

**Koshalyabai and Others Vs. Lachchhoo Devilal and Others**

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**Court :** Madhya Pradesh

**Decided On :** Nov-03-2000

**Reported in :** 2001(2)MPHT93

**Judge :** Mr. R.D. Vyas and ;Shambhoo Singh, JJ.

**Acts :** [Motor Vehicles Act, 1988](#) - Sections 2(21) and (47), 3, 147, 168, 171 and 173; [Code of Civil Procedure \(CPC\), 1908](#) - Order XLI, Rule 22; [Evidence Act, 1872](#) - Sections 102

**Appeal No. :** Misc. Appeal No. 402/99

**Appellant :** Koshalyabai and Others

**Respondent :** Lachchhoo Devilal and Others

**Advocate for Def. :** Shri S. Patwa and ;Shri Dandwate, Adv.

**Advocate for Pet/Ap. :** Shri M.M. Somani, Adv.

**Disposition :** Misc. appeal partly allowed

**Judgement :**

**Shambhoo Singh, J.**

1. This appeal is directed by the claimants for enhancement of compensation amount granted by the award dated 10-3-1999 passed by 14th Member, M.A.C.T.

Indore in Claim Case No. 37/93.

2. The claimants' case, in brief, was that on 30-3-1993, 30 years old Parwat Singh, husband of appellant No. 1 and father of appellant Nos. 2 to 4, was going on his cycle at Dhar Road, Indore. At about 7 p.m. the respondent No. 1 came from opposite direction driving truck No. C.I.O.9326, belonging to respondent No. 2 and insured with respondent No. 3, in rash and negligent manner and dashed against him, as a result of which he sustained injuries. He was admitted in M.Y. Hospital, Indore where he died on the same day. He was earning Rs. 2,500/- per month as a salesman. The appellants filed claim application seeking compensation of Rs. 3,41,000/-. The respondents resisted the claim and pleaded that the deceased had consumed liquor and he fell down from his cycle and sustained injuries. The respondent No. 3 Insurance Co. inter alia pleaded that the respondent No. 1 was not having valid driving licence, therefore, it was not liable to pay compensation. The Tribunal on appreciation of evidence held that the accident occurred due to rash and negligent driving of the truck No. C.I.O. 9326 and awarded compensation of Rs. 98,000/- but it exonerated the Insurance Co. on the ground that the respondent No. 1 was not having valid licence on the date of accident. Hence, this appeal by the claimants. Respondent No. 1, the driver also filed cross-objections.

3. Shri M.M. Somani, learned counsel for the appellants, submitted that the impugned award is on lower side. He also submitted that exoneration of the Insurance Co. was wrong. Shri Patwa, learned counsel for the respondent driver of the truck, contended that there was no breach of the condition of the insurance policy and the Insurance Co. was liable to pay compensation. Shri Dandwate, learned counsel for the Insurance Co. supported the impugned award.

4. We considered the arguments advanced by learned counsel for both sides and perused the record. First we take the question of adequacy of the compensation amount. The Tribunal putting reliance on the evidence of Koshalyabai (A.W. 1) widow of the deceased that her husband was a salesman in Krishna Agency and was earning Rs. 800/- per month, held the yearly earning of the deceased at Rs. 9,600/- and on deducting 1/3rd of it for personal expenses of the deceased, determined the dependency of the appellants at Rs. 6,400/-per year. The Tribunal

selected multiplier of 15 and worked out Rs. 96,000/-. In our opinion, the Tribunal rightly determined the dependency but committed error in selecting multiplier of 15. Koshalyabai stated that the age of her husband at the time of accident was 30 years. This evidence remained un-rebutted. Under such circumstances, the appropriate multiplier would be 18 according to the schedule. On multiplying it with the multiplicand, the amount comes to (6400 x 18) Rs. 1,15,200/-. The appellant is also entitled to Rs. 5,000/-for loss of consortium and Rs. 2,000/- for funeral expenses. The deceased was admitted in M.Y. Hospital, Indore, where he was treated but ultimately succumbed to the injuries. Therefore, the appellants are entitled to Rs. 7,000/-for pain and suffering, which had become the estate of the deceased. On addition of this amount, the amount of compensation comes to Rs. 1,29,200/-. It is rounded up to Rs. 1,30,000/-. This would be just, fair and reasonable compensation for the death of the deceased Parwat Singh.

5. Shri Somani and Shri Patwa, learned counsels, argued that the learned Tribunal committed error in exonerating the Insurance Co. on the ground that the respondent No. 2 had no valid driving licence. They submitted that matador was a light motor vehicle and respondent No. 2 was having licence for driving light motor vehicle, therefore, there was no breach of the terms and conditions of the insurance policy.

6. The contention of Shri Dandwate, learned counsel is that this vehicle was a transport vehicle and, therefore, in view of Section 3 of the Motor Vehicles Act, 1988 it could be driven by a person whose driving licence specifically entitled him to drive the same.

7. The question of endorsement entitling the driver to drive a transport vehicle would arise only if the vehicle was a transport vehicle. In the case in hand there is no evidence that the offending vehicle i.e., the matador was a transport vehicle. Admittedly, it was a light motor vehicle and the appellant was having a driving licence for driving light motor vehicles. Under such circumstances, the learned Tribunal committed error in holding that the respondent No. 1 was not having valid and effective driving licence. The burden of proving breach of the terms and conditions of the policy is on the insurer and the insurer in this case led no

evidence at all. In view of this, we hold that the respondent No. 1 was having valid and effective licence and there was no breach of the terms and conditions of the insurance policy and the Insurance Co. has been wrongly exonerated from paying compensation amount.

8. In the result, the appeal is partly allowed and the impugned award is modified and it is directed that the respondent Nos. 1 to 3 shall pay Rs. 1,30,000/- to the appellants with interest at the rate of 12% per annum from the date of filing of claim application till realisation. This amount shall be apportioned equally amongst the appellants. The share of appellant Nos. 2 to 4 who are minor son and daughters of the deceased and Rs. 15,000/- out of the share of appellant No. 1, the widow, with accrued interest be deposited in maximum interest paying scheme in nationalised bank situated at village Rangwasa. If there is no such bank in the village Rangwasa, then, it may be deposited in any nationalised bank in Indore. Copy of this judgment shall be sent to appellant No. 1 free of cost alongwith its Hindi translation.

There shall be no order as to costs.

9. Misc. Appeal partly allowed.

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