(2009) 10 MP CK 0006

In the Madhya Pradesh High Court

Case No : M.A. No. 2514 of 2006

United India Insurance Co. Ltd. — APPELLANT

Vs

Rajendra and others — RESPONDENT

Date of Decision : 22-10-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22
Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2011) ACJ 782

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sapre, J.—This is a miscellaneous appeal filed by insurance company, NA-3 u/s 173 of Motor Vehicles Act against an award dated 17.3.2006, passed by Twelfth Member, M.A.C.T., Indore in Claim Case No. 5 of 2002.

2. By impugned award, the Tribunal allowed the claim petition of respondent No. 1 (claimant) filed u/s 166 of the Motor Vehicles Act and awarded to him a sum of Rs. 2,06,000 towards compensation for the injuries sustained by him in the vehicular accident.

3. The appellant insurance company contends that no liability arising out of the accident could be fastened upon them. According to them, since the thresher fitted with tractor was not insured and only tractor was insured and hence no liability could be fastened upon them if accident occurs with such tractor/thresher.

4. So the main question that arises for consideration in this appeal is whether on facts pleaded, the Tribunal was justified in holding that insurance company is liable to suffer the award. In other words, whether any liability can be fastened upon the insurance company arising out of accident in question.

5. On 28.9.2001, Rajendra, i.e., claimant was working on thresher, which belonged to the respondent No. 2. This thresher was attached with one tractor

bearing No. MP 09-9473. It also belonged to respondent No. 2. The thresher was being run with the aid of tractor for cutting soyabean. This was being done by Rajendra when his right hand came in contact with the blade and his hand was cut in pieces. He thus lost his right hand almost completely. The tractor in question is insured with the appellant (insurance company).

6. It is this event which gave rise to filing of claim petition by Rajendra (respondent No. 1) against appellant (insurer), respondent No. 2 (insured) and its driver (respondent No. 3) u/s 166 of the Act claiming compensation for the injuries sustained by him, i.e., amputation of right hand.

7. The case of non-applicants in substance was that they are not liable to pay any compensation. So far as insurance company was concerned, they contended that since the thresher, which caused the accident was not insured and hence, no liability could be fastened on them.

8. Parties adduced evidence. The Tribunal as observed supra partly allowed the claim petition. It was held that accident occurred with the tractor/thresher. It was held that the claimant lost his right hand. It was also held that the policy in question covered the risk of such accident and hence, the insurance company is liable to indemnify the risk of such nature. In conclusion, a sum of Rs. 2,06,000 was awarded to claimant by way of compensation by passing an award jointly and severally against all the three non-applicants. It is against this award, the insurer of tractor has felt aggrieved and filed this appeal u/s 173 of Act.

9. So far as the respondent No. 1, i.e., claimant is concerned, he has filed cross-objection under Order 41, rule 22 of the Civil Procedure Code, 1908, praying for enhancement in award of compensation. According to him, what is awarded is on lower side and hence, it deserves to be enhanced reasonably.

10. Heard Mr. M. Upadhyay, learned counsel for the appellant and G.K. Neema, learned counsel for the respondents.

11. Having heard the learned counsel for the parties and on perusal of record of the case, I am inclined to dismiss the appeal and partly allow the cross-objection of the respondent No. 1.

12. In my view, the Tribunal on facts was right in fastening the liability on the appellant (insurance company) arising out of the accident in question. It is not in dispute that tractor and thresher were fitted with each other and were put to use for cutting soyabean. It is also not in dispute that Rajendra lost his right hand while working on the thresher. It is also not in dispute that tractor was insured with the appellant.

13. In my view, the aforesaid undisputed facts make the insurance company liable to suffer the liability arising out of accident. The view that I have taken is supported by decisions reported in United India Insurance Co. Ltd. Vs. Surinder and Others, ; Gunti Devaiah and Others Vs. Vaka Peddi Reddy and Others, . In all these cases, facts were more or less similar and the respective High Courts held

the insurance company liable to suffer the liability arising out of accident occurred with thresher. I do not find any good ground to differ with the view taken in these decisions because no decision taking contrary view was relied on by the learned counsel for the appellant except to contend that the insurance company is not liable.

14. In view of foregoing discussion, I find no merit in the appeal filed by insurance company. It is accordingly dismissed. No costs.

15. This takes me to the cross-objection filed by claimant (respondent No. 1). it is dated 24.3.2007.

16. According to respondent (claimant), since he lost his right hand permanently at a young age of 21 years, the compensation awarded towards such loss amounting to Rs. 2,06,000 is on lower side. According to him, the loss to him is 100 per cent because he can never use his right hand for any purpose.

17. Having heard the learned counsel for the parties and keeping in view the decided cases in awarding compensation in amputation cases of hand and taking into consideration the age of the claimant (21), I am inclined to enhance the compensation in lump sum to Rs. 2,75,000 in place of Rs. 2,06,000. In other words, the claimant (respondent No. 1) is held entitled for a total sum of Rs. 2,75,000. The enhanced sum would carry interest at the rate of 6 per cent from the date of claim petition till realization.

18. Accordingly and in view of foregoing discussion, the cross-objection of the respondent No. 1 dated 24.3.2007 is allowed in part as indicated above. The impugned award is modified to the extent indicated above in favour of the claimant-respondent No. 1. No costs.