
(2009) 10 MP CK 0025
In the Madhya Pradesh High Court

Vishambhar Singh

APPELLANT

Vs

Hakeem Khan and Others

RESPONDENT

Date of Decision : 05-10-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2010) ACJ 1716

Hon'ble Judges : S.K. Gangele, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.K. Gangele, J.—The appellant-claimant has filed this appeal u/s 173 of the Motor Vehicles Act, 1988 against the award dated 28.2.2003 passed by Ninth Motor Accidents Claims Tribunal, Gwalior in Claim Case No. 53 of 2000, for enhancement of compensation.

2. On 17.3.2000, appellant-claimant had been travelling in a jeep bearing No. MP 07-H 1798. Due to rash and negligent driving of the driver of the jeep, it turned turtle. In the aforesaid accident appellant-claimant received serious injuries over his body. Report of the accident was lodged at Police Station, Panihar, District Gwalior. The appellant was admitted at J.A. Group of Hospitals, Gwalior and thereafter, he was treated at various hospitals and a number of operations were performed on him. Thereafter, the appellant-claimant filed a claim application u/s 166 of the Motor Vehicles Act before the Claims Tribunal claiming total compensation of Rs. 24,15,000. The Claims Tribunal has held that the accident occurred due to rash and negligent driving of the driver of the jeep No. MP 07-H 1798. It was insured at the relevant time by New India Assurance Co. Ltd., respondent No. 3. The insurance company failed to prove that the driver of the jeep did not have a valid and effective driving licence at the time of accident. After considering all the evidence on record the Tribunal awarded a compensation of Rs. 1,97,493 in favour of claimant.

3. The learned Counsel for the appellant has submitted that the Claims Tribunal has awarded less compensation and injury to the claimant has not been considered by the Claims Tribunal. In support of her contentions, the learned Counsel relied on the following judgments:

- (1) Nandkishore Vs. Jagdish Chand and Others,
- (2) Neha Bhadauriya v. Ehsan Khan M.A. No. 303 of 2006; decided on 24.2.2009.
- (3) National Insurance Co. Ltd. Vs. Naushad and Others,
- (4) Amrit Lal Sood and Another Vs. Smt. Kaushalya Devi Thapar and Others,
- (5) National Insurance Co. Ltd. Vs. Brijlata and Others,
- (6) Netram Vs. Vijay Kumar and Others,
- (7) Ganga Ram Patel Vs. Mohammad Zaheed Khan and Another,
- (8) Smt. Sunita and Others Vs. Murlidhar Mishra and Others,
- (9) National Insurance Co. Ltd. v. Tanuja M.A. No. 725 of 2000; decided on 23.8.2005.
- (10) B. Imtiaz Ahanied Vs. G. Banumathi and Another,

4. Contrary to this, the learned Counsel for the insurance company has submitted that the insurance company is not liable to indemnify the insured, because the policy of the insurance was an Act Policy. He has further submitted that after considering the evidence on record of the case, proper compensation has been awarded by the Claims Tribunal. There is no permanent disability to the claimant. In support of his contentions, learned Counsel has relied on the following judgments:

- (1) Dilkhush and Others Vs. Bherulal and Others,
- (2) Ramashray Singh Vs. New India Assurance Co. Ltd. and Others,
- (3) United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others,

5. Learned Counsel for the insurance company has not disputed the fact that the vehicle was not insured at the relevant time, hence, the appeal has been decided with regard to quantum of compensation.

6. The claimant-appellant in his evidence deposed that at the time of accident, he was aged about 25 years and he had been doing the business of selling milk. He further deposed that on 17.3.2000 he had been sitting at Nehru Petrol Pump in a jeep bearing No. MP 07-H 1798 because the driver of the jeep was his friend, hence he had given him lift in the jeep and at the time of accident he was sitting in front side of the jeep. Due to rash and negligent driving of the driver of the jeep, it turned turtle and he received serious injuries. There was fracture in his pelvic bone and his urethra was ruptured. He was admitted in J.A. Group of

Hospitals on 17.3.2000 and discharged on 23.4.2000, after treatment he was not cured. Thereafter, he was admitted in Shrivastav Nursing Home at Doulat Ganj where an operation of urethra was performed. He was hospitalised in Shrivastav Nursing Home from 31.5.2000 to 18.7.2000, thereafter he was again admitted at Grover Nursing Home on 31.3.2001 and there another operation of urinary passage was performed and he was discharged on 10.4.2001. The appellant-claimant further deposed that he was further admitted on 29.6.2001 in Garg Nursing Home, where Dr. Bhargav came from New Delhi and performed an operation and, thereafter, he was admitted on 19.7.2001 in North Point Hospital, Delhi, where another operation was performed and he spent an amount of Rs. 65,000. The claimant in his deposition deposed that due to the aforesaid injuries he became impotent and there was also permanent problem in the urethra and he could not urinate properly.

