(2013) 08 MP CK 0211

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 848 of 2008 and Miscellaneous Appeal No. 653 of 2009

Shashi Mohan Dwivedi and Another APPELLANT

Vs

Ganesh and Others
 I.C.I.C.I. Lombard General Insurance Co. Ltd. Vs Shashi Mohan Dwivedi and Others RESPONDENT

Date of Decision : 01-08-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 147(5), 149(1), 149(2)
Penal Code, 1860 (IPC) — Section 279, 337

Citation : (2013) 08 MP CK 0211

Hon'ble Judges : G.D. Saxena, J

Bench : Single Bench

Advocate : Arun Sharma in Misc. Appeal No. 848/2008 and Mr. Arun Katare in Misc. Appeal No. 653/2009, for the Appellant; Arun Katare, Advocate for Respondents No. 3 in Misc. Appeal No. 848/2008 and Shri Arun Sharma, Advocate for Respondents No. 1 and 2 in Misc. Appeal No. 653/2009, for the Respondent

Final Decision : Disposed Off

Judgement

G.D. Saxena, J.—This order shall govern the disposal of aforesaid two appeals (Misc. Appeal No. 848/08 and Misc. Appeal No. 653/09) having arisen against a common Award dated 28th April 2008 in Claim Case No. 61/2007 passed by the Seventh Additional Member of the Motor Accident Claims Tribunal, Gwalior (M.P.). Apparently, Misc. Appeal No. 653/2009 is submitted by the appellant/Insurance Company beyond period of limitation, hence, with a view to condone such delay of 352 days, firstly I.A. No. 10816/2009 and supporting to it another application I.A. No. 3099/2013 have been filed. The grounds urged for condoning the delay are that the concerned appearing counsel of the tribunal could not inform the result of the case well within time and therefore the appellant-company could not know the fate of the case. It is further pointed out that at the relevant time, the company was having its Divisional Office at Indore. The appellant could know the result about the case only at Gwalior when the notice was served in an execution case. Apart the aforesaid, it is submitted that the file containing proposal was misplaced and could not be traced within time of limitation, hence, the delay has occurred in preferring this appeal.

2. Considering the averments made in the application, it appears that the case of the Insurance Company was not properly contested before the tribunal. However, in the interest of justice, even though the appeal presented on behalf of the Insurance Company is time bared, learned counsel appearing for the company is heard at length after taking into consideration the grounds available u/s 147 and 149 (2) of the Act, in view of specific circumstances of the case.

3. Now, turning to the case, the facts, as evident from the record are that on 21st February 2007, the appellant Brijmohan Dwivedi alongwith his family members was travelling from Shivpuri to village Sirsod in a hired Bolero Jeep for participating in the engagement ceremony. When the jeep crossed the new forest colony and reached at Shivpuri Jhansi Highway, the offending dumper coming from front side which was driven in a rash and negligent manner by respondent No. 1 dashed against the jeep from wrong side as a result, the jeep turned turtle. In the said accident, Brijmohan and his brother Rajendra Prasad died on the spot while other passengers got serious injuries. Later on, the other injured were shifted to the hospital. On the report, the F.I.R. was lodged on which Crime No. 36/07 for offence under sections 279 and 337 of I.P.C. was registered against the driver of the said dumper. After investigation, the charge-sheet was filed before the criminal court.

4. At the time of accident, Brijmohan Dwivedi, aged 56 years was working on the post of Training Officer in IIT Institute and was getting monthly Rs. 12,400/- which was the source of income to maintain the family and after his death, the family was starving. Hence, by submitting a claim, his wife and other dependents prayed for Rs. 20,00,000/- in all heads as compensation to be recovered jointly or severally from the respondents.

