(2007) 03 MP CK 0068

In the Madhya Pradesh High Court

Vijay Prakash Tiwari APPELLANT

Vs

Smt. Satya Bhama Devi and Others RESPONDENT

Date of Decision : 29-03-2007

Acts Referred:

Citation : (2007) 3 MPHT 65

Hon'ble Judges : K.S. Chauhan, J;Arun Mishra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Arun Mishra, J.—This appeal has been preferred by the owner Vijay Prakash Tiwari assailing the award exonerating the insurer from the liability to make payment of compensation of Rs. 1,74,000/-, awarded on account of death of Prem Narayan, aged 24 years, in an accident dated 18-2-98. Cross-objection has been preferred by the claimants; the widow, son and parents of the deceased, for enhancement of compensation.

2. As per the claimants, deceased was going to Adarsh Science College on 18-2-98, at 2.30 PM, in order to appear in the examination. Awadhraj Tiwari drove jeep bearing registration No. MP-17-A/4297, rashly and negligently and dashed the cycle of the deceased from behind. Prem Narayan sustained injuries. He was taken to Gandhi Memorial Hospital, where he succumbed to the injuries. Autopsy was performed, Apart from being a student of M.Sc. (Final Year), he was imparting tuitions privately and used to earn Rs. 2,000/per month. Compensation of Rs. 14 lacs was claimed. Jeep was owned by Vijay Prakash Tiwari and insured with National Insurance Company Limited.

3. Owner and driver in their joint statement, contended that deceased himself was negligent. Ex-gratia payment of Rs. 10,000/- was received from Janpad Panchayat, Sirmour. Insurer, in his written statement, contended that driver was not having valid and effective driving licence. Factum of the insurance of the vehicle was also denied and as such, insurer was not liable to make the payment

of compensation.

4. Claims Tribunal has found that accident was caused by rash and negligent driving of Awadhraj Tiwari. Prem Narayan sustained injuries in the accident and died due to the said injuries. Awadhraj Tiwari was not having valid and effective driving license on the date of the accident, as the same was found fake. It was also not found established that vehicle was insured. Compensation, of Rs. 1,74,000/- has been awarded, assessing the income of deceased at Rs. 1,500/- per month.

5. Shri J.L. Mishra, learned Counsel appearing on behalf of the owner, has submitted that record of the RTO was not produced. Owner had taken care while employing the driver, that he was having valid and effective driving license. In case, license held by the driver was ultimately found to be fake, it could not be said to be substantive breach on the part of the owner. He has placed reliance on the decisions of National Insurance Co. Ltd. Vs. Swaran Singh and Others, ; United India Insurance Company Ltd. Vs. Lehru and Others, ; and Lal Chand v. Oriental Insurance Company Limited 2006 AIR SC 4832.

6. He has further submitted that owner had produced cover note before the Claims Tribunal on 3-11-99. The chassis number and registration number on the cover note are the same. NAW 1 Sudarshan Das, Branch Manager of National Insurance Company Limited, was not in a position to deny the genuineness of the said cover note. Thus, insurer ought to have been held liable to make the payment of compensation.

7. Shri Nitin Karan, learned Counsel appearing on behalf of claimant/respondent Nos. 1 to 4, has submitted that deceased was student of M.Sc. He would have earned a substantial amount considering the qualification of Graduation and Post Graduation. He used to earn sum of Rs. 2,000/- by private tuitions, even while he was undertaking Post Graduate course. Thus, his earning capacity be suitably assessed and adequate compensation considering his age be awarded.

8. Shri Sharad Verma appearing with Shri Amit Pandey, on behalf of the insurer, has submitted that license held by the driver was found to be fake, but on enquiry made by the insurer, an endorsement was made on the back of the driving license that no such license was issued by RTO, Jhansi. Said endorsement has been proved by Sudarshan Das, Branch Manager of the Insurance Company. Apart from that, original cover note was not produced. Hence, it could not be verified that vehicle was in fact insured. Thus, Insurance Company has rightly been exonerated from indemnification of the owner''s liability.

