
(1995) 01 MP CK 0007
In the Madhya Pradesh High Court

United India Insurance Co. Ltd.

APPELLANT

Vs

Nyaldabai and Others

RESPONDENT

Date of Decision : 24-01-1995

Acts Referred:

Penal Code, 1860 (IPC) — Section 304

Citation : (1995) 1 ACC 560

Hon'ble Judges : R.D. Shaukla, J;Deepak Verma, J

Bench : Division Bench

Judgement

R.D. Shaukla, J.—This appeal is directed against the award dated 9.7.1990 passed by M.A.C.T., Dhar in Claim Case No. 8/87 whereby the claimant/respondents 1 to 8 have been awarded a compensation of Rs. 3,00,000/- with interest at the rate of 12% p.a. from the date of application till realisation of the same for the death of Sitaram who was the husband of respondent No. 1 and father of respondents Nos. 2 and 8 and died in a Motor accident on 11.1.1987 near village Thapla of District Dhar. The appellant and the respondent No. 9 have been jointly and severally held responsible for payment of compensation.

This appeal has been filed by the Insurance Company against the quantum of compensation and is further questioning the liability imposed on it.

2. The brief history of the case is that deceased Sitaram was engaged in the business of purchase and sale of catties including goat, she-goat, buffalow and she-buffalow. On the date of incident, he had hired the motor matador (mini-truck) for carrying the load of catties purchased by him. The motor vehicle--Matador CIF 5917 was owned by one Babukhan, respondent No. 9 here and was insured with Insurance Company (appellant here). Chagan and Dhannalal were also sitting in that Matador. Sitaram was in the rear portion of the Matador. Respondent No. 9, himself was driving the vehicle. He drove it rashly and negligently. It stopped near village Thapla," Sitaram tried to step down out of the vehicle put without caring as to whether Sitaram got down or not the driver moved the vehicle towards back side. The driver reversed the vehicle without

blowing horn. Sitaram was crushed by the motor vehicle and he died on the spot. The matter was reported to the Police. Autopsy on the body of Sitaram was conducted. After investigation, challan u/s 304 IPC was filed against Babukhan.

3. The claimants filed the claim petition for getting a compensation of Rs. 3,07,800/- mainly on the ground that Sitaram was earning nearly Rs. 2500/- from the business of cattles. He was aged about 35 years. He was also earning from the Agriculture.

4. This claim was resisted by the Non-applicants; owner of the vehicle and the Insurance Company. It was contended by the Non-applicants that Sitaram got down without caring as to whether the vehicle is moving and came beneath the wheel all of a sudden. The non-applicants disputed the income and dependency of the claimants also.

5. The learned Tribunal has found that the accident occurred due to rash and negligent driving of the vehicle. Taking the income of Sitaram to be Rs. 2500/- per month and the dependency of Rs. 2000/- per month, assessed the age to be 40 years and taking into consideration the longevity to the average to be 70 years, applied a multiplier of 15 and assessed the loss to Rs. 3,00,000/-.

6. Thereafter deducting Rs. 60,000/- for lumpsum payment, assessed the loss to Rs. 3,00,000/- and awarded the compensation as above. Hence this appeal.

7. The contention of the learned Counsel for the appellant is that income of the deceased has been assessed on the higher side and a multiplier of 15 has wrongly been applied. It has also been contended by the learned Counsel for the appellant that the liability of the Insurance Company was limited to Rs. 1,50,000/- as per the conditions of the insurance and, therefore, the appellant-Insurance Company could not be saddled with responsibility of making whole payment.

8. As against, the learned Counsel for respondents Nos. 1 to 8 has supported the award given by learned Tribunal and has further contended that since the vehicle had a comprehensive insurance, Insurance Company has rightly been held liable for making payment.

9. The learned Counsel for the respondent No. 9 has also opposed the contention of the learned Counsel for appellant and submitted that because of comprehensive insurance, the company is liable to make good the loss."

10. We were taken to evidence. PW 2 Chagan has proved the fact of negligent driving including reversing of the vehicle without blowing horn and without taking proper precaution. Learned Tribunal has rightly held the fact of rash and negligent driving, even otherwise that could not be challenged and has not been seriously challenged by the learned Counsel for the appellant.

