

(2009) 03 CHH CK 0013
In the Chhattisgarh High Court
Case No : Misc. Appeal No. 430 of 2000

Smt. B. Satyawati Devi

APPELLANT

Vs

Smt. Palibai and Others
 Hadmo and Ans. Vs Tanka
Alias Rupendra kumar Jangle Ors.
 Paibai and Others
Vs Tanka @ Rupendra kumar Jangle Ors.

RESPONDENT

Date of Decision : 03-03-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2009) 2 CGLJ 132 : (2009) 3 MPJR 75

Hon'ble Judges : Rajeev Gupta, C.J.;Sunil Kumar Sinha, J

Bench : Full Bench

Advocate : Rajendra Tripathi, for Owner, Viprasen Agarwal and N.P. Koshta, for Claimants, for the Appellant; Ajay Mishra, for New India Assurance Co. Ltd./ Insurer of Jeep, Abhishek Sinha and S.R.J. Jaiswal, for Oriental Insurance Co. Ltd./Insurer of Truck, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Kumar Sinha, J.—These appeals have been filed u/s 173 of the Motor Vehicles Act against a common award dated 30.11.99 passed by the Third Additional Motor Accident Claims Tribunal, Bastar at Jagdalpur in MACC Nos. 7/99, 19/99, 21/99 and 22/99. M.A. No. 430/2000 and 443/2000 have been filed against the award passed in MACC No. 7/99; M.A. 431/2000 has been filed against the award passed in MACC No. 21/99; M.A. No. 432/2000 and 442/2000 have been filed against the award passed in MACC No. 22/99 and M.A. No. 433/2000 has been filed against the award passed in MACC No. 19/99.

2. M.A. No. 442/2000 and M.A. No. 443/2000 have been filed by the respective claimants for enhancement of amount of compensation, whereas, the other appeals have been filed by the owner of the offending Jeep for setting aside the award against her, challenging her liability.

3. 4 persons namely Sakharam, Krishnadev Singh Thakur, Mudo and Ram

Abhilash lost their lives in a motor accident, which took place on 25.10.98 at about 9.00 p.m. when the offending Commander Jeep bearing registration No. MP-25/B/0364 dashed from the back side against the stationary Truck bearing registration No. CPT-2101.

4. 4 Claim Petitions were filed u/s 166 of the Motor Vehicles Act by the dependants of the deceased persons claiming different compensations on account of death of the deceased persons in the motor accident.

5. The owner and the driver of the offending Jeep filed their written statement taking a plea that the accident occurred on account of negligence of the driver of the Truck because he put his vehicle in the middle of the road and the Jeep collided with the Truck.

6. The insurer of the Jeep took the plea that the Jeep was being plied in breach of policy condition. It contended that the offending Jeep was registered and insured as a private vehicle, whereas, it was being used as a taxi at the time of accident as it was carrying fare-paid passengers. It also took a plea that since the accident occurred on account of all of a sudden negligently stopping of the Truck in the middle of the road by its driver, therefore, the owner, driver and insurer of the Truck would be responsible to pay compensation.

7. The owner and the driver of the Truck contended that their Truck was standing in stationary condition by the side of the road and the driver of the offending Jeep, rashly and negligently brought his vehicle from the back side and dashed against the stationary Truck, therefore, the entire liability of the accident goes upon the driver, owner and the insurer of the Jeep.

8. The insurer of the Truck also denied its liability on account of fault of the driver of the offending Jeep which dashed against the stationary Truck.

9. Learned Claims Tribunal recorded common evidence in all 4 Claim Cases. The claimants examined Ramshankar (AW-1), Nand Kishore Lodhi (AW-2), Kanti (AW-3), Palibai (AW-4), Hadma (AW-5) and Bitai (AW-6) in support of their Claim Petitions, whereas, the owner and the driver of the Jeep examined B. Vishveshwar Rao (NAW-1) in rebuttal. No witness was examined by the insurer of the Jeep or the owner, driver and insurer of the Truck.

