
(1995) 03 MP CK 0063

In the Madhya Pradesh High Court

Case No : M.A. No's. 142, 143 and 144 of 1989

Somti Bai and Others

APPELLANT

Vs

Mishri Lal Chhouthary and Others

RESPONDENT

Date of Decision : 07-03-1995

Acts Referred:

Motor Vehicles Act, 1988 — Section 96

Citation : (1995) ACJ 1233

Hon'ble Judges : D.M. Dharmadhikari, J;A.S. Tripathi, J

Bench : Division Bench

Advocate : N.D. Singhal, for the Appellant; R.D. Jain and B.N. Malhotra, for the Respondent

Judgement

D.M. Dharmadhikari, J.—A common order is being passed in this appeal, Misc. Appeal No. 142 of 1989, and in appeals, Misc. Appeal Nos. 143 and 144, both of 1989, all preferred by the claimants against the award of the Motor Accidents Claims Tribunal, Shivpuri, passed on 25.9.1989 in relation to an accident to truck No. MPW 4832.

2. Facts not in dispute are—that truck No. MPW 4832 while carrying in its body labourers overturned on 5.4.1984 some time in the midnight in which two labourers, by name Hotam and Harvilas, died and the third Deo Pal suffered injuries resulting in fractures of his bones. The Claims Tribunal awarded to the claimants of the deceased in each case a compensation in the sum of Rs. 28,000/- and a sum of Rs. 12,000/- to the injured labourer, Deo Pal. The Claims Tribunal held only owner and driver of the vehicle jointly and severally liable for payment of compensation. The Tribunal totally absolved the insurance company from any liability by holding that the three above-named victims of the accident were not employed on the truck by the owner of the vehicle. They were labourers of the mine-owner and were carried in the truck as gratuitous passengers. The Tribunal directed refund of compensation paid by the insurance company towards "no fault" liability, and the said amount was directed to be reimbursed to the

insurance company by the owner and driver of the vehicle.

3. The learned counsel, Mr. N.D. Singhal, appearing in all the three cases for the appellants, made strenuous efforts to assail the award of the Tribunal. First, it is urged that the Tribunal erred in completely absolving the insurance company from any liability. The finding recorded by the Tribunal that the three persons were gratuitous passengers has been questioned on several grounds. The oral evidence on record led by the claimants and owner of the vehicle were read in detail to contend that the three persons had boarded the truck as labourers on duty and they could not be termed as gratuitous passengers to absolve the insurance company completely from the liability. Alternatively, it is argued on behalf of the claimants that whatever may be the capacity in which the labourers boarded the truck, involved in the accident, it is not open to the insurance company to deny its liability on any ground not available to it under the provisions of Section 96 of the Motor Vehicles Act. Strong reliance is placed on a Division Bench decision of Indore Bench of this court in *Patharibai Karansingh v. Firm Lalji Shankarlal* 1985 ACJ 526 (MP), *Harishankar Tiwari v. Jagru* 1987 ACJ 1 (MP), *Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan* 1987 ACJ 411 (SC) and *Bhagwan Das and Another Vs. National Insurance Company Ltd. and Another*, .

4. Mr. B.N. Malhotra, learned counsel who appeared for the insurance company, reread the oral evidence on record and argued emphatically that the Tribunal was right in holding that the three persons were given a lift on the truck as they were returning after completing their job of stone-cutting from the stone-quarry where they were employed by the owner of the mine. It is argued on behalf of the insurance company that under the express terms of the policy the three labourers having not been employed by the owner of the vehicle, i.e., the insured, for any work of loading or unloading, their risk was not at all covered. On behalf of the insurance company heavy reliance is placed on the following express terms contained in the policy of insurance, which are reproduced hereinunder:

Limitations as to use:

(1) xxx xxx xxx(2) xxx xxx xxx (3) Use for carrying passengers in the vehicle except employees (cleaner and driver) total six in number coming under the purview of Workmen's Compensation Act, 1923.

5. On behalf of the insurance company attention is also invited to the other terms of the insurance policy where on payment of additional premium by the insured, risk is covered for accident of two drivers, plus one cleaner plus two labourers. There is a separate Endorsement No. IMT 16 attached to the policy which contains the terms with regard to the liability of the insurance company and reads as under:

Legal liability to persons employed in connection with the operation and/or maintenance and/or loading and/or unloading of motor vehicles.

