

(2014) 01 MP CK 0067

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No's. 2691 and 2693 of 2006

Sudarshan Prasad Soni

APPELLANT

Vs

Sheikh Nigam and Others
 Kaushalya Bai Vs
Sudarshan Prasad Soni and Others

RESPONDENT

Date of Decision : 10-01-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2014) 1 ACC 669

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : S.P. Pandey in M.A. No. 2691/2006 and Mr. Shushil Kumar Tiwari in M.A. No. 2693/2006, for the Appellant; Shushil Kumar Tiwari, Advocate for the Respondent Nos. 1, 2 in M.A. No. 2691/2006, Mr. S.K. Pandey, Advocate for the Respondent No. 1 in M.A. No. 2693/2006 and Mr. V.K. Trivedi, for the Respondent

Final Decision : Disposed Off

Judgement

Rajendra Menon, J.—As both these appeals u/s 173, Motor Vehicles Act, one by the claimant for enhancement of compensation and another by the owner challenging the liability imposed upon him arise out of a same accident and a common award is passed by the Additional Motor Accident Claims Tribunal, Umariya, in Claim Case No. 18/2005, both the appeals are being disposed of by this common order. Claimant Sudarshan Prasad Soni in M.A. No. 2691/2006 was travelling in a Tempo Trax bearing No. MP18-D/0305 owned by appellant Smt. Kaushalya Bai in M.A. No. 2653/2006 and driven by Sheikh Nigam one of the respondents in both the cases and insured with the United India Insurance Company - respondent No. 3 in both the cases. It is said that on 13.10.2004 the vehicle was coming from Bilaspur to village Kaudiya and due to the rash and negligent driving of the driver of the vehicle namely Shri Sheikh Nigam the vehicle had turned turtle and Shri Sudarshan Prasad Soni sustained various injuries on his head, ear, eyes, chest, etc. He was treated in various hospitals i.e. in District Hospital, Umariya by private Doctors, in Umariya and Katni and

thereafter in Medical College, Jabalpur. Claiming that he has sustained 40% disability because of the injury caused, a claim petition was filed making a claim of Rs. 2,80,600 on the ground that he was earning Rs. 8,000 per month, he had spent about Rs. 80,000 on his treatment. Rs. 5,600 for coming to Umariya and Jabalpur for treatment and Rs. 20,000 for mental ailment and Rs. 70,000 for permanent ailment. Based on the totality of the evidence and material that came on record, a compensation of Rs. 34,500 has been granted and it is held that the 40% disability indicated in the Medical Certificate Document No. 1 is not proved in accordance with law, the Doctors have not been examined and, therefore, the claim for disability is rejected. Seeking enhancement of compensation, M.A. No. 2691/2006 is filed by the claimant. However, while passing the award impugned on 3.5.2006, as the Tribunal has found that the vehicle in question was a private vehicle, was registered and insured as a private vehicle but after collecting fare from the passengers it was being driven as a commercial vehicle, the Insurance Company is exonerated from payment of compensation and liability is imposed upon the owner Smt. Kaushalya Bai. Hence, M.A. No. 2653/2006 by the owner of the vehicle.

2. Mr. Shakti Prakash Pandey, learned Counsel for the appellant appearing in M.A. No. 2691/2006 challenged the award mainly on the ground that once permanent disability to the extent of 40% is established from the Medical Board's report document No. 1 rejecting this claim was not proper. That apart, he submitted that for the serious injuries sustained by the appellant which is found to be grievous in nature, payment of total compensation of Rs. 34,500 was not sufficient.

3. Mr. S.K. Tiwari, learned Counsel for the appellant in M.A. No. 2653/2006 argued that the finding of the vehicle being used as a commercial vehicle was not correct and the same being a perverse finding, the liability be imposed upon the Insurance Company. That apart, he argued that as the compensation granted is adequate, no further interference be made in the claim for enhancement made by the claimant in M.A. No. 2691/2006.

4. Mr. Trivedi, learned Counsel for the Insurance Company argued that as a reasonable award has been passed by the Tribunal appreciating all the facts and circumstances, no interference be made and both the appeals be dismissed.

5. I have heard learned Counsel for the parties and perused the record. As far as enhancement claimed by the claimant Shri Sudarshan Prasad Soni in M.A. No. 2691/2006 is concerned, even though appellant claimed compensation on the ground that he has attained 40% disability based on a Medical Board Certificate given by the Medical Board at Umariya, it is seen that the Doctor or the Members of the Medical Board were not examined as witness and legal evidence to prove the disability, permanent in nature was not adduced. In the absence of any cogent evidence being available with regard to the disability and in the absence of the Doctor concerned having been examined, the learned Tribunal has not committed any error in rejecting the claim for permanent disability. The

permanent disability as alleged is not proved and, therefore, no interference on this count is called for. However, for the ailment suffered by the claimant on various heads a total compensation of Rs. 34,500 has been granted. The medical documents available on record does show that claimant suffered injury on his head, ear, chest and eye, etc. and he was also treated in various hospitals in Chandiya, Umariya, Katni and Jabalpur. The Tribunal has held that he has suffered grievous injury on various part of the body. That being so the compensation of Rs. 5,000 was very much on the lower side. The records do show that the claimant was unable to perform his normal functions for a period of six months and for this only a compensation of Rs. 10,000 is granted.

6. Taking note of the totality of circumstances and the nature of injury suffered, interest of justice would be met in case the total compensation awarded on various heads is enhanced by a further some of Rs. 25,000 in all which would take care of all the sufferings suffered by the appellant.

7. In view of the above, in appeal No. MA 2691/2006 it is directed that the amount of compensation be enhanced by a further sum of Rs. 25,000. The enhanced amount of compensation i.e. Rs. 25,000 be paid to the appellant Sudarshan Prasad Soni in M.A. No. 2691/2006 along with interest at the rate of 6% per annum from the date of award till its payment.

8. As far as the claim by the owner in M.A. No. 2653/2006 is concerned, it is seen from the record that the vehicle in question a tempo trax was being used as a commercial vehicle. The statement of witnesses available on record goes to show that passengers were being carried in the vehicle by collection of fare from them. Claimant Sudarshan Prasad in his evidence in para 15 says that for going from Bilaspur to Kaudiya a sum of Rs. 10 was paid by him and he was allotted a seat in the back of the vehicle where various other persons were also sitting. Claimant's witness No. 2 Gudda Burman has also given his statement and in para 5 he says that he was travelling in the vehicle in question along with his wife from Bilaspur to Chandia and for going from Bilaspur to Chandia for the two persons the Conductor collected Rs. 30 from him. Except for denying the aforesaid contention, appellant Kaushalya Bai has not adduced any cogent evidence to show that these facts are not correct. On the contrary in the vehicle 8 passengers were found to be travelling and the finding recorded is that for all the passengers have paid fare. This finding recorded by the Tribunal is a proper finding based on appreciation of the evidence available on record and I see no reason to interfere. It is established from the evidence that the vehicle which is registered as a private vehicle was being used as commercial transport vehicle after collection of fare and if finding it to be so, the learned Tribunal has held that the Insurance Company is not liable to pay compensation and has applied the principle of "Pay and recover" no error has been committed by the Insurance Company warranting interference.

9. Accordingly, finding no ground, this appeal M.A. No. 2653/2006 filed by Smt. Kaushalya Bai is dismissed. Accordingly, both the appeals are disposed of as

ordered hereinabove without any order so as to costs.