

(1996) 04 MP CK 0063
In the Madhya Pradesh High Court
Case No : M.A. No. 374 of 1992

United India Insurance Co. Ltd.

APPELLANT

Vs

Triveni Bai and Others

RESPONDENT

Date of Decision : 18-04-1996

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (1997) ACJ 950

Hon'ble Judges : Shambhoo Singh, J;S.K. Dubey, J

Bench : Division Bench

Advocate : Gulab Sahani, for the Appellant; M. Hafizullah, for the Respondent

Final Decision : Allowed

Judgement

S.K. Dubey, J.—Appellant insurance company has filed this appeal u/s 173 of the Motor Vehicles Act, 1988 aggrieved of the award dated 23.3.1992, passed in M.V.C. No. 175 of 1989 by IXth Additional Motor Accidents Claims Tribunal, Jabalpur. The claimants have filed cross-appeal for enhancement of the compensation awarded by the Tribunal by the aforesaid award. Both the appeals are disposed of by this common order.

2. The deceased Laxmi Narayan, aged 35 years, met with an accident caused by mini bus No. MKJ 1555 owned by Amolak Singh, driven by Harpeet Singh and insured by the appellant insurance company. At the relevant time on 18.2.1986 the cyclist Laxmi Narayan was going on his left side of the road at Kanchghar Chowraha near Railway Station, Jabalpur, who was dashed by the mini bus, as a result of which the deceased received multiple injuries and died instantaneously. The legal representatives of the deceased filed an application u/s 110-A of the Motor Vehicles Act, 1939 claiming compensation of Rs. 2,99,400/-. On the evidence adduced by the parties the Tribunal recorded a finding that the accident occurred due to rash and negligent driving of the mini bus driver. The deceased at the relevant time was earning Rs. 786/- per month as a labourer in M.E.S. He was in a settled job and there were prospects of his promotion. However, on the

basis of the monthly earning of the deceased the Tribunal had determined the dependency at the rate of Rs. 400/- per month and by applying the multiplier of 23 into the multiplicand of Rs. 4,800/- assessed the compensation at Rs. 1,10,400/- wherein a deduction of 20 per cent was given towards the lump sum payment and uncertainties of life. Thus, an award of Rs. 90,000/- against the respondents with a direction to pay the said amount jointly and severally with interest at the rate of 6 per cent per annum from the date of application till realisation was passed. The plea of insurance company that its liability was limited to the extent of maximum of Rs. 50,000/- u/s 95 (2) (b) (i) of the Motor Vehicles Act, 1939 was negated as the policy did not specify the said liability.

3. Aggrieved of the said award the appellant insurance company has filed the appeal contending therein that even if the defence that the driver was not holding a valid licence to drive the vehicle is not accepted, liability of the insurance company is limited to the extent of Rs. 50,000/- only in view of Section 95 (2) (b) (i) which is candid clear from the policy. Supporting the contention learned Counsel for the appellant company relied on a decision of the Supreme Court in the case of New India Assurance Co. Ltd. Vs. Smt. Shanti Bai and others, and Division Bench decision of this Court in the case of Smt. Vimla Gangotia and Another etc. Vs. National Insurance Company Ltd. and Others etc., . Mr. M. Hafizullah, learned Counsel for the claimants submitted that in view of the law laid down by the Supreme Court in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , while considering the dependency as the deceased was in a settled job under defence the future prospects of the deceased ought to have been taken into consideration, i.e., minimum earning ought to have been considered as Rs. 1,200/- deducting therefrom one-third for the personal living expenses of the deceased, the dependency ought to have been assessed as Rs. 800/- per month and applying the multiplier of 15 the claimants were entitled to compensation of Rs. 1,44,000/- besides an amount of Rs. 10,000/- in the head of consortium. The Tribunal also committed an error in deducting 20 per cent on account of lump sum payment while it is settled that when multiplier method is applied it takes care of all that and no deduction can be made either for lump sum payment or for uncertainties of life, a Division Bench decision of this Court in the case of Fizabai and Others Vs. Nemichand and Others, , was cited. It was further contended that the Tribunal committed an error in not awarding the interest at the rate of 12 per cent per annum from the date of application till realisation as awarded by the Supreme Court in cases referred by the Full Bench of this Court in the case of Prakramchand Vs. Chuttan and Others, and in the case of Susamma Thomas (supra). As regards the appeal by insurance company the learned Counsel supported the award and contended that the insurance company did not prove the policy, hence, the liability was unlimited.