In consideration of the payment of an additional premium it is hereby understood and agreed that notwithstanding anything contained herein to the contrary the company shall indemnify the insured against his legal liability under:

The Workmen's Compensation Act, 1923 and subsequent amendments of that Act prior to the date of this endorsement the Fatal Accidents Act, 1855, or at common law in respect of personal injury to any paid driver (or cleaner or conductor or person employed in loading and/or unloading) whilst engaged in the service of the insured in such occupation in connection with the truck and will in addition be responsible for all costs and expenses incurred with its written consent.

The premium having been calculated at the rate of Rs. 8/- per driver (and/or cleaner or conductor and/or person employed in loading and/or unloading) the insured shall certify at the expiry of each period of insurance the maximum number of drivers and/or cleaners and/ or conductors and/or persons employed in loading and/or unloading employed at any one time during such period in connection with the truck belonging to him and the premium shall be adjusted accordingly:

Provided always that:

[See, Paperbook, page No. 95].

On behalf of the insurance company, it is also pointed out that the contents of first information report of the incident made to the police on record, show that in the truck more than six persons were carried at the time of the accident in violation of the provisions of M.P. Motor Vehicles Rules framed under the Motor Vehicles Act. It is urged that on the above facts and terms of the policy the insurance company was rightly absolved by the Tribunal from liability towards compensation.

6. On the controversial issue of the capacity and the manner in which the three victims of the accident boarded the truck, the best evidence available is of the owner of the vehicle, Mishri Lal Chhouthary and one of the injured claimants, Deo Pal. The owner of the vehicle examined as PW 1 denies any knowledge of the capacity and the manner in which the three victims were carried in the truck. In the cross-examination, however, he admits that the driver of the truck used to transport stones in the truck and for that purpose the labourers were employed by the driver. The injured victim Deo Pal has been examined as PW 4. In para 5 of his statement in cross-examination he admits that he and the deceased Hotam and Harvilas were employed by one Baba Thekedar at the mines. In his statement-in-chief he states that the driver of truck had carried them to the mine as labourers. They were returning after the day's work from the mines in the truck in which the stones were also loaded. In para 7 in his cross-examination he states that they were given lift in the truck being employed as labourers and no fare was charged from them. The other witness, who was also the occupant of the truck, is Daya Ram, PW 5. He also corroborates in material part the version

of Deo Pal, PW 4. In para 4 he admits that the three victims of the accident were stone-cutters and they were not doing the work of loading or unloading of stones. In para 5 in his cross-examination he states that on the date of the incident they were brought to the mines of quarry owners for discharging duties as labourers. In para 5 of his statement in cross-examination he states that on the fateful day after loading the truck with stones they had proceeded sometime in the midnight and the accident took place somewhere in the early hours of morning between 4 and 5 a.m.

7. The question before us is whether in the state of above evidence the insurance company could be made liable for the death of the two labourers and for the injuries to the third when none of them was directly employed by the owner of the vehicle. We have also to consider and construe the terms of the policy of the insurance quoted above, to determine whether the insurance company can be held jointly liable with the insured and the driver of the vehicle. In construing the policy of the insurance due regard has to be given to the nature of the transport business by trucks and the purpose for which the insurance cover is statutorily provided in the Motor Vehicles Act. As has come in the evidence on record of the case that truck was employed in transporting cut-stones from the quarry or mines of different contractors. The truck owner had left it to the discretion and authority of the driver to employ the available labourers for the purpose. The three victims of the accident were labourers and were employed at the mines. On the fateful day they boarded the truck with stones and were returning from the mines after their day's work. The insurance policy admittedly covers the risk of two drivers, one cleaner and three other persons, maximum six persons. Can it be held from the terms of the policy and the provisions of the Motor Vehicles Act that only the risk of the labourers employed by the insured was covered by the terms of the policy? The terms of insurance policy have to be reasonably construed keeping in view the provisions of insurance in Motor Vehicles Act and the nature of transport business. A construction on the terms of the policy which effectuates the intention of law of giving adequate relief to the victims of motor accidents has to be preferred to any other construction which would defeat the purposes of the Act. In transport business by truck it is many times necessary to carry labourers with the goods. The labourers are sometimes employed directly by the truck-owners and sometimes they were employed by the hirer of the truck. Both categories of labourers should be deemed to be covered by the insurance cover. Any other interpretation would not fulfil the aim and intent of the Act. We are supported in our view by the Division Bench decision of Indore Bench of this court in the case of Patharibai Karansingh v. Firm Lalji Shankarlal 1985 ACJ 526 (MP) and a Full Bench decision of this court in Harishanker Tiwari v. Jagru 1987 ACJ 1 (MP). The contentions advanced on behalf of the insurance company cannot be accepted that the terms of the policy cover risk of the labourers employed directly by the owner of the vehicle on the truck and not of labourers employed by the hirer of the truck. The driver in this case has chosen to remain ex pane and has not entered the witness-box. The owner of the vehicle