5. Therefore, the submission of the learned counsel representing the appellants in Misc. Appeal No. 848/08 is that the award under appeal is not in consonance with the evidence and the settled principles of law. It is further contended that learned tribunal erred in applying multiplier while determining the compensation. No adequate compensation in other heads was awarded. On the basis of above, it is prayed that by allowing the appeal just and proper compensation may be awarded in favour of the appellants.

6. On the other hand, the Insurance Company in Misc. Appeal No. 653/09 averred that the learned MACT failed to appreciate the defences as raised and available u/s 149(2) of the Act. It is submitted that though the offending vehicle was insured, but the premium was paid by way of cheque issued by the insured which on presentation in the concerned bank became dishonoured. Consequently, the policy issued in favour of the insured was cancelled by the

company. Therefore, in this case, the policy was not effective for the period the vehicle was insured on account of dishonour of the cheque and cancellation of the insurance. In such circumstances, no liability can be fastened on the company to indemnify the insured. On these premises, it is prayed that by allowing the appeal, the insurance company may be exonerated.

7. The rest of the respondents, i.e., owner and driver after service did not appear nor they participated during the proceedings of the claim before the tribunal as well as this court in the appeals.

8. Following two questions arise for consideration in these appear. They are:-

(i) Whether the award passed by the learned tribunal, looking to the age of the deceased and service benefits as available to the deceased including his contribution to the family is liable to be enhanced?

(ii) Whether, under the circumstances when due to dishonour of cheque delivered for premium by the insured and cancellation of the insurance policy for want of premium, the insurance company could be liable to indemnify the liability of the insured for payment of compensation award to a third party?

9. Heard the learned counsel for the parties. Also perused the record of the case and the law.

10. It is not disputed that Jeep and dumper on dated 21st April 08 met with head on collision at Shivpuri Jhansi Highway and in such accident Brij Mohan Dwivedi and Rajendra Prasad died on the spot while others got injured. It is admitted that the dumper involved in accident was driven by Ganesh (respondent No. 3), owned by Arun Sharma (respondent No. 4) and insured with ICICI Lombard General Insurance Company (appellant) in M.A. No. 653/09. It is also admitted that the deceased aged 56 years was at the time of accident was working as Instructor in ITI Institute and was getting salary @ Rs. 12,400/- and looking to his experience, he was expected to be promoted in near future and extended with all allied benefits as per law and service rules applicable to the promotional post.

11. In Rajesh and Others Vs. Rajbir Singh and Others, the Hon. Apex Court has observed as follows:-

11. Since the court in Santosh Devi Vs. National Insurance Company Ltd. and Others, actually intended to follow the principle in the case of salaried to follow the principle in the case of salaried person as laid down in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and to make it applicable also to self-employed and person on fixed wages, it is clarified that the increase in the case of those groups is not 30 percentage always; it will also have a reference to that age. In other words in case of self-employed or persons with fixed wages, in case the deceased victim was below 40 years, there must be an addition of 50 years in case the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if

any. Additional should be 30 per-cents in case the deceased was in the age group of 49 to 50 years.

12. In Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, it has been stated those about 50 years, at in the case of those about 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there in normally on age of superannuation, we are of view that it will only just and equitable to provide an addition of 15 per-cent in the case where the victim is between the age group of 50 and 60 years so as to make the compensation just equitable, fair, and reasonable. There shall normally be no addition thereafter.

12. Applying the ratio of Rajesh''s case (supra) to the present one with further taking note of future prospects of the deceased since the deceased was aged 56 years at the time of accident, his monthly income for the purpose of assessment of compensation is determined as Rs. 14,260/- by adding 15% of his salary to actual salary income. Deducting 1/3rd of the monthly income towards personal and living expenses of the deceased, contribution to family (dependents) is determined as Rs. 9,507/-. Having regard to the age of the deceased, applying the multiplier of 8, the loss of dependency is worked out as Rs. 76,056/- annually Rs. 9,12,672/-. In addition thereto, claimants are also entitled to Rs. 5,000/- under the head of loss of estate, Rs. 5,000/- towards funeral expenses, Rs. 10,000/- as loss of consortium, Rs. 20,000/- as love and affection. Thus, the claimants are entitled to receive total compensation as Rs. 9,52,672/-(Rs. Nine lac fifty two thousand six hundred seventy two only) alongwith interest @ 6% per annum on the enhanced amount from the date on which the claim petition was filed before the tribunal till final payment of compensation amount, which shall be paid jointly or severally by the respondents.