10. Learned Claims Tribunal recorded the findings that the accident occurred on account of rash and negligent driving of the Jeep by its driver and the Jeep was being plied in breach of policy conditions as it was carrying fare-paid passengers, therefore, the insurer of the Jeep would not be liable to pay compensation to the respective claimants. The Tribunal directed that the owner and the driver of the offending Jeep shall be liable to pay the entire amount of compensation awarded in all the 4 Claim Cases. In MACC No. 7/99, the Tribunal awarded a total sum of Rs. 2,62,000/- as the amount of compensation to the claimants on account of death of deceased Sakharam. In MACC No. 22/99, the Tribunal awarded a sum of Rs. 74,896/- on account of death of deceased Mudo. In MACC No. 21/99, the

Tribunal awarded a sum of Rs. 3,19,600/- as the amount of compensation on account of death of deceased Krishnadev Singh Thakur. In MACC No. 19/99, the Tribunal awarded a sum of Rs. 2,13,904/- as the amount of compensation on account of death of deceased Ram Abhilash. The Tribunal also awarded interest @ 12% per annum from the date of filing of the Claim Petitions till their realization with a further direction that if the amount is not paid within a period of one month, the interest shall be chargeable @ 18% per annum.

11. Shri Rajendra Tripathi, learned Counsel appearing on behalf of the Appellant/ owner of the Jeep, argued that Jeep No. MP-25/B/0364 was insured with the New India Assurance Co. Ltd. at the relevant time and the insurance policy issued in favour of the owner, covers the risk of 9 persons. The finding of the Tribunal that the Jeep was being used for taxi purpose is perverse, therefore, the Tribunal has wrongly exonerated the Insurance Company.

12. On the other hand, learned Counsel for the concerned Insurance Company has opposed these arguments and supported the findings recorded by the Claims Tribunal in this regard.

13. In case of hand, all the deceased persons were the occupants of the Jeep. The claimants of respective Claim Petitions have never pleaded that they were traveling in Jeep in the capacity of fare-paid passengers. The driver and the owner of the Jeep have taken a plea that the family members of the owner of the Jeep had gone for a visit to Danteshwari Temple, Dantewada, and when they were returning back from Dantewada to Jagdalpur, they had given lift to the deceased persons and then the accident took place in which the deceased persons died.

14. The finding recorded by the Claims Tribunal that the deceased persons were traveling in the Jeep as fare-paid passengers is based on no material on record. The Tribunal has said that it is not mentioned in the F.I.R. that since the deceased persons were known to the driver, therefore, they were allowed to sit in the Jeep. The copy of the F.I.R. has been filed as Ex.-P/1. It has been lodged by the driver of the Truck which was standing in stationary condition. Therefore, if the same has not been mentioned in the F.I.R., lodged by the driver of the Truck, it shall hardly make any difference. There is no evidence to show that the deceased persons were traveling as a fare-paid passengers in the Jeep. The son of the owner namely B. Vishveshwar Rao (NAW-1) deposed "That on 25.10.98, he had taken his relatives in the Jeep for a Darshan to Dantewada. The names of the relatives are Sunil and Venkateshwar. He was also traveling in the Jeep. While they were returning from Dantewada in the evening, some persons, who were previously known to the driver, met in the way and they were allowed to travel in their Jeep because seats were vacant. Those persons had not paid any fare for traveling in the Jeep". This witness and the other witnesses examined on behalf of the claimants, have been cross examined by the counsel for the concerned Insurance Company but nothing could be brought on record to show that the occupants of the Jeep were fare-paid passengers. The finding recorded

by the Tribunal in this regard, in Para-22 of the award, appears to be based on no material on record and the same cannot be sustained. The Insurance Company had taken a plea that the occupants of the Jeep were fare-paid passenger, therefore, the burden of proof was on the Insurance Company, which the company has not discharged. Therefore, the finding of the Claims Tribunal deserves to be set aside and we do it accordingly and hold that the Insurer of the Jeep has been wrongly exonerated by the Claims Tribunal.

