

M.M.K. Nair Vs. United India Fire and General. Ins. Co. and 3 ors.

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Court : Madhya Pradesh

Decided On : Jan-07-1992

Reported in : I(1993)ACC589

Judge : D.M. Dharmadhikari and ;K.L. Issrani, JJ.

Appellant : M.M.K. Nair

Respondent : United India Fire and General. Ins. Co. and 3 ors.

Judgement :

ORDER

K.L. Issrani, J.

1. This order shall also govern the disposal of Miscellaneous Appeals No. 225 of 1982: P. Devrajan v. The United India Fire and General Insurance Co. Ltd. and three, Others and Miscellaneous Appeal No. 226 of 1982: P. Demodaran v. The United India General Insurance Co. Ltd. and three others.

2. OB 23.9.1979, a Matador bearing Registration No. M.P.T. 57 belonging to the respondent No. 3--Mithailal Gupta, met with an accident by dashing against a bridge on Pohaula, 9 Kilometers away from Katghora. The Matador turned turtle 3-4 times. The passengers sitting in it received grievous injuries. It was being driven by the respondent No. 4 Rajendra Kumar (the driver). It was insured with the respondent No. 1 The United Mia Fire and General Insurance Co. Ltd.,

Bombay, through its Branch Office at Raipur (respondent No. 2).

3. According to the appellant, his daughter Ku. P. Shanta received multiple injuries in the accident. Consequently she expired on 28.3.1979. the appellant being her father, is her legal heir and is entitled to receive the compensation. He, therefore, filed an application under Section 110-A of the Motor Vehicles Act claiming Rs. 40,200/- as compensation on account of the death of his daughter.

4. Ku. P. Shanta and others were the passengers in the said Matador bearing registration No. M.P.T. 57, which was hired for Rs. 500/- from the respondent No. 3 Mithailal Gupta for the marriage of P. Devrajan for going to Baloo from Bhilai.

5. The respondents 1 and 2, though admitted that the said matador was insured with them but they denied their liability on the ground that the insurance was not for running the Matador on hire. There was infringement of the terms of the policy. They are, therefore, not liable to pay any compensation for the said accident

6. The respondent No. 3 denied the liability to pay compensation on the ground that the death of Ku. P. Shanta was not on account of the accident but on account of the negligence of the doctors.

7. The respondent No. 4, the driver, remained exonerated.

8. The claims Tribunal held that the accident was due to rash and negligent driving of the respondent No. 4. It was further held that the claimant M.M.K. Nair is entitled to receive compensation, but the compensation of Rs. 5000/- only was granted. Further, an amount of Rs. 1000/- was also granted towards medical expenses. Thus, out of Rs. 40,200/- only Rs. 6000/- were awarded to the appellant M.M.K. Nair with interest at the rate of 6% per annum, Hence the appellant has filed the present appeal claiming the balance.

9. In Miscellaneous Appeal No. 225 of 1982, P. Devrajan, whose marriage party was going in the said Matador M.P.T. 57, is the claimant. P. Devrajan had received multiple jeep abrasions and lacerations over right shoulder and right arm and, fore-arm. The , shoulder wound was 3T and the fore-arm wound was 6'. They were stitched outside. He had also received lacerated wound left fore-arm,

compound fracture-- both the bones on the left forearm at the level of lower one third and upper two third. The bone was projecting out. He had also lacerated stitched wound on the left hand dorsum. The claimant appellant P.Devrajan was awarded Rs. 5000/- as compensation with interest at the rate of 6% per annum. He had claimed Rs. 11,300/-.

10. In Miscellaneous Appeal No. 226 of 1982, the claimant P. Demodaran had received compound fracture proximal phalanx right thumb and deep, lacerated injury in the right forearm with partial amputation which was stitched outside with a small piece of bone sticking out. There was also an abrasion in his left wrist. He had claimed compensation of Rs. 61,000/- for his injuries but was awarded compensation of Rs. 5557/- with interest at the rate of 6% per annum.

11. All the claims were awarded against the respondent 3 and 4 only jointly and severally.

12. The submission of the learned Counsel for the appellant is that the claimant should have been awarded full amount against all the respondents. The respondents 1 and 2 were wrongly exonerated from their liability to pay.

13. Learned Counsel appearing for the respondents 1 and 2 submitted that the respondent No. 3 had no permit to ply the vehicle on hire or reward. He could not have carried the marriage party in the vehicle on hire. Thus, there was clear infringement of the terms of the policy and they are not liable for the same. The Claims Tribunal had rightly exonerated them from their liability. Learned Counsel for the respondent No. 3 submitted that the death of Ku. P. Shanta was not due to the accident but due to the negligence of the doctors. He also submitted that the Insurance Company is also liable for the same. In any case, the amount of compensation awarded was sufficient and deserves no enhancement.

