

(1987) 10 MP CK 0033

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 122 of 1986

United India Insurance Co. Ltd.

APPELLANT

Vs

Ismail and Others

RESPONDENT

Date of Decision : 12-10-1987

Acts Referred:

Motor Vehicles Act, 1939 — Section 110B, 96(2)

Citation : (1988) 1 ACC 233 : AIR 1988 MP 189 : (1989) 66 CompCas 629

Hon'ble Judges : R.K. Varma, J

Bench : Single Bench

Advocate : G.M. Chaphekar and Samvastar, for the Appellant; B.K. Samdani and G.K. Neema, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Varma, J.—This is an appeal by the Insurance Company directed against the award dt. 24-12-1985 passed by the Motor Accidents Claims Tribunal, Indore in Claim Case No. 49/80 whereby the learned Tribunal has awarded compensation of Rs. 50,000/-for the death by motor accident of the deceased Mohammad Amin with interest @ 10% per annum from the date of the petition till realisation.

2. The facts giving rise to this appeal, briefly stated, are as follows : --

It is not disputed that on 21-1-1980, the truck bearing Registration No. MPM 3297 hit the deceased Mohammad Amin who was going on a bicycle near Premsukh Talkies, Indore with the result that the deceased fell down and was crushed under the wheels of the truck. The deceased was moved to the M. Y. Hospital, where he succumbed to the injuries. The respondents Nos. 1 and 2 who are parents of the deceased, filed the claim petition u/s 110-A of the Motor Vehicles Act against the respondents Nos. 3 and 4, the owner and the driver of the truck in question joining the Insurance Company which had insured the owner in respect of the truck, as a party non-petitioner.

3. The learned Tribunal, on appreciation of evidence adduced in the case, found

that the accident resulting in the death of Mohammad Amin took place on account of rash and negligent driving of the truck in question by its driver. The learned Tribunal considering the evidence that the deceased Mohammad Amin was aged 14-15 years and was an intelligent student of Class VII, has awarded a total compensation of Rs. 50,000/-with interest as aforesaid against the owner, driver and the Insurance Company. Being aggrieved by this award, the Insurance Company alone has filed this appeal on the ground that the accident took place due to contributory negligence of the deceased and that there was arbitrary determination of the amount of compensation which was not based on any evidence.

4. Learned counsel for the respondent-claimants has raised a preliminary objection that the owner and the driver having not challenged the findings of rash and negligent driving and the determination of quantum of compensation arrived at by the learned Tribunal, it was not open for the Insurance Company to challenge the same in the absence of any collusion having been pleaded or found between the claimants and the owner and driver of the truck in question. It is also urged that it cannot be said that the Claims Tribunal has found that the owner and the driver of the truck have failed to contest claim as envisaged u/s 110-C(2A) of the Act. In the circumstances, the appellant-insurer is not entitled to contest the claim on any of the grounds that are available to the owner and the driver who have not filed any appeal against the award. Learned Counsel has further submitted that the appellant-Insurance Company could have defended the claim for compensation only on the grounds specified in Section 96(2) and none other. But the appellant has not raised any one of those grounds specified in Section 96(2). This appeal of the Insurance Company, according to the submission of the counsel for the respondents is. therefore, not maintainable.

5. Learned counsel for the appellant has contended that there is collusion between the claimants and the owner and driver which is evidenced from the fact that although a case of contributory negligence was pleaded in defence by the owner and the driver, the driver was not examined in the case. This contention of the learned counsel, in my opinion, has no substance. The appellant-Insurance Company could have moved an application before the Tribunal for examination of the driver and could have alleged collusion and sought permission to contest the claim also on the grounds that were available to the owner and the driver. The proceedings of the Tribunal show that there was ample opportunity for the Insurance Company to move necessary application on that ground if it suspected a collusion as now alleged. Such an application could have been moved on 1-11-85, 30-11-85 and 12-12-85 before the arguments were heard.

6. From a perusal of the trend of cross-examination of the claimants' witnesses at the instance of the owner and the driver, it becomes apparent that there had been no such collusion as alleged. An argument of collusion in the absence of any tangible material on record at this stage cannot hold water and must be rejected.

7. The other contention of the learned counsel for the appellant is that the award passed by the learned Tribunal is defective inasmuch as the determination of compensation of Rs. 50,000/- has not been based on any evidence. Learned counsel also submitted that the age of the parents of the deceased should also have been taken into account while determining the compensation and that no evidence has been adduced about the age of the parents. In case of a boy of tender age who is a mere student in a school, there can be no determinative evidence of his future employment or earnings and the compensation has to be determined on the basis of conjecture and possibilities or on the basis of awards given in comparable cases. There can be no doubt that the age of the parents-claimants is a relevant consideration to be taken into account for adopting a multiplier in calculating the pecuniary loss on account of the death of a young son. However, in this case, there is sufficient indication that the parents-claimants are comparatively young having a long expectancy of life. The claim petition shows the age of the parents-claimants as 45 and 38 years respectively. Ismail, the father of the deceased has been examined as AW-3 and his apparent age is also recorded as 45 years by the learned Tribunal. There is no material regarding age to the contrary on record.

8. Learned counsel for the claimant-respondents has cited two cases involving death of young boys aged 7 years and 9 years respectively, namely, *Saraswatibai v. Damodar Prasad* 1987 Acc 501 High Court of M.P. and *Hassa Mal v. Jatti Ram* (1987) 1 TAC 231. Rajasthan High Court. In the first of these two cases, the amount of compensation assessed by the High Court in appeal was Rs. 50,000/- and in the second it was assessed as Rs. 48,000/-. It is inevitable that in assessing compensation, element of estimate and to some extent conjecture enters into the computation of compensation, but comparable cases do provide satisfactory guidance in judging whether the Tribunal's award as to quantum of compensation is arbitrary or unreasonable. The amount of compensation of Rs. 50,000/- as assessed by the learned Tribunal cannot be regarded as excessive or unreasonable in the circumstances.

9. Learned counsel for the claimant-respondents has contended that the appellant-insurance-Company cannot "challenge the quantum of compensation on merit as the defences available to the insurer are limited to the grounds mentioned in Section 96(2) of the Motor Vehicles Act. Sub-section (2) clearly provides that an insurer made a defendant to the action is not entitled to take any defence which is not specified in it and for this proposition, learned counsel had placed reliance on a decision of the Supreme Court in *British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others*, . Learned counsel has also cited a decision of this Court in *New India Assurance Co. Ltd. v. Shiv Kumar* 1978 ACJ 137, a decision of Calcutta High Court in *Kantilal & Bros. v. Ramarani Debi* 1980 ACJ 501 : and a decision of Patna High Court in *National Assurance Co. Ltd. v. Sanim Ahmad* 1985 ACJ 749 in support of his contention that the present appeal challenging the quantum of compensation is not maintainable as the Insurance Company cannot take defences not provided in Section 96(2). The

contention of the learned counsel for the respondents deserves to be upheld and consequently, this appeal must fail.

10. In the result, this appeal fails and is hereby dismissed. There shall, however, be no order as to costs.