15. So far as the extent of liability of the insurer of the Jeep is concerned, admittedly the insurance policy of the Jeep was valid on the date of accident and the contents of the policy would show that an extra premium of Rs. 450/- was paid for covering the risk of 9 persons at the rate of Rs. 50/- for each person. The policy has permitted the use of vehicle for social, domestic and pleasure purposes and for the insured's own business but it has not covered the use for hire or reward or for organized racing, pacemaking, reliability trials, speed testing, the carriage of goods (other than samples) in connection with any trade or business or use for any purpose in connection with Motor Trade. Therefore, the risk of such occupants was fully covered by the policy when the vehicle was not proved to be used in breach of policy conditions. It is admitted by the parties that the tariff prescribed for covering the risk of occupants of the vehicle for which a premium of Rs. 50/- per persons is paid, would cover the risk of such persons to the extent of Rs. 1 lakh only. Therefore, in our considered view, in the present case, the insurer of the Jeep, would be liable to pay compensation to the extent of Rs. 1 lakh for the death of each occupant of the Jeep.

16. Now we shall consider the merits of the two appeals filed for enhancement of the amount of compensation.

(i) M.A. No. 443/2000:

17.1. The claimants of MACC No. 7/99 namely Palibai and others have filed M.A. No. 443/2000 for enhancement of the amount of compensation awarded on account of death of deceased Sakharam, who was aged about 30 years. They are the wife and 2 minor children of the deceased. They pleaded that the deceased was earning Rs. 4,000/- per month. He was working as a Khallashi helper in the Railways. Palibai has been examined as AW-4. She has deposed that her husband was giving Rs. 3,000/- per month to her for their maintenance. The Tribunal, took this amount as the monthly income of the deceased and deducted Rs. 1,250/- on account of personal expenses of the deceased and determined the monthly dependency of the claimants at Rs. 1,750/- and the annual dependency at Rs. 21,000/-. The Tribunal used multiplier of 12 and the compensation was worked out to Rs. 2,52,000/-. By awarding a further sum of Rs. 10,000/- under the other permissible heads, a total sum of Rs. 2,62,000/- was awarded as compensation to the claimants on account of death of deceased Sakharam in the motor accident. The Tribunal also awarded interest @ 12% per annum from the date of filing of the Claim Petition till its realization.

17.2. Shri Viprasen Agarwal, learned Counsel appearing on behalf of the Appellants/claimants in M.A. No. 443/2000, argued that the Claims Tribunal erred in holding the monthly income of the deceased as Rs. 3,000/- because the wife of the deceased had stated that she was being paid Rs. 3,000/- per month for maintenance and not that the deceased was earning that much of amount. Referring to the pay certificate (Ex.-P/9), he argued that the Gross Pay of the deceased was Rs. 4,814/- and the Net Pay was Rs. 4,403/-, therefore, the Tribunal ought to have calculated on the Net Pay of the deceased and a just and proper compensation would have been awarded. He also argued that a low multiplier has been used.

17.3. It is true that the Pay-Certificate (Ex.-P/9) has been filed by the claimants, which has not been disputed by the other side. The Tribunal has completely ignored the certificate. This is the salary certificate for the month of September, 1998. In the certificate, the Gross-Pay of the deceased has been shown as Rs. 4,814/- per month and the Net-Pay, after usual deductions, has been shown as Rs. 4,403/- per month. The Tribunal ought to have taken this amount as the monthly income of the deceased. This material evidence has been completely ignored by the Tribunal. Therefore, we propose to re-compute the amount of compensation taking the monthly income of the deceased as Rs. 4,000/- and the annual income as Rs. 48,000/-. After deducting 1/3rd of Rs. 48,000/- towards the personal expenses of the deceased, the dependency works out to Rs. 32,000/-. Since the deceased was aged about 30 years and the claimants are the widow and minor children, we deem it appropriate to use the multiplier of 14 in this case. By applying the multiplier of 14 to the annual dependency of Rs. 32,000/-, the compensation works out to Rs. 4,48,000/- By adding a further sum of Rs. 15,000/-towards the other permissible heads, the total amount of compensation works out to Rs. 4,63,000/-. The Tribunal has already awarded a sum of Rs. 2,62,000/-. Therefore, the claimants are entitled to receive Rs. 2,01,000/- more as the enhanced amount of compensation on account of death of deceased Sakharam in the motor accident and the award passed in MACC No. 7/99 is modified to this extent.