11. The learned Tribunal has assessed the age of deceased to be 40 years. The autopsy report admitted by the non-applicants, shows the age of deceased to be

40 years, though claimant/respondent No. 1 Nyaldabai widow of deceased Sitaram has stated in her statement that Sitaram was aged about 50 years at the time of accident. In the claim petition the age has been shown to be 35 years. The Doctor has shown the age to be 40 years. In such a situation, the age of the deceased ought to have been accepted to be between 44-45 years. At present the longevity has increased and looking to the nature of the work of Sitaram, he could have worked upto the age of 64-65 years and would have survived for a further period of 5-10 years and, therefore, in such a situation, the multiplier of 12 would be justified. A reference may be had to guidelines given by the Apex Court of this country in a case reported in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, . Now so far as the income of the deceased is concerned, the claimant No. 1 has stated that from Agricultural operations, Sitaram was getting nearly Rs. 2000/- per annum. But in the earlier part of the statement, it is stated that earning from the cattle trade was nearly Rs. 3000/- per month and Sitaram was spending nearly Rs. 2000/- per month on the family. This accident occurred in the year 1987. Had the income of Sitaram been Rs. 3000/- and above, he would have become Income Tax payer and must have paid the Income Tax but no such evidence has been adduced in the case. Therefore, in our opinion, taking into consideration the income from agricultural and from the seasonal income of the cattle trade, the income of deceased can be safely accepted to Rs. 2400/- to 2500/-. Looking to the nature of work, Sitaram must have been spending slightly more on himself and, therefore, the dependency of family can be accepted to Rs. 15 to 18 thousand per annum. By applying a multiplier of 12, the compensation comes to Rs. 2,16,000/-. The claimant No. 1 is entitled to compensation for the loss of consortium and other claimants for the loss of love and affection. A total amount of Rs. 12,000/- on that account would be sufficient to compensate them on (hat count. Thus the total compensation comes to Rs. 2,28,000/-.

12. Now so far as the liability of payment of compensation by the appellant/ Insurance Company is concerned, the learned Counsel for the appellant has drawn out attention to the certificate of insurance Ex. D/1 produced in the case. The limits of liability fixed under the conditions of insurance reads as follows:

Limits of liability:

(a) Limit of the amount of the Company's liability u/s II-I(i) in respect of any one accident:

Such amount as is necessary to meet the requirements of the Motor Vehicles Act, 1939.

(b) Limits of the amount of the company's liability u/s II-I(ii) in respect of any one claim or series of claims arising out of one event: Rs. 150,000/-.

Thus the maximum liability of the Insurance Company as per the conditions of the Insurance are 1,50,000/-in all.

13. The learned Counsel for the respondents have submitted since the insurance was comprehensive, the liability would be unlimited. We do not find any word "comprehensive" in the Policy of Insurance produced in the case. No evidence in the case has been adduced regarding the additional premium paid for unlimited liability. By amendment in 1982, the liability of Insurance Company was enhanced from Rs. 50,000/- to Rs. 1,50,000/- w.e.f. 1.10.1982, and therefore, the Insurance Company can be made liable to pay compensation as per the statutory liability. If the Insurance Company is required to pay amount over and above the statutory liability fixed by the Act and revised therein; the party claimant as such is required to prove that the additional premium for covering the risk was paid. No evidence to that effect has been adduced in the case nor the learned Counsel for the respondents, including respondent No. 9 could demonstrate it before us in the Court that any additional premium for the same was paid. Under such circumstances, the appellant/Insurance Company cannot be made liable for making payment of compensation over and above the liability fixed by the Statute.

14. In our considerate opinion, therefore, the Insurance Company appellant cannot be made liable for making payment over and above Rs. 1,50,000/- as prescribed by law. However, they shall be liable to make payment of interest accruing thereon from the date of application till realisation of the same.

15. The rest of the amount over and above Rs. 1,50,000/- with interest shall have to be paid by respondent No. 9.

16. As a result, appeal partly succeeds. The compensation awarded by learned Tribunal is reduced to Rs. 2,28,000/- out of which, with interest at the rate of 12% from the date of application till realisation, Rs. 1,50,000/- shall be paid by the appellant to respondents Nos. 1 to 8 and the rest amount with interest at the rate of 12% from the date " of application till realisation of the same shall be payable by respondent No. 9, owner of the vehicle. In facts and circumstances of the case, the parties shall bear their own costs.