(2001) 04 MP CK 0065

In the Madhya Pradesh High Court

Case No : M.A. No''s. 1215 of 1998 and 1195 of 2000

United India Insurance Co. Ltd. APPELLANT

Vs

Sushila Bai and Others RESPONDENT

Date of Decision : 30-04-2001

Acts Referred:
Motor Vehicles Act, 1988 — Section 149, 163A

Citation : (2003) ACJ 683 : (2001) 2 JLJ 228 : (2002) 1 MPLJ 1

Hon'ble Judges : Rajeev Gupta, J;A.K. Mishra, J

Bench : Division Bench

Advocate : R.P. Agrawal, for the Appellant; S. Ahmad, for the Respondent

Judgement

Arun Mishra, J.

These two appeals arise out of the same accident. Claim Case No. 4 of 1996 was filed claiming compensation for death of Santosh by Sushila Bai, respondent No. 1 in M.A. No. 1215 of 1998. Claim Case No. 128 of 1998 was filed by Ojha and 2 others claiming compensation for death of Munnalal. Insurer has filed the appeal in Claim Case No. 4 of 1996 whereas the claimants in Claim Case No. 128 of 1998 have filed appeal for enhancement of compensation.

On 9.11.1995 deceased Munnalal and Santosh were going on tanker. Munnalal was additional driver on the said tanker. Santosh was driver on tanker No. MH 31-6599. Truck No. GJT 9315 was driven by Abdul Wahad in a rash and negligent manner and dashed against the tanker due to which the tanker turned turtle. Injuries were suffered by Santosh and Munnalal due to which they died.

In Claim Case No. 128 of 1998 filed u/s 163A, Motor Vehicles Act, 1988 by Ojha and 2 others for death of Munnalal in the accident, they have claimed the compensation of Rs. 3,93,500.

In Claim Case No. 4 of 1996 filed for death of Santosh the claimant prayed for compensation of Rs. 4,41,500. Deceased was working as driver and getting Rs.

3,000 per month. The accident took place because of rash and negligent driving by the driver of the truck. Tanker and truck were insured with United India Insurance Co. Ltd. respondent Nos. 3 and 5.

In both the cases, the respondents other than the insurance company remained ex pane. Insurer took the plea that cases were filed in collusion with the owner and driver, there was violation of the terms of the insurance policy. The deceased were travelling as fare paying passenger, therefore, insurer was not liable to indemnify.

The Claims Tribunal has found that accident took place in the manner suggested by the claimants and both Santosh and deceased Munnalal died owing to injuries suffered by them in the accident. Negligence of truck driver was found.

The claim petitions were filed under the provisions of Section 163A of the Motor Vehicles Act, 1988. The Tribunal in Claim Case No. 4 of 1996 filed by Sushila Bai for death of Santosh has awarded a sum of Rs. 3,88,500. Deceased was aged 30 years. His income was assessed at Rs. 3,000 per month. One-third was deducted on account of self expenditure. Multiplier of 16 was applied. Tribunal has awarded interest at the rate of 12 per cent per annum from the date of claim petition till realisation.

In Claim Case No. 128 of 1998 filed by Ojha and two others for the death of Munnalal, the Tribunal awarded a sum of Rs. 1,62,000 with interest at the rate of 12 per cent per annum u/s 163A of the Motor Vehicles Act, 1988.

Both the claim petitions were filed u/s 163A of the Motor Vehicles Act, 1988. u/s 163A special provisions as to payment of compensation on structured formula basis have been provided. Sub-section (2) of Section 163A provides that in any claim for compensation under Sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person. Hence the question of plea or proof of wrongful act, neglect or default was not germane in the instant cases.

Mr. R.P. Agrawal, learned Counsel for the insurer submits that since claim petitions were filed u/s 163A of the Motor Vehicles Act, 1988 the insurer was not afforded an opportunity to prove its defences u/s 149(2) of the Motor Vehicles Act and outrightly awards were passed without holding an inquiry.

The submission is resisted by the learned Counsel for the claimants.

After perusal of the record we find that Claims Tribunal has conducted the inquiry in the instant cases. On 18.8.1999 the issues were framed. The case was fixed initially for the claimant''s evidence. Witnesses Ojha, Bhuri and Sojar, Jagdish were examined on 24.11.1999. Counsel for the insurance company prayed for time to produce witnesses which was accorded and the case was fixed for 15.12.99. Thereafter several opportunities were granted to the insurer to lead evidence. Counsel for the insurer on 31.3.2000 expressed that insurer did not want to lead any evidence and the evidence was closed.. Thus, we find that the insurer was given adequate opportunities but it has failed to avail them for proving the plea taken by it.

In our opinion, the claimant while claiming compensation u/s 163A of the Motor Vehicles Act, 1988, is required to prove the factum of accident alone and wrongful act, or negligence or default of the owner of the vehicle, or vehicles concerned or of any other person is neither required to be pleaded nor established. In such a case, the scope of enquiry is a limited one. Thus, the defences of absence of plea or proof of a wrongful act, negligence or default are neither valid nor permissible.

Coming to the Appeal No. 1195 of 2000 filed by Ojha and 2 others claiming compensation for death of Munnalal, who was the additional driver of the tanker in question which met with the accident. His salary was claimed to be Rs. 3,100. The Tribunal has disbelieved the version of the claimants and has held his income only at Rs. 15,000 per annum which is given in the Table to Second Schedule for non-earning member. Ojha, PW 1, Bhuribai, PW 2, the parents of the deceased have clearly stated that income of the deceased was Rs. 3,100 per month. Jagdish, another witness, who was the driver in the Irrigation Department stated that his salary was Rs. 3,500 and the deceased was earning Rs. 3,100 per month. However, he has admitted that salary was not paid in his presence. Yet another witness Sojar, PW 4, brother of the deceased has corroborated the version of Rs. 3,100. Since Santosh was the main driver and his salary has been found Rs. 3,000 per month deceased Munnalal was working as additional driver on the same tanker, it would be safe to assess his monthly income at Rs. 2,400 of which one-third has to be deducted towards self expenses. Thus, the dependency of parents comes to Rs. 1,600 per month. Deceased was aged 35 years. Proper multiplier to be applied at his age is 16. Thus, the total loss of annual dependency comes to Rs. 19,200 and the total compensation to which claimants are entitled comes to Rs. 19,200 x 16 = Rs. 3,07,200. In addition claimants are entitled to funeral expenses Rs. 2,000 and for loss to estate Rs. 2,500. Thus, in all Rs. 3,11,700 along with the interest at the rate awarded by the Claims Tribunal from the date of claim petition till realisation.

In the result, appeal filed by the insurer, M.A. No. 1215 of 1998 is dismissed whereas M.A. No. 1195 of 2000 filed by Ojha and 2 others is allowed in part. The compensation amount is enhanced from Rs. 1,62,000 to Rs. 3,11,700 along with interest at the rate of 12 per cent per annum from the date of claim petition till realisation. Liability of owner/driver/insurer is held to be joint and several to satisfy awards. Costs on parties.

