
(2007) 02 MP CK 0020
In the Madhya Pradesh High Court

United India Insurance Co. Ltd.

APPELLANT

Vs

Saroj Bai and Others

RESPONDENT

Date of Decision : 12-02-2007

Acts Referred:

Citation : (2008) ACJ 1063 : (2007) ILR (MP) 1115

Hon'ble Judges : S.K. Seth, J;S.K. Kulshrestha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.K. Kulshrestha and S.K. Seth, JJ.—Both these appeals have arisen from the award dated 27.3.2006 passed by the Motor Accidents Claims Tribunal, Indore in Claim Case No. 68 of 2004. These appeals are, therefore, being decided by this common order at the admission stage.

2. The respondent Nos. 1 to 6 filed an application u/s 166 of Motor Vehicles Act to claim a sum of Rs. 45,00,000 in respect of the death of Devkaran Kajale in a motor accident in which the Tribunal awarded a sum of Rs. 7,41,271 as against the aforesaid claim of Rs. 45,00,000.

3. The case stated by Saroj Bai, the respondent No. 1, before the Tribunal was that while her husband Devkaran Kajale was going as a pillion rider on a motor cycle bearing registration No. MP 09-JN 4858 which was being driven by Santosh s/o Babulal Tiwari (original non-applicant No. 2), while he was so proceeding from Khategaon to Bhilkhedi and had reached near Nirmal Hospital, on account of rashness and negligence of the said driver of the motor cycle, it collided with a buffalo, with the result the pillion rider was flung away and he sustained severe injuries on his head, chest and other parts of the body. He was taken to a nursing home in Khategaon where after initial treatment, he was sent to Gokuldas Hospital, Indore where he succumbed to his injuries on 9.10.2004.

4. The insurance company has assailed the said award on the ground that the appellant insurance company could not have been saddled with the liability either

jointly or severally as the pillion rider was not covered by the terms of the policy and, therefore, insurance company was under no obligation to pay compensation to the pillion rider, Ms. Archana Kher, learned Counsel for the claimants has pointed out that this averment was not made in the reply filed by the insurance company and the claim was contested solely on the ground that the person driving the motor cycle did not have a valid licence. This ground was not proved by the insurance company with the result that while awarding a sum of Rs. 7,41,271, the insurance company was also saddled with the liability.

5. Mr. V.P. Khare, submits that since the decision in United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others, , which was followed in M.A. No. 1605 of 2002; decided on 4.5.2006 by a Division Bench of this Court lays down that the insurance company owes no liability in the case of pillion rider; the appeal filed by the insurance company deserves to be allowed and the insurance company deserves to be relieved from the liability saddled by the Tribunal.

We have heard learned Counsel for the parties and perused the record placed before us.

6. We find that though the insurance company has throughout participated in the proceedings before the Tribunal, no ground was raised to disown the liability on the footing that the pillion rider was not covered. In the appeal memo also, before us, it is nowhere stated apart from citing a passage from the said decision that the insurance company had not covered the risk of pillion rider. Learned Counsel for the insurance company, however, submits that since the insurance policy was brought on record, it is evident that the liability of the pillion rider was not covered.

7. We are afraid, we cannot subscribe to the view propounded by the learned Counsel for reasons more than one. Before the Tribunal, the insurance company did not raise the plea that it was not liable to compensate the claimants as the risk for pillion rider was not covered. It was only pointed out that the person driving the motor cycle did not possess a valid licence which was proved to be false. In the appeal memo also, it is not mentioned that the risk of the pillion rider was not covered and only para 21 of the decision in United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others, , has been quoted. In absence of proper pleading in this regard, we cannot concede to the suggestion that insurance company should be relieved of its liability. Learned Counsel submits that in the case of New India Assurance Co. Ltd. Vs. Pushpa and Others, , the Hon"ble Bombay High Court has taken the view that even carbon copy of the policy signed by the duly constituted attorney of the insurance company is admissible and on that basis, the insurance company should have been relieved. We have observed that this plea was not raised by the insurance company either before the Claims Tribunal or before this Court and, therefore, the claimants had no opportunity to meet this ground and to adduce evidence in that behalf. The appeal, M.A. No. 2130 of 2006, is thus liable to be dismissed.

8. As regards M.A. No. 2944 of 2006, the learned Counsel submits that deceased was Rural Agriculture Extension Officer drawing a gross salary of Rs. 10,250 while the carry-home salary was Rs. 8,700. The Tribunal had gone through the salary certificate and other documents Exh. P15 and the statement of Narendra Kumar Gupta, AW 3.

9. On the basis of this evidence, Claims Tribunal has determined the dependency of Rs. 5,000 per month, that is, annually Rs. 60,000 and applying the multiplier of 12, the total dependency has been worked out at Rs. 7,20,000. The Tribunal has also awarded Rs. 14,271 as medical expenses; Rs. 5,000 towards loss of consortium and Rs. 2,000 for funeral expenses. However, the learned Counsel submits that in view of the income of the deceased, the family deserves more compensation. We find that the Tribunal has worked out the annual dependency and awarded sufficient compensation under other counts. The learned Counsel, however, submits that no provision has been made in the compensation for loss of love and affection. We, therefore, enhance the compensation to bring out a round figure of Rs. 7,45,000. Thus, the appeal of the insurance company allowed only to the extent stated herein above. The appellants in the aforesaid appeal shall be entitled to recover a sum of Rs. 7,45,000 in place of Rs. 7,41,271. The appropriation of the amount made by the Tribunal in para 33 is affirmed except that the enhanced amount shall be paid to claimant No. 1, Saroj Bai. The enhanced amount shall also carry interest at the same rate as awarded by the Tribunal. There shall be no order as to costs of these appeals.