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Court : Madhya Pradesh

Decided On : Aug-16-1991

Reported in : 1992ACJ519

Judge : V.D. Gyani and ;V.S. Kokje, JJ.

Appeal No. : M.A. No. 302 of 1989

Appellant : Ashok Kumar and ors.

Respondent : Dhulia

Advocate for Def. : Sujan Jain, Adv.

Advocate for Pet/Ap. : V.V. Dandwate, Adv.

Disposition : Appeal dismissed

Judgement :

V.D. Gyani and V.S. Kokje, JJ.

1. This appeal under Section 110-D of the Motor Vehicles Act is directed against award dated 31.7.1988 passed by Member, Motor Accidents Claims Tribunal, Jhabua in Claim Case No. 36 of 1988 awarding Rs. 61.500/- as against claim of Rs. 1,80,000/- to the claimant-respondent.

2. The insurer has joined the owners as appellant probably with a view to widen the scope of interference, otherwise taking each of the grounds, as urged and enumerated in the appeal memo, are not available to the insurer.

3. These grounds are: (a) lack of medical evidence, (b) 50 per cent disability on account of loss of memory, not proved, (c) claimant-respondent was smelling of alcohol at the time of his medical examination, and should, therefore, be held responsible for the accident, (d) agricultural income of Rs. 300/- and daily wages of Rs. 15/- not proved.

4. None of these grounds is available to the insurance company as a ground of attack permissible under the law, Section 96 (2), Motor Vehicles Act, 1939. Mr. Dandwate, however, urged that the owners are also co-appellants. It is for this reason that the grounds as raised will have to be examined in the light of evidence bearing on the point but the vital question that does it behove a nationalised institution, the insurance company, to depend on the insured, the owner, for support and survival of its appeal against a poor tribal coming from Jhabua, putting him to further expenses in contesting such appeal. Tribunal's record is before us. The insured had filed a separate written statement represented by another counsel, Mr. Pancholi, who did not cross-examine witness AW 1, Dr. S.K. Jain and AW 3, Rameshchandra. From remaining witnesses only one question about non-seizure of driving licence was asked to AW 2, Ramautar Sharma, the police inspector. Similarly Dr. Sharad Jain, AW 4, was also asked only one question about X-ray plate, and this question was about damage done to the claimant's nerves-a very abortive question indeed. Claimant Dhulia, AW 5, was also asked only one question by way of suggestion relating to daily wages of Rs. 15/- which the claimant repudiated and the other point was about non-production of revenue record. This is the sum total of the cross-examination done on behalf of the insurance company. No other evidence was adduced either by the insurer or the insured. It is not to suggest that the insurance company cannot avail of the evidence, as elucidated by cross-examination done by other parties. The moot point is when at the appellate stage all these questions are raised, the insurer would do well to bother a little at the trial level as well. It is also significant to note that not a single question pertaining to conditions of insurance policy was put to

any witness, nor any evidence adduced in this behalf.

5. Claim proceedings under the Motor Vehicles Act are not to be inserted with a litigative approach, more so by nationalised insurance company, an instrumentality of the State, supposed to be virtuous litigant.

6. Coming to the evidence on record, the first point regarding medical evidence and extent of disability, as raised by the appellant's counsel, holds no water. It is amply proved by the evidence of Dr. S.K. Jain, AW 3, that claimant had sustained a depressed fracture of the skull, which could adversely affect his memory. The argument that the Tribunal has gone by mere probabilities is wholly ill-conceived. What else a medical expert would say. It is a matter of rudimentary knowledge that it is opinion evidence, which has to be accepted or rejected for whatever worth it is, but there is nothing in his cross-examination so as to discard his evidence. A very hypothetical suggestion was thrown to this witness that if there was no fracture of the skull, unconsciousness could be due to heavy drinking as well, but the witness has emphatically stated that in instant case, the patient who was stated to be unconscious in his injury, Exh. P-1, was because of the head injury sustained by him.

7. Other point that claimant was heavily drunk was suggested to Dr. Jain who stated that he could not say so and the point was not pursued further. How can it be said that the claimant was so excessively drunk that he was responsible for the accident? No such question was put to another witness, Ramautar Sharma, the police inspector, who immediately reached the spot, arranged for rushing the injured to hospital and further investigated the matter. Rameshchandra, AW 3, is yet another eye-witness and has denied the suggestion that the claimant was drunk. What is more surprising to be noted is that this suggestion of being drunk has not been thrown to the claimant himself examined as AW 5, yet such a ground is being raised at the appellate stage.

8. Taking up the point of disability the claimant, in his evidence at para 3, has testified that as a result of head injury his vision and memory were adversely affected which in work has also affected his working but very surprisingly, not a single question has been put to him on this point, in his cross-examination.

Claimant's statement is corroborated by medical evidence. Therefore, there is no substance in the argument advanced by the appellant.

9. The last point that remains to be considered is about income of the claimant who deposed that he was earning Rs. 15/-per day by working in the Veterinary Department. Besides this income, he had his agricultural income of Rs. 300 to Rs. 350/-per month. It may not be out of place to note here that minimum daily wage for labourer prescribed under the Minimum Wages Act is more than Rs. 15/-, a fact of which judicial notice can be taken. As for agricultural income, there can be some variation, depending on the vagaries of nature. A certain 'amount of guesswork is always involved in such matters. The view taken by the Tribunal on this point is not either exaggerated or excessive. Really speaking the Tribunal has taken the lowest figure. No legitimate grievance can, therefore, be made by the appellants on this count, more so in face of the fact that the claimant has not been put single question in his cross-examination on this point.

10. For the foregoing reasons this appeal being devoid of any merit is dismissed with costs of Rs. 2,000/- (two thousand) payable to the claimant-respondent in person by the appellant insurance company. Counsel's fee as per schedule if certified.