(2004) 06 MP CK 0003

In the Madhya Pradesh High Court

Someshwar APPELLANT

Vs

Shabir Sheikh and Others RESPONDENT

Date of Decision : 21-06-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 147

Citation : (2004) 3 ACC 529

Hon'ble Judges : Ashok Kumar Tiwari, J;A.M. Sapre, J

Bench : Division Bench

Judgement

1. This is an appeal filed by the claimant against an award, dated 8.7.1999, passed by learned Additional Member, Motor Accident Claims Tribunal, Kukshi in Claim Case No. 23 of 1997 whereby claimant''s claim was decreed in part for a sum of Rs. 80,000/- by way of compensation for the damage caused to claimant''s vehicle in Accident. According to claimant, it is on a lower side. He wants more and, hence, has come up in appeal for enhancement. The question, therefore, that arises for consideration in this appeal is, whether any case for enhancement is made out?

2. Heard Mr. H.S. Rajpal, learned Counsel for the appellant and Mr. V.R Saraf, learned Counsel for respondent No. 3.

3. As observed supra, two questions arise in this matter. First, whether any case for enhancement in compensation is made out on facts? And secondly, whether Tribunal was justified in holding that both the vehicles i.e., the one belonging to appellant (claimant) and the other belonging to respondent Nos. 1 and 2 coming from other direction were equally negligent in their driving, resulting in causing Accident in question?

4. So far as first question is concerned, we have gone through the evidence led by the claimant on the question of claiming damages caused to his vehicle due to Accident in question. We have also perused the application done by the Tribunal when a finding was recorded that claimant is entitled to claim a sum of Rs.

80,000/- by way of total compensation towards loss of vehicle.

5. In our considered opinion, we find no reason to take a different view than what is taken by the Tribunal. In other words, we find no cogent reasons or grounds to differ with the findings of Tribunal and modify the impugned award by enhancing the compensation awarded to the claimant. As observed supra, the total compensation awarded to the claimant (appellant herein) is a sum of Rs. 80,000/-. It is to our mind, a just, reasonable and proper when one look to the evidence led. The Tribunal seems justified in properly appreciating the evidence and rejecting that part of oral/documentary evidence which was tendered in the nature of inflating the claim of the claimant. Since, we concur with the factual finding of the Tribunal on the determination of the compensation awarded by the Tribunal; we do not wish to again re-appreciate the whole evidence for confirming the factual finding of the Tribunal, In a case where the Appellate Court is inclined to uphold any factual finding of the Trial Court then the Supreme Court says that it is not necessary to undertake the de novo exercise of appreciation of evidence by the Appellate Court. We follow this legal course and uphold the finding. Indeed, the claimant should feel satisfied in what he has got by way of compensation for the loss that occasioned to his vehicle only and not to his own body. He should not to be too commercial in claiming compensation for the loss of his vehicle. He is fortunate to have survived.

6. Coming to the question of negligence on the part of the two vehicles who were involved in the Accident. We are inclined to concur with the impugned finding on this issue as well. In our opinion, there was an evidence to sustain the finding of negligence on the part of both the drivers of the vehicles. In other words, there is an evidence to hold that both the drivers were negligent in their driving that resulted in an Accident. Once, it is held that it was a case of contributory negligence in equal percentage then the liability has to be apportioned equally between the two Insurance Companies of the vehicles. In (act, no fault can be found in apportioning the liability inter se the owners/drivers and the Insurance Companies of the two vehicles involved in the Accident.

7. Coming to yet another question raised by the learned Counsel appearing for the Insurance Company that no liability more than Rs. 6,000/- could be imposed upon the Insurance Company in view of Section 147(2)(b) has no merit in the facts of this case. It is for the reason that no evidence was led in support of this objection. See National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, . In other words, no witness was examined by the Insurance Company to prove their case. Mere filing of the documents without there being any proof is not enough to sustain the plea sought to be raised to avoid the liability. We, therefore, do not uphold this objection though raised.

8. In view of aforesaid facts and the law laid down by Supreme Court, we find no merit in this appeal as also in the cross-objection filed by the respondent. The appeal as also the cross-objections failed and are hereby dismissed.

No costs.