has not taken a stand that the driver was not authorised to engage labourers or carry labourers in the course of the transport business of the owner. The labourers although engaged by hirer of the vehicle, but having been carried in the truck in the course of the transport business can claim reimbursement of the compensation awarded against the insured from the insurer under the terms of the policy. The award of the Claims Tribunal to the extent that it completely absolved the insurance company from the liability towards compensation, therefore, deserves to be set aside. We accordingly set it aside partly and hold that the insurance company would be jointly liable to pay compensation with the insured and the driver of the vehicle for the accident.

8. The other argument advanced on behalf of the insurance company is that the truck was carrying persons more in number than permissible under the Motor Vehicles Act and the Rules framed thereunder. No specific plea was raised in that behalf before the Tribunal and no evidence was led in support of the said plea. It was neither pleaded nor proved that due to the breach of the provisions of the Motor Vehicles Act and the Rules, the insurance company could deny its liability. The above ground urged for the first time in this appeal, therefore, could not be accepted.

9. The learned counsel for the claimants seeks enhancement of the amount of compensation awarded in the two cases concerning deaths and in the third case for the injuries caused. We have perused the relevant part of the award of the Claims Tribunal on the question of determination of quantum of compensation payable to the dependants of the deceased. In the case of deceased Hotam, the learned Member of Claims Tribunal determined the total amount of compensation at Rs. 28,000/-. Deceased Hotam was aged 28 years and found to be earning about Rs. 25/- to Rs. 30/- per day. On the above basis his annual income (Sic. dependency) was determined at Rs. 2,000/- and taking a multiplier of 15, a sum of Rs. 30,000/- was arrived at being the total compensation payable. From the above sum Rs. 5,000/- were deducted for lump sum payment. Thus, only Rs. 25,000/- were held payable for the death. In addition to the above, Rs. 2,000/- were awarded for loss of consortium to the widow and a total sum of Rs. 1,000/- awarded to the children. Thus, in all a sum of Rs. 28,000/- was awarded. In the similar manner the same amount of compensation was determined for the death of Harvilas. The injured claimant, Deo Pal, was awarded a total sum of Rs. 12,000/- for the injuries sustained by him. In doing so, it was held that he was earning Rs. 25/- per day and thus he was able to save about Rs. 2,000/- per annum. Because of the injuries caused to him his loss of earning capacity was held to have been reduced approximately to 25 per cent. Thus, determining loss of his income at Rs. 500/- per annum and taking a multiplier of 20 a sum of Rs. 10,000 was determined as compensation for future loss of earnings. For pain and suffering he was awarded a sum of Rs. 1,000/- and Rs. 1,000/- were awarded for medical expenses. Thus, in all a sum of Rs. 12,000 was awarded to the claimants who had suffered injuries in that accident.

10. In our opinion, the amount of compensation determined for death in the two cases has to be re-computed in view of the legislative changes and the latest decisions of the Supreme Court. In Motor Vehicles Act of 1988 a minimum compensation fixed for death, irrespective of no fault of the driver of the vehicle, is Rs. 50,000/-. It is true that the present case is covered by the Act of 1939 and at that time the minimum no fault compensation for death was Rs. 15,000/-. Against the awarded amount by the Claims Tribunal the claimants have not been paid anything more than Rs. 15,000/- deposited by the insurance company towards "no fault" liability. The present claimants are thus suffering because they have not been fully paid the amount of compensation awarded by the Tribunal. The provision contained in the Motor Vehicles Act, 1988 fixing Rs. 50,000 as the minimum amount of "no fault" compensation for death can, therefore, be taken aid of for computation of compensation based on fault liability.