(ii) M.A. No. 442/2000:

18.1. Claimants of MACC No. 22/99 namely Hadmo and another have filed M.A. No. 442/2000 for enhancement of the amount of compensation awarded in MACC No. 22/99 on account of death of deceased Mudo. Claimant No. 1 is the uncle and claimant No. 2 is the unmarried sister of the deceased. It comes in the evidence of Hadma (AW-5) that deceased Mudo was earning Rs. 1,000/- per month. The Tribunal has accepted this evidence and held that the deceased was earning Rs. 1,000/- per month. After deducting Rs. 584/- from the said amount, the monthly dependency was determined as Rs. 416/- and the annual dependency as Rs. 4,992/-. The Tribunal applied multiplier of 13 to the said amount of Rs. 4,992/- and the compensation was worked out to Rs. 64,896/-. By adding a further sum of Rs. 10,000/- under the other permissible heads, a total

amount of compensation was worked out to Rs. 74,896/-. On this amount, the Tribunal also awarded interest @ 12% per annum from the date of filing of the Claim Petition till its realization and further directed that if the payment is not made within a period of 1 month, the interest would be chargeable @ 18% per annum.

18.2. Learned Counsel for the Appellants/claimants has argued that a low income has been assessed and a lower multiplier has been used. We do not find any force in such arguments advanced by the counsel for the Appellants/claimants. The claimants themselves pleaded that the deceased was earning Rs. 1,000/- per month as he was working as a conductor. Even Hadma, AW-5 (claimant No. 1), categorically deposed that the deceased was earning Rs. 1,000/- per month. Therefore, it cannot be said that a low income has been assessed by the Tribunal.

18.3. So far as deduction is concerned, since the claimants are uncle and unmarried sister of the deceased and the deceased was also unmarried, the Tribunal could have deducted 2/3rd from the income of the deceased in view of the dictum of the Apex Court rendered in the matter of Donat Louis Machado and Others Vs. L. Ravindra and Others, , as the deceased would have spent 2/3rd amount of his earning on his own family which he would have raised and on himself. The Tribunal has deducted less than 50% in this matter which cannot be said as a higher deduction. Looking to the age of the claimants as also the deceased which was 22 years, the multiplier of 13 selected by the Tribunal cannot be said to be a lower multiplier. For the reasons stated above, we do not find that a low compensation has been awarded to the claimants in this case. Therefore, the appeal filed for enhancement of amount of compensation awarded in MACC No. 22/99 deserves to be dismissed.

19. In the result:

(i) M.A. No. 430/2000; M.A. No. 431/2000; M.A. No. 432/2000 and M.A. No. 433/2000 are partly allowed. It is directed that the New India Assurance Co. Ltd. shall be liable to pay the amount of compensation to the extent of Rs. 1 lakh in each case along with proportionate interest on the said amount as awarded by the

Claims Tribunal. The owner and the driver of the offending Jeep shall be jointly and severally liable to pay the balance of amount of compensation in each case, if any, along with proportionate interest on the said amount as awarded by the Claims Tribunal and/or enhanced by this Court.

(ii) M.A. No. 443/2000 is allowed in part. The amount of compensation awarded in MACC No. 7/99 is enhanced by Rs. 2,01,000/-. This amount shall carry interest @ 6% per annum from the date of filing of the Claim Petition till its realization. The concerned Respondents are granted 2 months time to deposit the said amount.

(iii) M.A. No. 442/2000 is dismissed.

(iv) There shall be no orders as to the cost(s).