4. We first take up the appeal filed by the insurance company. The contention that the driver was holding a valid licence to drive a light motor vehicle and not that of heavy motor vehicle, hence was not authorised to drive the mini bus

cannot be accepted as the same was not proved by appellant insurance company of which the burden lies on the insurance company.

5. Admittedly the accident occurred by the mini bus. The policy which was placed on record and has been taken into consideration by the Tribunal in its para 13 of the judgment clearly lays down in respect of the liability to third party. Clause (c) of proviso to Clause (1) of Section II lays down the term that except so far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act, 1939, in relation to liability under the Workmen's Compensation Act, 1923 the company shall not be liable in respect of death of or bodily injury to any person (other than the passenger carried by reason of or in pursuance of the contract of the employment) being carried in or entering upon, mounting or alighting from the motor vehicle at the time of the occurrence of the events out of which any claim arises. In the Schedule in the heading "Limitation of the liability" it is clearly stated that the limits of the company's liability u/s II 1 (i) in respect of any one accident is such amount as is necessary to meet the requirements of the Motor Vehicles Act, 1939. The policy does not indicate that any additional premium was charged or paid to cover unlimited liability u/s 111(i). That column in the Schedule of premium is blank. The burden to prove that the liability of the insurance company was unlimited was not discharged either by the claimants or by the owner or driver of the vehicle. In the circumstances, the decision of this Court in the case of Smt. Vimla Gangotia and Another etc. Vs. National Insurance Company Ltd. and Others etc., , which has followed the decision of the Supreme Court in the case of National Insurance Co. Ltd. v. Jugal Kishore 1988 ACJ 270 (SC) and a Division Bench decision of this Court in the case of Prabhavati Sharma and Others Vs. Brijmohan Parihar and Others, , are fully applicable which lay down that where no additional premium is paid to cover unlimited or higher liability to a third party by the owner of the vehicle and the policy provides liability of the insurance company limited to Rs. 50,000 the liability of insurance company under a comprehensive policy does not become unlimited or higher than the statutory limits in the absence of a specific agreement. Therefore, we partly allow the appeal of the appellant company that the liability of the appellant company shall be limited to Rs. 50,000/- which shall be deposited by it with interest thereon at the rate of 12 per cent per annum from the date of the application till deposit. It is stated at the Bar that the appellant company deposited under an interim award an amount of Rs. 15,000/- on 13.9.1989 and Rs. 10,000 on 5.8.1992 and Rs. 25,000/- after the filing of the appeal on 21.10.1993 as directed by this Court while passing the stay order on 30.9.1993. As no interest has been deposited on the amount so deposited on different dates the appellant company shall deposit the interest accordingly at the rate of 12 per cent per annum from the date of application till the date of deposit within a period of two months from today before the Tribunal failing which the amount shall carry interest at the rate of 18 per cent per annum.

6. Coming to the appeal of claimants for enhancement of compensation we are of the view that though the figure of the multiplier is higher, but the fact that the

Tribunal has not taken into consideration that the deceased was in a settled job and would have got increments and promotions, therefore, we are not inclined to interfere in the amount of compensation so assessed by the Tribunal. However, the Tribunal has committed an error in making deduction of 20 per cent on account of lump sum payment and uncertainties of life. It is well settled that when multiplier system is applied it takes care of all heads and no deduction can be made either for lump sum payment or for uncertainties of life. [See decision of this Court in *Fizabai and Others Vs. Nemichand and Others*, . Further a conventional amount of Rs. 10,000/- deserves to be added in the amount so calculated. The total compensation amount thus would come to Rs. 1,20,000/- on which the claimants would be entitled to interest at the rate of 12 per cent per annum from the date of application till the date of deposit or realisation as awarded by the Supreme Court in various cases and also by this Court referred in Full Bench decision in the case of *Prakramchand Vs. Chuttan and Others*, . See also the Apex Court decision in the case of *General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others*, ().

7. In the result, the two appeals are allowed in the manner indicated above. The award passed by the Tribunal shall stand accordingly modified. In the circumstances of the case, the parties shall bear their own costs.