After examination, injury was found on the right side of her head with dimension of 2 1/2" x 1 1/2" x 1/2". X-ray was advised. Another injury was found on the upper part of left elbow with dimension of 1 1/2" x 1/4". First injury was of serious nature for which she was referred to District Hospital, Sagar. There is no evidence of fracture, as is evident from the X-ray report, nor it can be inferred from the medical report that the injury is of permanent nature.

Parvati Bai has been awarded compensation of Rs. 15,000 with interest at the rate of 12 per cent per annum. From the statement of Parvati Bai, we find that she suffered two injuries. First injury described above has been stated to be of serious nature. Of course, the X-ray report does not disclose fracture as per statement of doctor but the dimension of injury is such which suggests that injury is of a serious nature as a result of which she had to be shifted to District Hospital, Sagar from Tili. She remained in the hospital for ten days, whereafter the treatment continued and even on the date of her statement in the court on 6.9.97, she was taking medicines for the injuries she suffered. Naturally, for this injury, claimant must have suffered great pain. We are of the opinion that the award of lump sum compensation of Rs. 15,000 for the injuries, for pain and suffering, medicines, etc., is not justified. Therefore, amount of compensation is enhanced to Rs. 25,000 (rupees twentyfive thousand) making enhancement of Rs. 10,000 to the compensation awarded by the Claims Tribunal which will carry interest at the rate of 12 per cent per annum from the date of application till award.

(2) M.A. No. 832 of 1998: Harishankar v. Prasanna Kumar Jain

Claimants are father, mother, sister and brother of deceased Rajendra who died in this accident. At the time of the accident, Rajendra was 15 years old. He was brilliant student of 5th class. Harishankar states that he wanted to make him doctor. He had good physique and was not suffering from any kind of ailment. Apart from studies, he used to work at the shop and earn Rs. 10 per day. He has stated that his father died at the age of 85 years. He had great love and affection for his son Rajendra and due to his death, all the hopes of the family had been finished. He could become doctor at the age of 30 years and earn Rs. 6,000 to Rs. 7,000 per month and after spending Rs. 2,000 from the salary on himself, leave the rest to the family and he could survive for 90 years had this accident not taken place. The Claims Tribunal has awarded compensation of Rs. 56,000 in this case. The amount of no fault liability under the Motor Vehicles Act is Rs. 50,000. Therefore, taking into consideration the family background of the deceased, his studies and possibility of good career ahead, it appears that the award of compensation in this case is on the lower side. It has been held in *Pramila Bai v. Mustafa Khan* M.A. No. 1496 of 1996; decided on 10.10.2000, that looking to the amount of Rs. 50,000 payable as no fault liability, compensation in such type of cases cannot be less than this amount. In the totality of the circumstances, compensation of Rs. 70,000 (rupees seventy thousand) is awarded, which shall take care of Rs. 10,000 for loss of expectancy of life, Rs. 2,000 for funeral expenses and Rs. 2,500 for loss to the estate. Enhanced compensation of Rs. 14,000 (rupees fourteen thousand) over and above the compensation awarded by Claims Tribunal will carry interest at the rate of 12 per cent per annum from the date of application till date of payment.

(3) M.A. No. 833 of 1998: *Sumitra Bai v. Prasanna Kumar Jain*

Sumitra Bai states that she suffered injury to her chest and waist which remained under plaster for a month. That apart, there was bone fracture in her foot and both feet had swelling. As a result of these injuries, it was difficult for her to sit and stand. This affected her daily routine. She was treated at Primary Health Centre, Rahatgarh, then shifted to District Hospital at Sagar where she remained for three months and then treated at Bhopal. Before the accident, she used to earn Rs. 50-60 per day and thereafter could not earn. Dr. J.P. Nayak has stated that he examined Sumitra Bai and found cut injuries on her foot and chest. These injuries were X-rayed and her second, third and fourth ribs were found fractured. But there is no evidence to suggest that she suffered permanent disability on account of these injuries, Dr. V.K. Mishra states.

With respect to Pappu alias Hari Narayan, Dr. J.P. Nayak states that he examined Pappu (20) and found injuries on left leg of ordinary nature. X-ray test does not disclose any kind of fracture and the injuries suffered by him were of general nature.

