
(2010) 05 MP CK 0060
In the Madhya Pradesh High Court
Case No : M.A. No. 923 of 2007

United India Insurance Co. Ltd.

APPELLANT

Vs

Jyoti and Others

RESPONDENT

Date of Decision : 20-05-2010

Acts Referred:

Citation : (2011) ACJ 1324

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N.K. Mody, J.—With the consent of parties, arguments heard finally. This order shall also govern the disposal of M.A. Nos. 924 and 971 of 2007 as all the appeals are arising out of one accident.

2. In M.A. Nos. 923 and 971 of 2007 award under challenge is dated 16.7.2007 passed by M.A.C.T.-1, Gwalior in Claim Case No. 6 of 2006, while in M.A. No. 924 of 2007 award under challenge is dated 18.7.2007 passed by the M.A.C.T., Gwalior in Claim Case No. 4 of 2006.

3. In M.A. No. 923 of 2007 the deceased is Mukesh Soni who was a pillion rider, learned Tribunal awarded a sum of Rs. 7,98,950. In this appeal submission of the appellant insurance company is that the learned Tribunal committed error in holding the appellant insurance company liable for payment of compensation. M.A. No. 971 of 2007 has been filed by claimants-appellants alleging that amount awarded by the learned Tribunal is on lower side. In M.A. No. 924 of 2007 also the award is challenged by the insurance company in which cross-objections have been filed by the claimants who are legal representatives of the driver of motorbike deceased Navin Agrawal, who are being represented by Mr. M.M. Bansal, Advocate.

4. Short facts of the case are that on 9.9.2005 at about 9.45 p.m. deceased Navin Agrawal aged 38 years was going on a motorbike along with his friend

Mukesh Soni, who was pillion rider from Railway Station, Gwalior to Gola Ka Mandir. It was alleged that the motorbike was being driven by deceased Navin carefully. Further case of claimants was that when the motorbike reached near Mela Ground, at that time Maruti car bearing registration No. PB 03-F 9902 which was being driven by respondent No. 7 rashly and negligently and was insured with appellant met with an accident, with the result Navin and Mukesh who were travelling on the motorbike sustained grievous injuries. It was alleged that both of them were hospitalised but none of them could be saved and the pillion rider Mukesh died after four days while Navin died after 10 days. In both the claim petitions it was alleged that since the accident occurred because of rash and negligent driving of respondent No. 7, therefore, the respondent No. 7 and appellant are liable for payment of compensation.

5. The claim petition was contested by the appellant on various grounds including on the ground that the accident occurred because of rash and negligent driving of deceased Navin, therefore, appellant insurance company is not liable for payment of compensation. In alternate it was alleged that since it is a case of contributory negligence, therefore, the appellant insurance company cannot be held liable for payment of entire amount of compensation. After framing of issues and recording of evidence, the learned Tribunal allowed the claim petitions filed by claimants holding that the accident occurred because of rash and negligent driving of respondent No. 7 and awarded compensation, against which present appeals have been filed.

6. In M.A. Nos. 971 and 923 of 2007, Mr. B.D. Verma, learned counsel for the claimants, submits that on account of death of Mukesh Soni learned Tribunal awarded a sum of Rs. 7,98,950, break-up of which is as under:

Loss of dependency

Rs. 7,78,932

Loss of consortium

Rs. 15,000

Medical expenses for four days

Rs. 5,000

7. Learned counsel further submits that the income of the deceased Mukesh Soni was assessed by the learned Tribunal at the rate of Rs. 6,000 per month. It is submitted that loss of dependency was assessed after applying unit system and also after applying multiplier of 14, which has wrongly been applied. It is submitted that on number of heads no amount has been awarded. It is submitted that the amount of compensation be enhanced.

8. In M.A. No. 924 of 2007 claimants have submitted the cross-objections and are being represented by Mr. M.M. Bansal, Advocate, who submits that on account of death of Navin Agrawal, learned Tribunal awarded a sum of Rs.

5,88,330, break-up of which is as under:

Loss of dependency

Rs. 5,63,330

Loss of consortium

Rs. 15,000

Medical expenses for ten days

10,000

9. Learned counsel further submits that the learned Tribunal assessed the income of the deceased at the rate of Rs. 5,000 per month and multiplier of 13 has been applied, which is not correct. It is submitted that the income of the deceased was more than Rs. 8,000 per month. It is submitted that the amount of compensation be enhanced.

10. Mr. B.N. Malhotra, learned counsel for insurance company, submits that the amount awarded by the learned Tribunal in both the cases is on higher side. It is submitted that the accident occurred because of rash and negligent driving of deceased Navin Agrawal who was driving motorbike. It is submitted that spot map, Exh. P7, is on record which shows the place of accident. It is submitted that the motorbike was on extreme wrong side. It is submitted that apart from this appellant insurance company has examined respondent No. 7 who was driver of the offending car and is a Flying Officer. It is submitted that respondent No. 7 was travelling in car with his family and was going to drop the members of the family to the railway station. It is submitted that otherwise also from the map it is evident that at the most it was a case of contributory negligence, therefore, appellant insurance company cannot be held liable for payment of entire amount of compensation. It is submitted that in the facts and circumstances of the case, appeals filed by the insurance company be allowed and the impugned award whereby insurance company has been held liable for payment of compensation be set aside.

