

Prabhakar Vs. Gajanan and Others

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Court : Mumbai Nagpur

Decided On : Dec-10-2013

Judge : A.P. Bhangale

Appeal No. : First Appeal No.269 of 2008

Appellant : Prabhakar

Respondent : Gajanan and Others

Judgement :

Oral Judgment:

1. This appeal is filed against the Judgment and Award, dt.25.10.2004 passed by the learned Member, Motor Accident Claims Tribunal, Akola in M.A.C.P. No.119 of 1999 whereby compensation was awarded in the sum of Rs.2,00,000/- including no fault liability amount with interest @ 6 % p.a. from the date of petition till realization of the amount.

2. The facts, briefly stated, are as under:

That the claimant Gajanan Pralhad Sapkal, aged about 28 years, labourer by occupation went to attend a fair at village Dhargad on 10.8.1998. He decided to return home at Akot. a tractor bearing registration no.MH-30 B-5864 along with trolley bearing registration no.MH-30 E-2886 was standing there. The driver of the tractor was calling the persons for traveling upto Akot by the said tractor-trolley.

The claimant also decided to travel by the said tractor-trolley. About 50 persons were sitting in the trolley and the driver namely Purshottam was driving the tractor rashly and negligently and in a high speed taking sharp turns. When the tractor-trolley reached near Khatkali on Bridge no.CH-56865, the tractor took a sharp turn. In the result, the hook attached to the trolley was broken and the trolley turned turtle. The claimant was thrown away from the trolley. His left leg was fractured and he became permanently disabled. He was admitted in the hospital at Akola and then shifted to the private hospital of Dr.Ranjit Patil, where he received medical treatment. He is now unable to do any hard work. He was earning Rs.5,000/- p.m. from the agricultural work. Now he is unable to do said work and has incurred expenses of Rs.50,000/- for his medical treatment. Thus, the claimant had restricted compensation to the sum of Rs.2,00,000/- only. The owner of the offending motor vehicle i.e. tractor-trolley had denied that the driver was negligent in driving the tractor-trolley and also denied having called passengers in the trolley. Further, according to the owner of the offending motor vehicle, the State Bank of India had financed the owner to purchase the tractor-trolley and it was hypothecated with the State Bank of India and therefore, the owner denied liability to pay compensation as, according to him, the State Bank of India was liable to renew the insurance policy. But it was not done. Under these circumstances, the Tribunal found from the evidence led that, on 10.8.1998, at about 6.00 p.m., the claimant was returning home by tractor-trolley and became victim of the accident as a result of rash and negligent driving of the tractor-trolley being registration number referred above and the claimant was injured in the accident resulting in 22 % permanent disability.

3. It appears that, before the Tribunal, the evidence was led regarding medical treatment received by the claimant at the hospital of Dr. Ranjit Patil. The driver was prosecuted on the basis of police papers such as F.I.R. (Exh.29), spot panchanama (Exh.30) etc.. The Injury Certificate (Exh.32) indicated that the claimant was suffering fracture of femur bone of the left leg and the Medical Officer assessed as 22% permanent disability for the claimant. Having examined the evidence, the learned Member of the Tribunal considered the age of the claimant as 28 years at the time of accident and calculated the amount of compensation on the basis of multiplier of 18 applicable to the claimant as also treated his income

as 5000/- p.m. from agricultural business as well as labour work and arrived at the conclusion that the claimant was entitled for compensation in the sum of Rs.4,37,680/-. However, since the claimant had restricted the amount of compensation to Rs.2,00,000/- only, the Award was passed in the sum of Rs.2,00,000/- exclusive of no fault liability amount and 6 % p.a. simple interest from the date of petition till realisation.

4. Learned Counsel for the appellant submitted that the Branch Manager, State Bank of India having branch at Akot, Tq. Akot, District Akola was negligent in renewal of insurance policy. Therefore, the State Bank of India, with whom the offending motor vehicle was hypothecated, is also liable jointly and severally along with owner of the offending vehicle to compensate the injured person. This submission cannot be accepted as u/s. 165 of the Motor Vehicles Act compensation is payable in respect of the accident involving body injury to the person arising out of use of the offending motor vehicle. The amount of compensation is payable to the third party. It is duty of the owner of the offending motor vehicle to have the motor vehicle insured periodically and the owner, as such, cannot have any pretext to avoid liability as argued in the present case on the ground that it was obligation of the State Bank of India, with whom the vehicle was hypothecated, to get the insurance contract renewed from the Insurance Company. Admittedly, the appellant was allowed to ply the offending motor vehicle notwithstanding the fact of hypothecation and owner of the offending motor vehicle incurred third party risk by plying vehicle on road and by engaging the driver to ply the offending motor vehicle, Thus, if bodily injury is caused to any of the passenger of the tractor and trolley used as if it is a public service vehicle by the owner and driver thereof, the owner of the offending motor vehicle, in the facts and circumstances, cannot be allowed to hide behind the State Bank, with whom the motor vehicle was allegedly hypothecated. Even assuming for the sake of argument that the owner of the offending motor vehicle has any cause of action against the State Bank of India, with whom he had allegedly hypothecated the offending motor vehicle, the owner would have remedy to recover any amount paid to the third party as compensation ordered by the Motor Accident Claims Tribunal if owner can prove negligence of the State Bank of India in not getting renewal of the Insurance cover for the tractor-trolley. Such remedy to sue State

Bank, if so advised, is open for the owner. However, considering the Award of compensation, which was restricted by the claimant to the claim of Rs.2,00,000/- only, even when the Tribunal could have awarded more compensation. I think no interference is warranted in exercise of the appellate jurisdiction to disturb the impugned Judgment and Award.

Hence, the appeal is dismissed.

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