Claims Tribunal has awarded Rs. 25,000 to Sumitra Bai and Rs. 5,000 to Pappu. We find that Sumitra Bai has suffered number of injuries. Serious among them appears to be the fractures of second, third and fourth ribs. It may be that she

did not suffer any permanent disability on account of these injuries but the fact remains that fracture of three ribs is a serious matter. She was placed under plaster for one month and this kind of injury takes long time to recover. During this period, she must have suffered great pain. Award of compensation of Rs. 25,000 appears to be on the lower side. It is enhanced by Rs. 15,000 taking the total compensation to Rs. 40,000 (rupees forty thousand). Enhanced amount of compensation will carry interest at the rate of 12 per cent per annum from the date of application till payment. Pappu does not deserve enhancement in compensation. Injuries suffered by him are not of very serious nature and as per the doctor, they are of general nature. Therefore, his request for enhancement is rejected.

(4) and (5) M.A. Nos. 834 and 890 of 1998: Har Prasad v. Prasanna Kumar Jain and Kali Bai v. Prasanna Kumar Jain

Har Prasad states that he suffered injuries to head, face and shoulders. Due to injury, he lost his speech and could not speak for 2-3 days. Even now, his speech goes and he cannot work properly. After the accident, he was admitted in the hospital at Sagar wherefrom he was shifted to hospital at Bhopal where he remained for 15 days. He is carpenter and used to earn Rs. 150 per day. He cannot work the way he used to do before the accident since he has pain in his head and hand. He has spent about Rs. 15/20 thousand in the treatment of injuries but he does not possess the bills of expenditure on medicines. His head was X-rayed. He was treated at Primary Health Centre, Rahatgarh also. During examination doctors had stated about the necessity of operation of his head for which expenditure was around Rs. 75,000.

With respect to his wife Kali Bai, he states that she suffered fracture of foot at two places, her thigh was subjected to operation due to which she cannot walk properly. She remained in the hospital for four months. She used to manufacture bidis and earn Rs. 60/70 per day. In the treatment of Kali Bai, an amount of Rs. 40,000 has been spent. She was admitted in the hospital at Bhopal. Kali Bai has also stated that she was treated at Tili Hospital, then Sagar and in Hamidia Hospital at Bhopal for 21/2 months. At Tili Hospital, she was plastered and steel rod was inserted in her foot during operation at Bhopal. She used to manufacture 2-3 thousand bidis which she cannot do now. She used to earn Rs. 40/50 per week but after the accident due to pain, she cannot work.

With respect to Jitendra alias Jitoo, Har Prasad states that he suffered fracture to both feet and left hand. He was treated at Hajela Hospital and Hamidia Hospital at Bhopal for three months and on his treatment, a sum of Rs. 40,000 has been spent. He was still under treatment. Kali Bai has also stated about these injuries to Jitendra.

The Claims Tribunal has awarded a sum of Rs. 10,000 to Har Prasad, a sum of Rs. 25,000 to Kali Bai and Rs. 25,000 to Jitendra. It is contended by appellants that compensation awarded is too low and requires enhancement, whereas

Counsel for the insurance company contends that it is just and reasonable compensation.

Dr. J.P. Nayak has stated that apparently, the injuries could not be found on the person of Har Prasad. Dr. V.K. Mishra states that Har Prasad was admitted in District Hospital, Sagar. His right shoulder was got X-rayed and fracture was found. Fracture was of serious nature but there is no evidence of permanent disability. With respect to Kali Bai, Dr. J.P. Nayak states that injury was found to left thigh and on X-ray examination, her femur bone was found fractured but there is no evidence of her suffering permanent disability. Jitendra (3) had fracture in both thighs as per Dr. J.P. Nayak. This fact is also supported by Dr. V.K. Mishra. Evidence of permanent disability is not there. It may be true that it is not there but it is clear from the statement of Dr. J.P. Nayak that Har Prasad suffered injury of serious kind on right shoulder. Therefore, he must have suffered great pain during the course of treatment and this injury has affected his daily routine. For this kind of injury, compensation of Rs. 10,000 is on the lower side. Therefore, it is enhanced by Rs. 10,000 totalling the compensation to Rs. 20,000. The enhanced compensation will be payable with interest at the rate of 12 per cent per annum from the date of application till payment.

Kali Bai suffered fracture of the femur bone. It may be true that symptom of permanent disability has not been pointed out but injury is of serious nature. She was treated at different hospitals, therefore, she must have spent sufficient amount for medical treatment. She is wife of Har Prasad in whose case also there is no evidence what exact amount has been incurred towards medical treatment. It cannot be said that the family did not incur expenditure on the treatment of three persons who are involved in the accident in the instant case. Claims Tribunal has awarded Rs. 25,000 as compensation in this case. Looking to the nature of injuries, treatment in the hospitals, pain and suffering, compensation is enhanced by Rs. 10,000 payable with interest at the rate of 12 per cent per annum from the date of application till payment.