7. Dr. C.V.L. Shrivastava, AW 5 in his evidence deposed that claimant Vishambhar Singh was admitted in the hospital on 31.5.2000 and there was a fracture in his pelvic bone and he was also feeling problem in urination. The appellant-claimant was hospitalised up to 18.7.2000 in the hospital and an operation was performed, name of the operation is rail-row. In the aforesaid operation, two catheters were inserted because the urethra of the claimant was ruptured. He further deposed that due to the injuries, the claimant was not able to perform sexual intercourse because there was injury in his penis and for that illness, there was no medical treatment available in the country. He further deposed that the ailment of the claimant with regard to urination has also not been cured completely. The claimant was also admitted in the hospital of Dr. Grover. The record keeper of J.A. Group of Hospitals, Gwalior, Subhash Chandra Gupta, AW 6, deposed that he had submitted the record of the treatment of the claimant. Dr. J.S. Chhawda, AW 7, in his evidence, stated that he was working at the relevant time as Professor, Head Surgery in J.A. Group of Hospitals, Gwalior. The claimant was admitted in the hospital on 17.3.2000, there was a fracture of pelvis with rupture of urethra of the claimant and an important operation was performed by Dr. J.S. Chhawda. The blood was changed and two catheters were inserted in the urethra and the claimant needed another operation. He was discharged on 23.4.2000 thereafter, the claimant was admitted in the Shrivastav Nursing Home and further operation was performed on the claimant in the hospital of Dr. Grover by telescope. It has further been deposed by the doctor that there was a problem to the claimant in urination and the claimant was not able to perform sexual intercourse and it could not be said that the aforesaid injury of the claimant could be cured. Another Dr. Veerendra Kumar Grover, AW 8, in his evidence deposed that the claimant was admitted in his hospital and he performed an operation on the claimant.

8. From the aforesaid evidence on record of the case and the nature of injuries suffered by the claimant, in my opinion, the disability certificate issued by Dr. Shrivastava, Exh. 172 to the fact that the claimant was not able to perform sexual intercourse and there was impotency to the claimant is just and proper

and looking to the injury to the claimant and the fact that claimant became impotent and he has not been able to perform sexual intercourse, in my opinion, it would be just and proper to award a compensation of Rs. 3,00,000 to the claimant on the aforesaid ground. The Tribunal has awarded a compensation of Rs. 1,97,493 after considering the medical expenses spent by the claimant, in my opinion, the aforesaid compensation would be just and proper towards medical expenses, hence, the claimant is entitled to an enhanced compensation of Rs. 3,00,000.

9. With regard to liability for payment of compensation, the copy of the insurance policy was filed as Exh. D3. Although, the aforesaid policy is neither original nor it is the carbon copy, however, the policy, Exh. D3, has been exhibited before the Claims Tribunal and as per evidence on record, counsel for the appellant-claimant has not objected with regard to exhibiting the document. In such circumstances, the policy could be relied on by this Court. As per the insurance policy, it was an Act Policy and the insurance company charged the premium of Rs. 509 for Act Policy and Rs. 15 for the purpose of driving risk of the driver and the risk of other persons travelling in the vehicle was not covered as per the policy. The witness of the insurance company Lalit Kishore Ikka, DW 1 in para 4 of his cross-examination deposed that the policy, Exh. D3, is an Act Policy and a premium of Rs. 509 was charged for the third party and premium of Rs. 15 was charged for the purpose of risk of the driver except that no other premium was charged. The Hon'ble Supreme Court in *Oriental Insurance Co. Ltd. Vs. Sudhakaran K.V. and Others*, and *United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others*, , has held that under the Act Policy, the risk of passengers who were travelling inside the vehicle is not covered, hence, the insurance company is not liable to indemnify the insured, the same principle is applicable to the present case also.

10. Learned Counsel for the appellant-claimant has submitted that the insurance company has not taken this plea before the Claims Tribunal. It has further been submitted that no such issue has been framed by the Tribunal. From the perusal of the award, it appears that the Tribunal has not considered the aforesaid point in its award that whether insurance company is liable to indemnify the insured, however, since the point has been raised by the learned Counsel for the insurance company and it is legal point, the liability of the insurance company to indemnify the insured could be considered with regard to payment of enhanced compensation.

11. As per the judgment of the Division Bench of this Court in the case of *Jyoti Jain v. Motor Transport of India Pvt. Ltd.* M.A. No. 596 of 2001; decided on 12.3.2007 and *Naresh Kumar v. Rajendra Kumar Vyas* M.A. No. 345 of 2002; decided on 25.10.2007.

12. Looking to the aforesaid facts of the case, appeal filed by the appellant is disposed of with the following directions:

That the appeal of the appellant is allowed to the extent that the appellant is

entitled to receive an enhanced compensation of Rs. 3,00,000 (rupees three lakh). The enhanced amount shall carry interest at the rate of 8 per cent per annum from the date of filing of the claim application before the Claims Tribunal up to its realization. It is hereby further directed that the liability of payment of enhanced compensation is of the non-applicant Nos. 1 and 2 jointly and severally excluding insurance company, non-applicant No. 3. 50 per cent of the enhanced amount shall be kept in a fixed deposit in a nationalised bank for a period of five years. Rest of the terms and conditions will be as per the award of the Claims Tribunal. The impugned award is modified to the extent as indicated above. No order as to costs.