11. The leading case of the Supreme Court in General Manager, Kerala State Road Transport Corporation v. Susamma Thomas 1994 ACJ 1 (SC), contains the guidelines to be followed by all Claims Tribunals in the matter of computation of compensation in motor accidents. The multiplier method is upheld as the appropriate method for calculating just compensation. In the subsequent decisions of the Supreme Court in National Insurance Co. Ltd. v. Swaranlata Das 1993 ACJ 748 (SC) and Urmilla Pandey and others Vs. Khalil Ahmad and others, , for the age between 20 and 30 the proper multiplier indicated is of 15. A separate amount is to be awarded under the head of loss of consortium and loss of estate between Rs. 5,000/- and Rs. 10,000/-. Deduction for lump sum payment has been disapproved by the Supreme Court. In cases, where a proper multiplier is taken and the amount awarded remains unpaid for a long period of time deduction for lump sum payment cannot be upheld.

12. Taking aid of the decisions of the Supreme Court (supra) we proceed to recalculate the amount of compensation payable in the present two cases of deaths. Admittedly, both were labourers and daily wage-earners. The minimum wage fixed under the Minimum Wages Act is above Rs. 30/-. Considering the uncertainty that they might not have got work every day it can be safely assumed that in a month they would have definitely worked at least for 20 days. At the rate of Rs. 25/- per day for 20 days in a month they would earn Rs. 500/- per month, i.e., Rs. 6,000/- per year. It can be assumed that about 2/3rd of the income would have been spent on the dependants. The annual dependency would, therefore, come to Rs. 4,000/-. Multiplying the same by 15, the amount of compensation payable to each of the claimants for death would come to Rs. 60,000/-. A sum of Rs. 5,000/- minimum is payable towards the loss of consortium and estate, all inclusive. Thus, a total amount of Rs. 65,000/- as compensation should have been awarded by the Claims Tribunal to the claimants in each case of death in the accident in the two cases.

13. So far as the injured claimant, Deo Pal, is concerned, we do not find any justification to grant any enhancement. The claimant has not proved that he has

been physically disabled from working as a labourer. The Tribunal had seen the claimant in the witness-box and has also recorded that no deformity or physical disability was seen by the learned Member of the Tribunal while he was walking in the court. It has also not been proved by him that his earning capacity has been reduced as a result of the accident. It appears that for the injuries suffered by him he took medical treatment and was almost fully cured. The learned counsel on his behalf cited a few unreported decisions of this court to claim a sum of Rs. 25,000 in all towards general damages and special damages. In the instant case, the injured claimant has failed to prove the extent of his physical disability and loss of earnings to him. We do not consider that any case is made out for enhancing the amount of compensation awarded to him.

14. In view of the discussion aforesaid in consequence we partly allow the appeal, M.A. No. 142 of 1989 (Somti Bai v. Mishri Lal Chhouthary) and M.A. No. 143 of 1989 (Kashumal v. Mishri Lal Chhouthary) to the extent of enhancing the amount of compensation and setting aside the avvord of the Claims Tribunal absolving the insurance company from the liability to pay compensation. Instead, we direct that the compensation awarded by us shall be paid jointly and severally by all the respondents, i.e., the owner, driver and the insurance company. In the above-mentioned two appeals filed by the claimants for death, the amount of compensation in each appeal is enhanced from Rs. 28,000/- to Rs. 65,000/-. On the unpaid amount of compensation the claimants shall be paid interest at the rate of 12 per cent per annum from the date of application to the Tribunal till payment. Out of the compensation so deposited 50 per cent of the amount be paid to the widow in each of the two cases of death and the remaining amount of compensation is directed to be deposited through Claims Tribunal in the fixed deposits in a scheduled bank, to be made payable to the children of the deceased in each of the cases. On demand made by them or on their behalf for their requirements the amount in deposit shall be disbursed on a proper application and for proper needs of the claimants themselves or through their guardians and in disbursing of that fixed deposit amount the Tribunal shall be guided by the penultimate directions given by the Supreme Court in *Susamma Thomas*" case 1994 ACJ 1 (SC).

15. The appeal filed by the injured claimant, Deo Pal, M.A. No. 144 of 1989 is dismissed.

16. In the circumstances, in all the appeals there shall be no order as to costs.