Jitendra was 3 years old at the time of accident. He has suffered fractures of both thighs. Obviously he must have suffered great pain during the treatment which must have taken longer time at this age of the child. The family must have spent sufficient amount for his treatment. Compensation of Rs. 25,000 in this case appears to be on the lower side, therefore, it is enhanced by Rs. 10,000 payable with interest at the rate of 12 per cent per annum from the date of application till payment.

(6) and (7) M.A. Nos. 886 and 889 of 1998: Laxman v. Prasanna Kumar Jain and Geeta Bai v. Prasanna Kumar Jain

Laxman Prasad states that his daughter Neelu died in the accident. The matter was reported to the police by him which is signed by him. Neelu died in the hospital. She was 8 years old at the time of accident. She was studying in class II and was a brilliant student. Geeta Bai is his wife. She suffered injuries to head,

chest and feet. She remained in hospital at Sagar for three days, then shifted to Hamidia Hospital, Bhopal by ambulance. When it was found that the treatment was not good, she was shifted to Hajeli Hospital where she had to remain for two months and subjected to operation of waist and foot. Her treatment still continues and a sum of Rs. 90,000 has been spent on the treatment. Before accident, she had good health and used to earn Rs. 60/65 per day from knitting. After the accident, she cannot work. Rani, Nikhil and Renu also suffered injuries in this accident to nose, ear and waist. They were treated at Tili Primary Health Centre. Dr. J.P. Nayak has stated that Rani suffered abrasion above left ear. It was of simple nature. Injuries were not detected on the persons of Nikhil and Renu.

Dr. Nayak states that on examination of Geeta Bai, fracture of tibia and fibula of right foot was found. During operation, nail was inserted and she was advised treatment in the hospital as an indoor patient. The injuries suffered by her were of serious nature. There is permanent disability but the extent thereof is not proved.

Body of Neelu was subjected to postmortem examination by Dr. Mithilesh. According to doctor, she died as a result of this accident. Claims Tribunal has awarded sum of Rs. 55,000 for the death of Neelu, Rs. 5,000 to Rani and Rs. 45,000 for personal injuries to Geeta Bai. No compensation has been awarded for injuries to Nikhil and Renu since evidence did not justify it as per the Claims Tribunal.

Neelu was 8 years old at the time of accident and was studying in class II. She was an intelligent student and had good expectations in life. Award of compensation for no fault liability under Motor Vehicles Act, 1988, is Rs. 50,000. Therefore, there is justification to enhance the amount of compensation in this case too. A sum of Rs. 75,000 would meet the ends of justice. Accordingly, the compensation is enhanced from Rs. 55,000 to Rs. 75,000 (rupees seventy-five thousand). Enhanced amount of compensation would carry interest at the rate of 12 per cent per annum from the date of application till payment. Looking to the nature of injuries suffered by Rani, we do not find any justification to enhance the compensation over and above Rs. 5,000 awarded by the Claims Tribunal.

Geeta Bai had suffered serious injury of tibia and fibula. She was subjected to operation and nail was inserted. Obviously, she must have undergone great suffering and pain during treatment and afterwards. Of course, there is no evidence about the amount spent on medical treatment but it cannot be said that nothing was spent. It may be due to the inadvertence that evidence on medical expenditure must not have been produced. Looking to the nature of injuries and suffering undergone by her, amount of compensation is enhanced to Rs. 75,000 (rupees seventy-five thousand) from Rs. 45,000 awarded by the Tribunal. Enhanced amount of compensation will carry interest at the rate of 12 per cent per annum from the date of filing of application till payment. There is no definite evidence with regard to injuries suffered by Nikhil and Renu, therefore, case for

awarding compensation in their favour does not arise.

(8) and (9) M.A. Nos. 923 and 887 of 1998: Ramnath v. Prasanna Kumar Jain and Praveen Kumar v. Prasanna Kumar Jain

Ramnath states that in the accident, he suffered injuries to his face and fracture of foot. He was treated at Tili Hospital, Sagar and X-rayed. He remained indoor patient for ten days and thereafter he was treated at Bhopal. Injury remained under plaster for two months. He used to make furniture and earn Rs. 150 per day. After the accident, he cannot work, feels pain in chest and knees, which had developed swelling. Dr. V.K. Mishra has described the injuries suffered by Ramnath on left ankle and found fracture of tibia which is of serious nature though causing of permanent disability is not stated. The Claims Tribunal has awarded compensation of Rs. 5,000 in this case. From the nature of injuries and the statement of doctor, it is not difficult to say that the injuries are of serious nature, therefore, compensation of Rs. 5,000 is absolutely unreasonable. Consequently it is enhanced to Rs. 25,000 (rupees twentyfive thousand)-twenty thousand more than the amount awarded by the Claims Tribunal. It shall be paid to the claimant with interest at the rate of 12 per cent per annum.