9. We shall consider the submission raised by the owner/appellant as to the liability to make payment of compensation on two grounds. The insurer has been exonerated by the Claims Tribunal from its liability to make payment of compensation:

Firstly, license held by the driver was found to be fake; and, Secondly, the vehicle was insured has not been established.

10. Firstly, coming to the question of liability of the insurer, in case license held by the driver was ultimately found to be fake. Exh. D-l contains the particular of the driving license and endorsement appears to have been made on the back of it by RTO Office at Jhansi, that license in question was issued in the name of Mr. Peter Eric Philips, and not in the name of Awadhraj Tiwari. No witness from the office of RTO, Jhansi has been examined. Record of the RTO Office, at Jhansi has not been produced before the Claims Tribunal. The person who has made the enquiry from the office of RTO, has also not been produced. It is not the statement of Sudarshan Das that he himself had inquired into the license. Evidence of the Investigating Officer has not been adduced. There was variation of the particulars on the driving license, whether it was issued in the year 1984 or 1989. Endorsement made on the back of Exh. D-l was with respect to the year 1989. In the absence of production of record, non-examination of witness from the office of RTO and Investigator, it cannot be held that license has been proved to be fake. In view of the decisions of the Apex Court, in the matter of Lehru (supra), Swaran Singh (supra) and Lal Chanel (supra), it cannot be said to be a substantial breach on the part of the owner. Owner is not supposed to make enquiries in RTOs in India, with respect to the genuineness of the license held by the driver. There is no evidence on record, pointed out by the insurer, that owner had not taken reasonable care at the time of employing the driver. Thus, insurer cannot escape from the liability on this ground.

11. Coming to the second ground, it has not been established that vehicle was insured. Cover note issued by the insurer was produced before the Claims Tribunal. It bears the same chassis number and engine number, as mentioned in the registration book. When we consider the statement of NAW 1 Sudarshan Das, Branch Manager of National Insurance Company Limited, he has stated that he made no verification on the basis of the said cover note, whether vehicle was insured or not. It could have been very well verified from the cover note that the vehicle was insured or not. Having failed to do so, an adverse inference has to be drawn against the insurer.

12. In view of the non-verification of the cover note by the insurer, insurer cannot escape the liability because it was the duty of the insurer to verify the cover note and adduce the evidence whether the vehicle was insured or not, in which the insurer has failed. Thus, there is nothing to doubt the correctness of the cover note placed on record. We hold that the vehicle was insured and insurer is liable to make indemnification to the extent of owner''s liability.

13. Coming to the cross-objections preferred by the claimants for enhancement of compensation. It is clear that the deceased was a student of M.Sc. He had earning capacity through his qualification of graduation and had bright future prospects. He was imparting tuitions and earning a sum of Rs. 2,000/- per month.

14. In the facts and circumstances of the case, considering the bright future

prospects and that a life has been nipped at a young age, we assess the earning capacity at Rs. 4,500/-, this amount deceased would have earned by his special skill and qualification. Deceased has left behind his young widow, minor son Amar (aged 5 months at the time of the accident) beside his parents. Making 1/3rd deductions towards self expenditure, which amount deceased would have been spending on himself had he been alive, loss of monthly dependency comes to Rs. 3,000/- and yearly to Rs. 36,000/-. At the age of 24 years, multiplier of 17 is applicable and the same is applied. Thus, the compensation comes to Rs. 36,000/- x 17 = Rs. 6,12,000/-. Apart from that, claimants are held entitled for a sum of Rs. 30,000/- towards the customary heads as funeral expenses, loss of estate, loss of expectancy of life, inclusive of a sum of Rs. 7,500/-, awarded to the widow on account of loss of consortium. Thus, the total compensation awarded comes to Rs. 6,42,000/- (Rupees Six lacs and forty two thousand). In view of the above, the compensation awarded shall carry interest @ 7% per annum, instead of 12% per annum as ordered by the Claims Tribunal.

15. Thus, appeal and cross-objections are allowed to the aforesaid extent. Parties are liable to bear the costs of the appeal.

