

(2006) 02 MP CK 0027

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 735 of 1995

United India Insurance Co. Ltd.

APPELLANT

Vs

Shanta Bai and Others

RESPONDENT

Date of Decision : 23-02-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22, 21
Madhya Pradesh Motor Vehicles Rules, 1994 — Rule 242(1), 242(2), 242(3)
Motor Vehicles Act, 1939 — Section 95, 95(1), 95(2)
Motor Vehicles Act, 1988 — Section 147, 147(1), 147(2), 217(1), 217(2)

Citation : (2007) ACJ 1738

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

Bench : Single Bench

Advocate : S.V. Dandwate, for the Appellant; Rajesh Lal, for the Respondent No. 1, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Mody, J.—Being aggrieved by the award dated 23-8-1995 passed by MACT, Dewas in Claim Case No. 9/1990, whereby the claim petition filed by the respondent No. 1 has been allowed and respondent Nos. 2 and 3 and appellant has been held liable for making payment of Rs. 40,000/- along with interest @ 12% per annum, the present appeal has been filed.

2. Short facts of the case are that an accident took place on 23-8-1989, in which the husband of respondent No. 1 deceased Jagannath died who was sitting in the offending Tempo bearing registration No. MOU-1039, which was being driven by respondent No. 2, owned by respondent No. 3 and insured with appellant. A claim petition was filed by respondent No. 1 being the legal representative of deceased Jagannath. The claim petition was contested by the appellant on various grounds including on the ground that liability of the Insurance Company is limited. On the basis of the pleadings of the parties, learned Tribunal framed the issues, recorded the evidence and held the respondent No. 1 entitled for a sum of Rs. 40,000/- along with interest @ 12% per annum and also on the

ground that in other two claim cases which were arising out of the same accident, the Insurance Company has settled the claim in compromise for a sum of Rs. 14,000/- each.

3. learned Counsel for the appellant submits that the accident took place on 23-8-1989 and Motor Vehicle Act, 1988 has come in force from 1-7-1989. At the time of accident Motor Vehicles Act, 1939 was in force of which Section 95(2)(b) of the Act, which reads as under :

Section 95. (1)"*** ***** (2) Subject to the proviso to Sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely :

(a) *** ** (b) Where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment:

(i) in respect of persons other than passengers are carried for hire or reward, a limit of fifty thousand rupees in all;

(ii) in respect of passengers, a limit of fifteen thousand rupees for each individual passengers.

4. It is submitted that after coming into force of the New Act in Section 147 of the Motor Vehicle Act, 1988 the proviso to Sub-clause (b) of Section 147 of the Act, which reads as under :

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

5. It is submitted that the policy Ex. D-I is on record which was duly proved by the Insurance Company. In that policy, it is mentioned that a sum of Rs. 12/- per passenger has been charged by the appellant/Insurance Company.

6. It is submitted that since the New Act came in force from 1-7-1989, therefore, the policy which was issued by the appellant/Insurance Company with effect from 9-9-1988 to 8-8-1989 was very much in force on the date of accident and according to that policy the liability of the Insurance Company was limited to Rs. 15,000/- per passenger, therefore, any amount which has been awarded over and above Rs. 15,000/- for which the Insurance Company/appellant cannot be held liable.

7. learned Counsel for the appellant placed reliance on a decision in the matter of New India Assurance Co. Ltd. Vs. C.M. Jaya and Others, , wherein five Judges of Hon"ble Apex Court has held that "statutory liability could not be more than what is required under statute itself". Further reliance was placed on a decision in the case of New India Assurance Co. Ltd. Vs. Smt. Shanti Bai and others, , wherein the Hon"ble Apex Court has observed that "in case of payment of premium

towards insurance @ Rs. 12/- per passenger and no special contract has taken place between Insurance Company and owner of the vehicle to cover un-limited liability in respect of an accident, the policy covers only the statutory liability".

8. learned Counsel for the respondent No. 1 submits that accident took place on 23-8-1989 after coming into force of Motor Vehicle Act, 1988 and as per Section 147 of the Act, liability of the Insurance Co. is unlimited. Reliance is placed on decision in the matter of National Insurance Company Ltd. Vs. Behari Lal and Others, , wherein the proviso to Section 147(2) of the Act, whereby the life of the Insurance Policy was extended for a period of four months was taken into consideration by the Hon"ble Apex Court and it was observed as under :~?

10. In our view, the proviso cannot be so interpreted as to subject the insurance companies to different maximum liabilities under statutory policies in respect of accidents occurring during the same period. We do not think that this could be the intention of Parliament. Having fixed a date for enforcement of the new Act incorporating the requirement of a statutory policy u/s 147(1) thereof, the effect of the provision could not have been whittled down during the period which may vary from one day to four months depending upon when the existing policy expires within the said period of four months. It merely indicates that span of validity of existing policy. Here, it is pertinent to notice the provisions of Section 217(2) of the new Act which deal with the effect of repeal of the old Act (under which a statutory policy was taken) on coming into force of the new Act. Sub-section (1) of Section 217 repeals, inter alia, the old Act. Clause (c) of Sub-section (2), which is relevant, provides that notwithstanding the repeal under Sub-section (1) of the old Act any document, referring to any of the repealed enactments or the provisions thereof, shall be construed as referring to the new Act or the corresponding provisions thereof.