14. For proving the injuries and the death of Ku. P. Shanta, the claimant has examined Dr. J.B. Niyogi as P.W. 1, who has stated that on 30.1.1979 it was decided to operate Ku. P. Shanta on 2.2.1979 and on the said date i.e. 2.2.1979 she was actually operated. She was discharged on 27.2.1979 but on 24.3.1979 she was readmitted and on 28.3.1979 she was again taken up for operation for the

same injuries. The fractured area was opened and a fresh sailing was done. After the fractured area was opened, the patient went in low blood pressure shock. At 1.00 P.M., her general condition was noted to be very poor she became unconscious and responded very little to painful sign in the upper limbs only. In the lower limbs there was no movement. At 2.00 P.M., her general condition remained the same. She was examined at various intervals and necessary medicines were given. The patient had a down hillcourse, progress deteriorating, and was declared expired at 9.55 P.M. on 28.3.1979. This doctor was not cross-examined regarding the death of Ku. P. Shanta due to the negligence of the doctors and the medical treatment. Therefore, it cannot be said that the death was caused due to the negligence of the doctors. It was only as a consequence of the injuries received by her, that she expired.

15. Now it is to be seen as to what extent of compensation the claimant is entitled. Learned Counsel for the respondent fairly conceded that the compensation awarded in this case in respect of Ku. P. Shanta is low and deserves to be enhanced.

16. In the case of a death of a child, no evidence of pecuniary loss is to be led by the parties. The desire of the Court to compensate the pecuniary loss would not be appropriate basis to fix the compensation in as much as in the case of a child it would not be an earning capacity. The Court has, therefore, to make departure from the traditional mode of computing compensation in such a case. The compensation has to be computed mostly to take care of the mental shock the parents had received on the death of their son or child. The age of the child and the number of children, more particularly of the sex to which the deceased belonged, the couple had, would be the guiding factor. This Court has laid down such principles in Miscellaneous appeal No. 168 of 1983: Lachchaudai v. Sobharam and two others, decided on 27.9.1991. In a case of a death of a boy of 5 years of age, the compensation awardable to the claimant was fixed at a sum of Rs. 17,000/- with interest at the rate of 12% per annum from the date of filing of the claim petition. In the present case also, the deceased Ku. P. Shanta was the only child of the parents. The parents had received great mental pain and shock. There are no prospects of bearing any child. Therefore, we think it just and proper

at least to award the compensation of Rs. 15,000/- in addition to the compensation of Rs. 1000/- for medical treatment along with interest at the rate of 12% per annum from the date of the application till the date of realization.

17. In Miscellaneous Appeal No. 225 of 1982, the amount claimed was Rs. 11,300/- and the claims Tribunal had awarded Rs. 5000/-. We do not think that the amount awarded is unjust or unreasonable except the rate of interest, which should be 12% per annum instead of 6% per annum. The claimant appellant P. Devrajan had received multiple deep abrasion and laceration over right shoulder, right arm and fore-arm. The shoulder--wound was 3' and the fore-arm wound was 6'. They were stitched outside. He had also received lacerate'wound in the left fore-arm with compound fracture. Both bones on the left fore arm at the level of lower 1/3rd and upper 2/3rd. The bone was projecting out. P. Devrajan had also received lacerated stiched wound on left hand dorsum. He was admitted in the Bhilai Hospital on 25.1.1979 and was operated under general anesthesia on 26.1.1979. He was discharged on 27.2.1979, When the wound was properly treated and healed up Dr. Niyogi (P.W. 1) does not say of further incapacity of Devrajan. Nothing has been put to him in cross-examination also. In cross-examination, P. Devrajan has admitted that he is employed in Bhilai Steel Plants and he got free treatment in the Bhilai Hospital. He is still in service drawing the same emoluments. There is no reduction in pay and rank. Therefore, we do not think it proper to award him more except the interest at the rate of 12% per annum from the date of the application.

18. Similarly, in Miscellaneous Appeal No. 226 of 1982, the claimant P. Demodaran has also been awarded Rs. 5557. P.Damodaran is doing tailoring work. According to him, alter the injuries he is not able to do the failloring work properly. He had received compound fracture proximal phalanx right thumb and deep lecerated injury in the right fore-arm with partial amputation which was stitched outside with a small piece of bone sticking out. There was also an abrasion in his left wrist. His thumb was amputated. He was discharged on 27.2.1979 and was again admitted on 28.4.1979 and discharged thereafter on 1.5.1979. In cross-examination Dr. Niyogi stated that before admission of P.Demodaran on 25.1.1979 he had some stitching done at some other place. The

doctor has not been cross-examined about, the loss a capacity of P.Demodaran. After the accident, though he himself has slated that he is not able to work as a tailor, there is no other evidence to support his version. Therefore, we are not inclined to interfere in the compensation awarded to him, which cannot be said to be unjust except the quantum of interest which is enhanced from 6% to 12% per annum from the date of the application.

19 Consequently, the appeals are partly allowed. However, we do not order payment of any cost. Parties are directed to bear their own costs.

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