11. From perusal of the record it is evident that to prove the case claimants have filed the documents Exh. P1 to Exh. P24. Exh. P7 is spot map, which goes to show the place where the accident took place. NAW 1 is respondent No. 7 who was the driver of offending car. From his statement it is evident that at the relevant time he was driving the car and in the car, his wife, son and also one companion were travelling. Except respondent No. 7 none of them has been examined. In the statement of NAW 1 /respondent No. 7 it has come that at the time of accident one Tata Sumo was at a distance of 3-4 metres from his car, therefore, he could not see the motorbike and moment he saw the bike, within fraction of 3-4 seconds accident took place. Apart from this, case was registered against the respondent No. 7 for rash and negligent driving. After going through the map and the statement of respondent No. 7, learned Tribunal has come to

the conclusion that the accident occurred because of rash and negligent driving of the respondent No. 7. Otherwise also it was expected from the respondent No. 7 to maintain a reasonable distance from the car Tata Sumo.

12. In the facts and circumstances of the case, this court is of the view that no illegality has been committed by the learned Tribunal in coming to the conclusion, which requires no interference. Hence, the appeals filed by appellant insurance company which are M.A. Nos. 923 and 924 of 2007 stand dismissed.

13. So far as amount of compensation is concerned, in M.A. No. 971 of 2007 which is arising out of death of Mukesh Soni who was pillion rider on the motor bike, in the evidence it has come that the deceased Mukesh was running shop of goldsmith, which was being owned by his father. The learned Tribunal assessed the income of the deceased Mukesh at the rate of Rs. 6,000 per month, which appears to be just and proper. Keeping in view the dependants who are six in number it appears that 1/4th ought to have been deducted for personal expenses and keeping in view the age of deceased which was 31 years, multiplier of 16 ought to have been applied. In view of this, claimants-appellants in M.A. No. 971 of 2007 are entitled for the following amount:

Loss of dependency

Rs. 8,64,000

Funeral expenses

Rs. 5,000

Loss to estate

Rs. 5,000

Loss of consortium

Rs. 5,000

Loss of love and affection

Rs. 25,000

Medical expenses for four days

Rs. 15,000

Total

Rs. 9,19,000

14. In other words, in view of this, the claimants are held entitled for a total sum of Rs. 9,19,000 instead of Rs. 7,98,950 by way of compensation. The enhanced amount of Rs. 1,20,050 shall carry interest at the rate of 8 per cent per annum.

15. So far as cross-objections filed by legal representatives of deceased Navin

Agrawal are concerned, the income of the deceased Navin assessed by the learned Tribunal as Rs. 5,000 per month appears to be just and proper. Since the dependants are respondent Nos. 1 to 4, therefore, 1/3rd amount ought to have been deducted towards personal expenses and multiplier of 15 ought to have been applied. In view of this in M.A. No. 924 of 2007 respondent Nos. 1 to 4 are entitled for the following amount:

Loss of dependency

Rs. 6,00,000

Funeral expenses

Rs. 5,000

Loss to estate

Rs. 5,000

Loss of consortium

Rs. 5,000

Loss of love and affection

Rs. 15,000

Medical expenses for ten days

Rs. 25,000

Total

Rs. 6,55,000

16. In other words, in view of this, the claimants are held entitled for a total sum of Rs. 6,55,000 instead of Rs. 5,88,330 by way of compensation. The enhanced amount of Rs. 66,670 shall carry interest at the rate of 8 per cent per annum.

17. It is made clear that the amount awarded shall be deposited by the insurance company with the learned Tribunal and learned Tribunal is directed to invest 80 per cent of the said amount on long-term fixed deposit in the name of widows of the deceased Mukesh Soni and Navin Agrawal in the nearest nationalised bank, in the area where they are residing, with the condition that the bank will not permit any loan or advance. Interest on the said amount shall be credited on monthly basis in S.B. Account of widow of deceased, which shall be opened by them/widow from where they/widow can withdraw the amount as per their needs. However, on an application by them/widow this condition could be modified by the learned Tribunal in exceptional circumstances such as educational and marital needs of children of deceased Mukesh Soni and Navin Agrawal, if made out by the widow.

18. With the aforesaid observations, M.A. Nos. 923 and 924 of 2007 stand

dismissed and M.A. No. 971 of 2007 filed by legal representative of deceased Mukesh Soni and cross-objections filed by legal representatives of deceased Navin Agrawal stand allowed. A copy of this order be placed in the connected appeals.

C.C. as per rules.