13. Now, only one question remains to be considered in the light of the arguments as advanced on behalf of the learned counsel for the appellant-Insurance Company. It is submitted that for want of premium the insurance cover-note was cancelled by the Insurance Company and therefore when there was no contract with the Insurance Company on the date of accident, the Insurance Company could be held liable to indemnify the liability of insured for payment of compensation award to a third party.

14. The aforesaid question has been answered in the case of United India Insurance Co. Ltd. Vs. Laxmamma and Others, at page 241, wherein the Hon. Apex Court has been pleased to observe as under:-

26. In our view, the legal position is this: where the policy of insurance is issued by an authorised insurer on receipt of cheque towards the payment of premium and such a cheque is returned dishonoured, the liability of the authorised insurer to indemnify the third parties in respect of the liability which that policy covered subsists and it has to satisfy the award of compensation by reason of the provisions of Sections 147(5) and 149(1) of the MV Act unless the policy of

insurance is cancelled by the authorised insurer and intimation of such cancellation has reached the insured before the accident. In other words, where the policy of insurance is issued by an authorised insurer to cover a vehicle on receipt of the cheque paid towards premium and the cheque gets dishonoured and before the accident of the vehicle occurs, such insurance company cancels the policy of insurance and sends intimation thereof to the owner, the insurance company''s liability to indemnify the third parties which that policy covered ceases and the insurance company is not liable to satisfy awards of compensation in respect thereof.

27. Having regard to the above legal position, insofar as the facts of the present case are concerned, the owner of the bus obtained the policy of insurance from the insurer for the period 16-4-2004 to 15-4-2005 for which premium was paid through cheque on 14-4-2004. The accident occurred on 11-5-2004. It was only thereafter that the insurer cancelled the insurance policy by communication dated 13-5-2004 on the ground of dishonour of cheque which was received by the owner of the vehicle on 21-5-2004. The cancellation of policy having been done by the insurer after the accident, the insurer became liable to satisfy the award of compensation passed in favour of the claimants.

28. In view of the above, the judgment of the High Court impugned in the appeal does not call for any interference. The civil appeal is dismissed. However, the insurer shall be at liberty to prosecute its remedy to recover the amount paid to the claimants from the insured. No order as to costs.

15. As a result of aforesaid, Misc. Appeal No. 848/08 preferred by the claimants/ appellants is partly allowed. The award by the learned tribunal stands modified and enhanced up to Rs. 9,52,672/- (Rs. Nine lac fifty two thousand six hundred seventy two only) alongwith @ 6% per annum on the enhanced amount from the date on which the claim petition was filed before the tribunal till final payment of compensation amount which shall be paid jointly or severally by the respondents.

16. Keeping in view the aforesaid law, this court is of the view that the interest of justice will be sub-served, if the appellant-Insurance Company herein is directed to satisfy the award amount in favour of the claimants within a period of three months from the date of this order and on such deposit, the total amount of compensation in the light of the terms of the impugned Award of the learned tribunal shall be disbursed to the claimants. The insurer for recovery of such amount from the owner shall initiate proceedings before the Executing Court as if the dispute between the insurer and the owner is the subject-matter of determination before the Tribunal. The said issue after affording proper opportunity of hearing to the owner and Insurance Company shall be resolved by the learned tribunal in such proceedings within a period of six months from the date of deposit of the award amount before the learned MACT. In view of the above, Misc. Appeal No. 653/09 stands disposed of.

