
(1996) 10 MP CK 0019
In the Madhya Pradesh High Court
Case No : M.A. No. 595 of 1992

Satyanarayan

APPELLANT

Vs

Tulsiram and Others

RESPONDENT

Date of Decision : 18-10-1996

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (1998) ACJ 1168

Hon'ble Judges : P.N.S. Chauhan, J

Bench : Single Bench

Advocate : N.K. Patel, for the Appellant; N.S. Ruprah, for the Respondent

Final Decision : Allowed

Judgement

D.P.S. Chauhan, J.—These are the two appeals filed u/s 110-D of the Motor Vehicles Act, 1939, against the award given by the Presiding Officer of the Motor Accidents Claims Tribunal in Claim Case No. 4 of 1988 Tulsiram and 3 Ors. v. Satyanarayan and Anr. and Claim Case No. 5 of 1988 Daulat and 5 Ors. v. Satyanarayan and Anr., dated 8.9.1992, whereby the Tribunal, in both the cases, gave an award for a sum of Rs. 37,000/- in each case out of which a sum of Rs. 25,000/- in each case was held to be the liability of the United India Insurance Co. Ltd. Both the appeals are by the truck owners.

2. The brief facts of the case are that on 11.1.1988 three persons, i.e., Anoop, Brijesh and Manmohan, who were riding on one bicycle, met with an accident with truck No. MIJ 8095 belonging to the appellant herein, as a result whereof, two persons, viz., Brijesh and Manmohan died and Anoop survived. Consequent upon this, the heirs and legal representatives of Brijesh filed a claim petition before the Motor Accidents Claims Tribunal, Gadawara being Claim Petition No. 4 of 1988 and the heirs and legal representatives of Manmohan filed claim petition before the same Motor Accidents Claims Tribunal, which was numbered as Claim Petition No. 5 of 1988.

3. The learned Claims Tribunal, after taking evidence made separate award in both the cases but the award was identical in each case, which was to the tune of Rs. 37,000/- together with interest, limiting the liability of United India Insurance Co. Ltd. to Rs. 25,000/- in each case.

4. Heard the learned Counsel for the appellant, Mr. N.K. Patel and learned Counsel for the respondent No. 7, Mr. N.S. Ruprah. Both the appeals are decided by one composite judgment.

5. The pure question of law is agitated by the learned Counsel for the appellant over which the facts which have been stated above, have only a preferal reference. The question as agitated by the learned Counsel is that the Tribunal has erred in law in bifurcating the liability in both the cases, half and half, whereas under the law the whole of the liability rests with the insurance company. In connection with this submission, the learned Counsel submitted that the Tribunal has accepted that the limit of the liability of the truck in question, as was insured for the purpose of accident, was limited to Rs. 50,000/- and since two deaths have occurred in the same sequence, the liability was bifurcated as Rs. 25,000/- in each case.

6. Learned counsel for the respondent No. 7 submitted, firstly, that the requirement of law as per the first proviso to Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") has not been complied with as the appeal before this Court has been filed under the new Act as is also mentioned in the title of the appeal.

7. This submission has no substance as the claim was under the Motor Vehicles Act, 1939 and the appeal is the continuation of the proceedings which would be guided by the old Act without any impact of the new Act, i.e., Motor Vehicles Act, 1988.

8. The next question, as submitted by the learned Counsel is that, it is correct that in the reply given in the two cases, in one, in reply to para 18 and in the other, in reply to para 19 of the claim petition, the limit of the liability of the insurance company was mentioned as Rs. 50,000/- but under the provisions of Section 95(2) of the Motor Vehicles Act, 1939, the limit of the liability under the policy is mentioned and in Clause (a) it is mentioned that "where the vehicle is a goods vehicle, a limit of fifty thousand rupees in all, including the liabilities, if any, arising under the Workmen's Compensation Act, 1923, in respect of the death of, or bodily injury to, employees (other than the driver) not exceeding six in number, being carried in the vehicle." The limit of Rs. 50,000/- was added by way of amendment in the provision. However, this aspect of the matter in the present appeal has no relevance.

9. It should not go unnoticed that the learned Counsel for the respondent No. 7 Mr. N.S. Ruprah was fair enough with the Court to bring to the notice of the Court the correct position of law. According to him, the question involved is that the risk of the liability in the event of the death cannot be bifurcated though the

death may have occurred of more than one person in the same accident. In this connection, the learned Counsel submitted that the proposition, is no more *res Integra* in view of the decision of the Supreme Court in *Motor Owner's Insurance Co. Ltd. Vs. Jadavji Keshavji Modi and Others*, where the Supreme Court in para 15 dealt with the expression "any one accident". The expression "any one accident" in Section 95(2) of the Motor Vehicles Act, 1939, is susceptible of two equally reasonable meanings or interpretations. This aspect was considered having in mind subjective and objective considerations and the Court said:

In matters involving third party risks, it is subjective consideration which must prevail and the occurrence has to be looked at from the point of view of those who are immediately affected by it. If the matter is looked at from an objective point of view, the insurer's liability will be limited to Rs. 20,000/- in respect of injuries caused to all the five persons considered *en bloc* as a single entity, since they were injured as a result of one single collision. On the other hand, if the matter is looked at subjectively as it ought to be, the insurer's liability will extend to a sum of Rs. 20,000/- in respect of the injuries suffered by each one of the five persons, since each met with an accident, though during the course of the same transaction. A consideration of preponderating importance in a matter of this nature is not whether there was any one transaction which resulted in injuries to many but whether more than one person was injured, giving rise to more than one claim or cause of action, even if the injuries were caused in the course of one single transaction. If more than one person is injured during the course of the same transaction, each one of the persons has met with an accident.

In para 16 of the report, the Court said:

...There is no table of logarithms to guide or govern statutory construction in this area, which leaves a sufficient and desirable discretion for the Judges to interpret laws in the light of their purpose, where the language used by the law makers does not yield to one and one meaning only. Considering the matter that way, we are of the opinion that it is appropriate to hold that the word "accident" is used in the expression "any one accident" from the point of view of the various claimants, each of whom is entitled to make a separate claim for the accident suffered by him and not from the point of view of the insurer.

10. In view of the above decision, which is a landmark one, both the appeals deserve to be allowed.

11. Accordingly, the appeals are allowed. The extent of the liability of the United India Insurance Co. Ltd. is Rs. 50,000/- for each case and therefore the whole of the claim under the award, i.e., to the tune of Rs. 37,000/- together with interest in each case up to date would be liability of the insurance company. In the facts and circumstances of the case, no order as to costs is made. The award is modified accordingly to the extent of the liability of the insurance company.