Praveen Kumar was 13 years old at the time of accident. He suffered injuries on upper lip which is stated to be of simple nature. He has been awarded compensation of Rs. 5,000 which appears to be just and proper: No enhancement is therefore called for.

Dharmendra was 9 years old at the time of accident. He suffered abrasion on left shoulder. He has been awarded compensation of Rs. 5,000 which also appears to be just and proper, therefore, no enhancement is called for.

Bharat Kumar was 8 years old at the time of accident. He suffered injury to the left foot but no fracture was found in the X-ray report. The injury has been found to be of simple nature. He has been awarded compensation of Rs. 5,000, looking to the nature of injury, we are of the opinion that no enhancement is warranted in this case.

6. Having discussed and decided the matter on other aspects, we proceed to examine the question with regard to liability for payment of compensation. Mrs. Amrit Ruprah, learned Counsel for the New India Assurance Co. Ltd. has submitted that Tempo-Trax No. MP 15-D 1679 was registered for private use, for social, domestic and excursion but it was being used for hire and reward and was carrying more passengers than permitted. There is violation of terms and conditions of insurance policy, therefore, the Claims Tribunal has rightly shifted the liability to pay the compensation from the insurance company to the owner and driver of the vehicle. This submission is opposed by Mrs. Sneh Mishra, the learned Counsel for the appellants. The learned Counsel for appellants contended that there is no evidence suggesting that the vehicle was being used for hire and reward. Mrs. Ruprah refers to the statement recorded at the instance of Laxman stating that Tempo-Trax was hired against payment of Rs. 600 for this journey

from Bhopal to Sagar. Therefore, this is enough to show that the vehicle was used for hire and reward. This witness has admitted having given this kind of statement to the Investigator engaged by the insurance company and that there is satisfactory evidence to suggest that the vehicle was carrying more than 20 passengers at the relevant time. This submission is opposed by Mrs. Sneh Mishra and it is contended that Laxman has denied having given such a statement.

7. Having considered the matter, we are of the opinion that respondent cannot take benefit of the statement contained in the F.I.R. to the police with respect to this incident. Firstly, this statement was given for initiation of the criminal proceedings, therefore, cannot be used in civil proceedings. Secondly, Laxman has denied having given the statement. Statement recorded by private Investigator of the respondent insurance company is not on record nor the same is proved in court, therefore, it is not of much consequence. Perusal of claim petition discloses that nowhere in it has been stated by the claimants that they engaged Tempo-Trax on hire for going from Bhopal to Sagar. They have not said so in their statements before the Claims Tribunal. The owner and driver of the vehicle have specifically stated that they did not charge any fare from the claimants since they were known to them. Claimants, owner and driver of the vehicle were the best persons to depose on this aspect of the matter and since they have said that no fare was charged from the claimants for the journey undertaken by them, it is difficult to accept the version of the insurance company and the so-called Investigator appointed by it. We also notice that the vehicle could be used for social, domestic and excursion purposes. The claimants were going to attend the marriage and since the parties were known to each other, it can be accepted that the vehicle was being used for a social trip without monetary consideration. Consequently, it is held that the vehicle was not being used for hire and reward on the date the accident took place.

8. Second phase of the question is overloading of the vehicle. On this question, it can be said that the occupants thereof were mostly small children who could not be left out when the purpose of journey was to attend the marriage. They could not be separated from the parents. Practically they are related to each other. This plea is not available to insurance company since the vehicle was not being used for the purpose other than indicated in the policy and it is to be taken as separate accident for each of the victims of the accident. [See National Insurance Co. Ltd. Vs. Anjana Shyam and Others, and United India Insurance Co. Ltd. Vs. Sabeer Ali and Others,]. For all these reasons stated above, we are of the opinion that insurance company (respondent No. 3) is liable, to pay the compensation in these cases and the finding of the Claims Tribunal exempting the insurance company from payment of compensation is set aside.

In all cases where enhancement of compensation is ordered, the same will carry interest at the rate of 12 per cent per annum from the date of application till payment.

9. Consequently, appeals are allowed in terms aforesaid. Compensation awarded

be paid within two months. Costs on parties.