

Devilal and anr. Vs. Sidhanath Through L.Rs. Ramakant and ors.

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Court : Madhya Pradesh

Decided On : Jan-20-2004

Reported in : III(2004)ACC522; 2004ACJ1515

Judge : P.C. Agrawal, J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 147(1)

Appeal No. : M.A. Nos. 536, 537 and 646 of 2000

Appellant : Devilal and anr.

Respondent : Sidhanath Through L.Rs. Ramakant and ors.

Advocate for Def. : Vijay Bakshi, Adv.

Advocate for Pet/Ap. : Indira Vyas, Adv.

Disposition : Appeal allowed

Judgement :

Agrawal, J.

1. On 2.11.1995 deceased Vishal, Mushtak, A-2 and Mehmood, A-3, were travelling from Sendwa to Indore by truck No. MP 09-D 6954. Due to rash and negligent driving of the truck by Ravindra, R-3, the truck driver, the truck overturned resulting in death of Vishal and injuries to both Mushtak, A-2 and his

brother Mehmood, A-3. Claim Case No. 5 of 1996 was filed by parents of deceased Vishal. Mushtak, A-2, filed Claim Case No. 35 of 1996 while Mehmood, A-3, filed Claim Case No. 80 of 1996. The Tribunal held the truck driver guilty of negligence and rashness. It held the truck owner liable to pay compensation. However, insurance company, R-2, was exonerated. Award of Rs. 62,000 with interest at the rate of 12 per cent per annum to the parents of deceased Vishal, award of Rs. 25,000 with interest at the rate of 12 per cent per annum in favour of Mushtak, A-2 and an award of Rs. 1,500 with interest at the rate of 12 per cent per annum in favour of Mehmood, A-3, were passed. All these appeals are filed against these awards in claims arising out of the same accident and thus are being decided together.

2. In these appeals appellants have claimed that as the truck owner, R-1, had paid additional premium of Rs. 50 to cover the liability for non-fare paying passengers under the comprehensive policy of insurance, the insurance company could not be exonerated and was also liable to pay compensation and that the compensation awarded had been too low and should be enhanced.

3. First, I take up the issue of liability of insurance company. In the present case the deceased Vishal was claimed to be a cleaner in the truck while Mushtak, A-2 and his brother Mehmood, A-3, had been gratuitous passengers. Certainly, under the law both the driver and owner of the truck are liable to compensate for death or injury to them. It is true that under any Act policy risk to the gratuitous passengers in a goods vehicle was not to be covered yet it can always be open for insured to get covered the higher risk by payment of extra premium. Therefore, insurance company is also free to cover the higher risk. However, for this purpose a specific agreement and payment of extra premium was necessary. In *National Insurance Co. Ltd. v. Jugal Kishore*, 1988 ACJ 270 (SC) and *Pushpabai Purshottam Udeshi v. Ranjit Ginning and Pressing Co.*, 1977 ACJ 343 (SC), it was clearly held that the insurance company could cover the higher risk on payment of extra premium. In *Amrit Lal Sood v. Kaushalya Devi Thapar*, 1998 ACJ 531 (SC) and *Oriental Insurance Co. Ltd, v. Shanti Devi*, 1996 (2) TAC 102, it was held that the insurance company by taking additional premium could undertake to cover unlimited liability also. Here in this case by acceptance of extra premium of Rs. 50

to cover the risk of non-fare paying passenger, insurance company had undertaken the liability. Thus, exoneration of the insurance company had been erroneous.

4. In M.A. No. 537 of 2000 deceased Vishal had been about 13.5 years old. His date of birth vide school certificate, Exh. P-6, being 10.6.1982. He was student of 7th class. Claim was filed by his parents. He being a non-earning person under the Second Schedule to the [Motor Vehicles Act, 1988](#), his notional income could be taken to be Rs, 15,000 per year, out of which 1/3rd could be deducted towards his personal expenses. Thus, the dependency could be to the extent of Rs. 10,000. The claim had been filed by the parents who were in the age group of 50 to 55 years and thus, the multiplier of 11 should have been applied. Thus, his parents were entitled to get Rs. 1,10,000 for loss of dependency. Parents were further entitled to Rs. 2,000 as funeral expenses and Rs. 2,500 for loss to estate. Thus, enhancement of Rs. 52,500 is allowable in M.A. No. 537 of 2000.

5. In M.A. No. 536 of 2000 Mushtak, A-2, had suffered a fracture of left forearm. There had been no evidence of permanent disability or diminution in earning capacity. No doctor has been examined. Mushtak, A-2, had claimed that his left forearm was fractured. He had sustained injuries in his chest and he had remained admitted in Barwani Hospital for 15-20 days. His hand was put to plaster. Thereafter, he was taken to Khandwa where a rod was inserted in his hand. He was operated. According to him he is a mechanic. In para 4 he admits that he is running his shop at Sendwa. No bills or vouchers for purchase of medicines have been submitted. No hospital record is submitted. The Tribunal has awarded Rs. 25,000 in lump sum which in the facts and circumstances of the case has neither been too low or too high. Thus, no case for enhancement is made out.

6. In M.A. No. 646 of 2000 Mehmood, A-3, had suffered abrasion on his lip, forearm, hand and ventral aspect of left foot. There had been no bone injury. He had submitted Exh. P-6 for Rs. 109; Exh. P-7 for Rs. 65.75, and Exh. P-8 for Rs. 277.80 cash-memos for purchase of medicines. Prescription Exh. P-5 is also submitted. According to him first he was treated at Thikari and from there he went to Barwani for 8 days and then to Khandwa for 15-20 days and had spent Rs.

15,000-20,000 on treatment. Claims Tribunal had awarded only Rs. 1,500 as compensation. However, in my considered opinion an amount of Rs. 3,000 should have been awarded for mental and physical pain and suffering due to injuries sustained by him and an amount of Rs. 5,000 in lump sum should have been allowed for loss of earnings during treatment, medical expenses, special diet, travelling expenses, etc. Thus, an enhancement of Rs. 6,500 has to be allowed with interest at the rate of 9 per cent per annum since the date of claim, i.e., 8.3.1996.

7. Thus, all three appeals are allowed partly. Following awards are substituted:

(A) In M.A. No. 537 of 2000, all three respondents shall pay compensation of Rs. 1,14,500 with interest at the rate of 9 per cent per annum since the date of claim, i.e., 9.2.1996 to the appellants.

(B) In M.A. No. 536 of 2000, all three respondents shall pay compensation of Rs. 25,000 with interest at the rate of 12 per cent per annum since the date of claim, i.e., 5.2.1996 to the appellant.

(C) In M.A. No. 646 of 2000, all three respondents shall pay compensation of Rs. 8,000 with interest at the rate of 9 per cent per annum since the date of claim, i.e., 8.5.1996 to the appellant.

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