12. From the above discussion, it follows that the proviso to Sub-section (2) of Section 147 does not limit the liability of insurance companies to payment of compensation to the extent specified in the policy of insurance in terms of Section 95 (2) of the old Act which is in force before the commencement of the new Act for a period of four months after commencement of the new Act or till the date of expiry of such a policy, whichever is earlier. In this view of the matter, we endorse the view taken by the Division Bench of the High Court of Gujarat in Kacharabhai L. Limbachia Vs. Ratansinh J. Rathod-Patelia and Others, and by the Division Bench of Punjab and Haryana High Court in National Insurance Company Limited Vs. Puja Roller Flour Mills (Pvt.) Ltd. and Others, (P and II).

9. On the strength of this, learned Counsel for the respondent No. 1 submits that liability of Insurance Company is un-limited. It is further submitted that in the cases of Jaya and also Smt. Shanti Bai (supra), this aspect of the case has not been considered by the Hon"ble Apex Court.

10. learned Counsel for the respondent No. 1 submits that in a death case, wherein the deceased was 40 years of age, learned Tribunal awarded a sum of

Rs. 40,000/- which is on lower side. It is submitted that cross-objection has been filed by the respondent No. 1 and according to the respondent No. 1 even if there is no income, the notional income ought to have been considered and as per II Schedule of Motor Vehicle Act multiplier of 16 ought to have been applied.

11. For this contention, Mr. S.V. Dandwate, appearing for the appellant makes an preliminary objection and submits that since the appellant/Insurance Company has filed the present appeal wherein award has been challenged, therefore, cross-objection is not maintainable. For this contention, reliance was placed on a decision in the matter of The New India Assurance Company Ltd. Vs. Jyotilal Mahato and Another, , wherein the Divisional Bench of Ranchi High Court has observed that in the present appeal quantum of compensation has not been challenged by the Insurance Company rather only their liability on the ground of fake driving licence has been challenged in the present appeal by the appellant, enhancement of compensation amount cannot be considered by way of cross-objection under Order 41, Rule 22 of the Civil Procedure Code. Further, reliance was placed on a decision in the case of Oriental Insurance Co. Ltd. Vs. Dehri Devi and Others, , wherein the High Court of Himachal Pradesh has held that since the Insurance Company cannot dispute the quantum of compensation awarded, cross-objection by the claimants are not maintainable after placing reliance on Pawan Kumar v. Subhash Chand 1999(1) SO 187.

12. Meeting to this Mr. Rajesh Lai, learned Counsel appearing on behalf of respondent No. 1 placed reliance on Sub-rule (3) of Rule 242 of Madhya Pradesh Motor Vehicles Rules, 1994, which lays down that "save as provided in Sub-rules (1) and (2) the provisions of Order XXI and Order XLI of the First Schedule of the Code of Civil Procedure, 1908 (V of 1908) shall mutatis mutandis apply to appeals preferred to the High Court u/s 173". Further reliance was placed on a decision in the matter of New India Assurance Co. Ltd. Vs. Smt. Guddi and Others, , wherein a Division Bench of this Court has held that the cross-objections are maintainable in appeal filed by the Insurance Company. Further reliance was placed on another decision in the case of Ram Singh and Others Vs. Ashok Sharma and Others, , wherein a Divisional Bench of this Court has held that even if cross-objections of the Insurance Co. were not entertained on the technical ground, the Court is not debarred from its right to exercise jurisdiction in examining any legal position for or against any of the parties.

13. After perusal of the law placed before this Court, this Court is¹ of the opinion that the cross-objections filed by the respondent No. 1 are maintainable. As the rule itself provides under Order XLI of the Code of Civil Procedure, 1908 are applicable to the present case. So far as the amount awarded is concerned, the deceased was aged 40 years at the time of accident and there is no justification for awarding a meager sum of Rs. 40,000/- in a death case. Even if notional income has taken into consideration then the loss of dependency comes to Rs. 10,000/- per year and after applying the multiplier of 15 looking to the age of deceased as per II Schedule of Motor Vehicles Act, 1988, total loss of

dependency comes to Rs. 1,50,000/-.

14. In view of this, the respondent No. 1 shall be entitled to get the following amounts as compensation :

Loss of dependency Rs. 1,50,000/- Loss of love and affection Rs. 5,000/-
Towards funeral expenses and loss of estate Rs. 5,000/- Towards medical
expenses Rs. 10,000/- _____ Total Rs. 1,70,000/- _____

15. So far as the liability of Insurance Company is concerned, the accident took place on 23-8-1989 and the New Act, 1988 has come in force with effect from 1-7-1989, i.e., after the enforcement of the New Act the accident has taken place. Therefore, the appellant is equally liable to pay the amount of compensation along with driver and owner of the vehicle in view of the proviso of Sub-section (2) of Section 147 of the Act of 1988 and also in view of the law laid down in the case of Beharilal (supra).

16. In view of this, the appeal stands dismissed. The cross-objections filed by the respondent No. 1 is allowed. Respondent No. 1 is entitled to get a sum of Rs. 1,70,000/- instead of Rs. 40,000/- along with interest @ 6 % per annum from the date of application and the Insurance Company/appellant herein shall be liable to make the payment of compensation. No order as to costs.