

(2010) 07 MP CK 0003
In the Madhya Pradesh High Court
Case No : M.A. No. 1886 of 2008

Sanjaynath (deceased) through L.Rs. Smt. Bindu	APPELLANT
Vs	
Lakshmichandra and Others	RESPONDENT

Date of Decision : 09-07-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, Order 6 Rule 17
Motor Vehicles Act, 1988 — Section 173

Citation : (2011) 1 MPJR 252

Hon'ble Judges : Prakash Shrivastava, J

Bench : Single Bench

Judgement

Prakash Shrivastava, J.

THIS appeal is filed by the appellants u/s 173 of the Motor Vehicles Act, 1988 against an Award dated 25.03.2008 passed by Motor Accident Claims Tribunal, [Fast Track Court] Shujalpur, District Shajapur in Claim Case No.76/2007.

The original claimant Sanjaynath had suffered injuries in an accident which had taken place on 19.07.2006. Accordingly he had filed the claim petition before the Claims Tribunal and the Claims Tribunal awarded a sum of Rs.3,45,393-00 to the original claimant along with the interest @ 6% p.a. from the date of the claim petition.

At the commencement of the argument, learned counsel appearing for the original claimant pointed out that during the pendency of this appeal, on 28.06.2009 the original claimant has died and his legal representatives have been brought on record. He has also submitted that I.A.No.1598/2010 has been filed by the appellants for amendment of the claim petition and to incorporate the plea the original claimant Sanjaynath has died due to the injuries received in the accident.

The said application is opposed by the counsel for the Respondent No.3- Insurance Company.

The evidence on record indicate that the original claimant had suffered serious injuries in the accident. On account of the injuries, he had suffered paralysis of the lower part of the body. The fact that the original claimant has died is not in dispute. Whether he is died due to injuries received in accident or for some other reason is an matter of evidence.

Considering the entire circumstances of the case, I.A.No. 1598/2010 is allowed and the appellants are permitted to amend the claim petition.

Learned counsel appearing for the appellants has also pressed I.A.No.957/2010, which is an application under Order XLI Rule 27 of the CPC for permission to bring the additional documents on record. By this application, the appellants want to place on record the additional documents to show that the death of the original claimants had taken place on account of the injuries received in the accident. Since the amendment application has been allowed by this Court, therefore, I.A.No.957/2010 is also allowed.

8. Since after the amendment of the claim petition the nature of claim has changed and the appellants are required to establish their case that the death had taken place because of the accident, therefore, the impugned Award passed by the Claims Tribunal is set-aside and the matter is remitted back to the Tribunal to pass a fresh Award after giving the parties an opportunity to further amend their pleadings, if so required, and give them further opportunity to lead evidence. However, it is made clear that if the original claimant/appellants have received any amount in pursuance to the impugned Award passed by the Tribunal, then they will not be required to refund the same and it will be adjusted in the fresh Award passed by the Tribunal. The parties are directed to appear before the Tribunal On 16.08.2010. The original record of the Claims Tribunal be sent back immediately along with the copies of the applications filed by the appellants under Order XLI Rule 27 of the CPC and under Order VI Rule 17 of the CPC being I.A.No.957/ 2010 and I.A.No.1598/2010. The appeal is accordingly disposed off.

No order as to costs.