(1996) 05 MP CK 0061

In the Madhya Pradesh High Court

The Oriental Insurance Co. APPELLANT

Vs

Vishwanath and Others RESPONDENT

Date of Decision : 01-05-1996

Acts Referred:
Motor Vehicles Act, 1988 — Section 147, 173, 2

Citation : (1997) 1 ACC 399

Hon'ble Judges : Subhash Balwant Sakrikar, J

Bench : Single Bench

Judgement

S.B. Sakrikar, J.—The appellant, Oriental Insurance Company (for short, ''the Insurance Company'') has directed this appeal against the Award dated 10th January, 1992 passed by II Additional Motor Accident Claims Tribunal, Indore in Claim Case No. 49/87, thereby partly allowing the claim petition of respondents No. 1 and 2 and awarding compensation of Rs. 19,195/- together with interest @ 12% p.a. from the date of filing of the application till realisation of the amount, in favour of the claimants.

2. The facts lie in a narrow compass. On 8th January, 1984, at about 3.30 a.m., respondent No. 4, Bherusing was driving his truck bearing registration No. MBI 9086, from Chandrabhaga, Juni, Indore. As a result of rash and negligent driving, the truck dashed against portion of the house bearing MPL No. 113, situated in Chandrabhaga, Juni, Indore, owned by the complainant/respondents -No. 1 and 2 and caused damage to the said house. It is not in dispute that respondent No. 3, Jagdeesh, was the registered owner of the offending vehicle (truck) and the same was insured with the appellant, Insurance Company. The claim petition was filed before the Tribunal against the appellant, respondent No.

3 and respondent No. 4, for the compensation, for the damage caused to the house in question. The claim petition was registered by the appellant but respondents No. 3 and 4, did not appear before the Tribunal, therefore, the case proceeded ex-parte against them. On the basis of the evidence recorded in the case, the Tribunal partly allowed claim petition and awarded compensation

against respondents No. 3 and 4 and the appellant jointly for the payment of compensation, as indicated _, above. Aggrieved by the award, the appellant. Insurance Company has filed this appeal u/s 173 of the Motor Vehicles Act, 1988 (for short, ''the Act'').

3. I have heard Mr. N.C. Behl learned Counsel for the appellant. None appeared for the respondents.

4. Mr. N.C. Behl, learned Counsel for the appellant contended that the compensation awarded by the Tribunal is on higher side. The assessment of the compensation is not based on the evidence on record. The Counsel urged that the amount of compensation bemodified.The Counsel further contended that in view of statutory liability arising u/s 147 of the Act (Section 95 of the repealed Code). The appellant can be held liable for the compensation to the extent of Rs. 6,000/- only. The Tribunal has committed the error in holding the appellant responsible for the payment of the amount of compensation alongwith respondents No. 3 and 4 jointly and severally.

5. I have perused record of the Tribunal and considered the evidence from | it. The claimant, on the point of compensation, has examined himself and Satyapal Pande (PW 2) as also Rameshchandra, Photographer (PW 3). Claimant, Vishwanath Tiwari (PW 1) in his statement has stated that after the accident, the estimate of the damage caused to the house in question, got assessed by Satyapal Pande (PW 2), a Retd. Engineer. Satyapal Pande (PW 2) assessee the damage to the tune of Rs. 30,000/- to 35,000/-. Exh. p/1 is the estimate assessed by Satyapal Pande (PW 2). Satyapal Pande (PW 2) corroborated the statement of Vishwanath Tiwari (PW 1) and deposed that Ex. P 1, estimate of the damage of the house in question owned by the claimants, is prepared by him and bears his signatures on it. Rameschandra (PW 3) stated in his statement that he took out the photographs of the damaged house. Exh. P 2 to P10 are the photographs and Exh. P11 to P13 are negative films of the photographs. The Tribunal on evaluation of the evidence led on behalf of the claimants, assessed total amount of damage caused to the house in question as Rs. 18,775/- and the expenses incurred for taking out photographs etc. are worked out to Rs. 420/- and passed the award of Rs. 19,195/- in favour of the claimants. The findings of the Tribunal and the award of compensation are based on proper appreciation of the evidence on record, which require no interference in this appeal.

6. The other contention urged by the learned Counsel is that the liability of the Insurance Company is limited to the extent of Rs. 6,000/- in view of the Provisions of Section 147 of the Act of 1988 (Section 95)

7. On perusal of Section 147 Sub-section 2(b) of the Act, the contention of the learned Counsel appears to be acceptable. Section 147 Sub-section 2, reads as under:

Section 2(d) of the Act of 1939.

147. Requirements of policies and limits of liability--

...(2) Subject to the proviso to Sub-section (1), shall cover any liability incurred in respect of any accident up the following limits, namely--

(a) save as provided in Clause (b) the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand;

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

On perusal of the copy of the policy, Exh. P1, it is found that it''s a third party risk policy and no special condition is incorporated in the policy with regard to the amount of compensation payable to the third party in case damage caused to the property arising out of the motor accident. In view of the above, the Insurance Company can be held responsible only to the extent of statutory liability arising u/s 147, Sub-section 2 of the Act. The Tribunal has not considered the above aspect and held the Insurance Company liable jointly and severally for the payment of compensation awarded by the Tribunal. The Award passed by the Tribunal requires modification only to the extent of limited liability of the Insurance Company for the payment of compensation.

8. In the result, this appeal is allowed in part. So far as the amount of compensation awarded by the tribunal is concerned, it is affirmed but the liability of the Insurance Company to pay the compensation is fixed to the extent of Rs. 6,000/- alongwith the interest as awarded by the Tribunal. The remaining amount of compensation shall be payable by the respondents No. 3 and 4 (the driver and owner of the truck). There shall be no orders as to costs

