

Netram Vs. Vijay Kumar and ors.

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Court : Madhya Pradesh

Decided On : Sep-09-2005

Reported in : 2006(2)MPHT94

Judge : Arun Mishra and ;S.R. Waghmare, JJ.

Acts : Indian Penal Code (IPC) - Sections 304, 337 and 379

Appeal No. : Misc. Appeal No. 1769/2004

Appellant : Netram

Respondent : Vijay Kumar and ors.

Advocate for Def. : P.K. Kaurav, Adv. for Respondent No. 1 and ; Amrita Ruprah,
Adv. for Respondent No. 3

Advocate for Pet/Ap. : Nitin Agrawal, Adv.

Judgement :

ORDER

Arun Mishra, J.

1. This appeal has been preferred by the claimant for enhancement of compensation aggrieved by an award dated 21-1-2004 passed by Second Addl. Motor Accident Claims Tribunal, Gadawara, District Narsinghpur in Claim Case

No. 10/2003.

2. The claimant filed the claim petition with respect to the injuries sustained by him in an accident dated 9-11-97 which took place at about 11 a.m. when claimant Netram along with Tarachand and other persons after hiring jeep for a sum of Rs. 500/- from the owner of the jeep Shri Vijay Kumar, was going from Gadarwara to have Darshan 'Banjari Mata temple situated at Kareli, Narsinghpur'. Due to rash and negligent driving of Ramgopal, driver of the jeep, and to save a cyclist the jeep turned turtled, appellant sustained injuries and Tarachand died. Claimant suffered the fracture of clavicle bone and owing to the injuries sustained, his spleen was removed. He was admitted in Govt. Hospital, Narsinghpur. He remained at Govt. hospital from 9-11-97 till 11-12-97. His spleen was punctured, life saving operation was done. Claimant was lucky to survive. He could not resume the duty for about 6 months. The claimant was vegetable commission agent and was also owner of truck (M.P. No. 20-H/1067) was an income-tax payee and for the assessment year 1996-97, 1997-98 and 1998-99, his income was assessed Rs. 77,120/-, 72,960/- and Rs. 59,485/- respectively. Claim petition was preferred as against the owner, driver and insurer of the jeep claiming compensation of Rs. 9,98,633/-. Report of the incident was lodged at P.S. Narsinghpur. Offence was registered under Sections 379, 337 and 304 of the IPC and charge-sheet was filed as against Shri Ramgopal, driver of the jeep in the Court of JMFC, Narsinghpur.

3. Owner and driver in their written statement denied the averments made in the claim petition. It was averred that liability, if any, is that of the insurer as the vehicle was duly insured. The driver contended that jeep was driven at the speed of 40 kms per hour. All of a sudden, cyclist came in front of the jeep, hence, it turned turtle; he was not negligent.

4. Insurer in the written statement contended that Tarachand dashed the jeep. Tarachand and Yeshwant Singh were on Hero Honda motor-cycle, owing to which jeep turned turtle. Jeep was not to be used for taxi purpose for hire and reward; it was insured only for private use; as such the insured has violated the terms and conditions of the insurance policy.

5. The Claims Tribunal has found that accident took place owing to rash and negligent driving of Shri Ramgopal. The Claims Tribunal has further found that injuries were sustained, however, incurring of permanent disability has not been established. Issue No. 2 that spleen was damaged, has been found to be established in part. The Claims Tribunal has further found that the vehicle was used as a taxi; it was hired by deceased Tarachand, hence, the insurer has been given liberty after making the payment of compensation to the claimant to realize from insured. The Claims Tribunal has awarded compensation of Rs. 10,000/- along with interest at the rate of 9% per annum from the date of filing of claim petition; in case award is not satisfied, within 2 months, the interest shall carry the rate of 10% per annum. Dissatisfied with the award, the claimant has preferred the appeal for enhancement of compensation whereas owner/respondent No. 1 Shri Vijay Kumar has preferred the cross-objection as against the liberty given by the Claims Tribunal to the insurer to recover the amount from the insured in Para 17 of the award.

6. Shri Nitin Agrawal, learned Counsel for the claimant, has submitted that the spleen of claimant was removed. He has suffered fracture of left clavicle bone. Claimant was admitted in Govt. hospital for more than a month; due to the life saving surgery which was performed for removal of spleen. Removal of spleen is serious kind of disability suffered by the claimant. Surgical Specialist, District Hospital, Narsinghpur, has issued a certificate (P-5) on 26-2-98 that while the claimant was admitted in the hospital, his spleen was removed and he has suffered fracture of left clavicle bone. In spite of answering the question that aforesaid injuries have been sustained awarding compensation of Rs. 10,000/- can not be said to be adequate, is meager considering the nature of the injuries sustained by the claimant, hence, compensation be suitably enhanced.

7. Shri P.K. Kaurav, learned Counsel for respondent No. 1, owner while pressing the cross-objection preferred, has, submitted that jeep was not plied for hire or reward. There was no violation of terms and conditions of insurance policy. In case driver has taken any person as a passenger without knowledge of the owner, that can not be said to be breach on the part of owner, hence, insurer be saddled with the liability to make payment of compensation along with owner and driver; liberty

given to recover the amount from the insured is, thus, bad in law. Learned Counsel has also relied upon a decision of this Court in M.A. No. 1730/2004 in which liability has been saddled on the owner, driver and insurer jointly and severally to make the payment of compensation.

8. Ms. Amrita Ruprah, learned Counsel for the insurer, has submitted that it was averred by the claimant that jeep was hired for a sum of Rs. 500/- to have darshan of 'Banjari Mata Temple'; it was hired from the owner for a sum of Rs. 500/-. She has also referred to the statement of the claimant's witnesses and also that of driver of the jeep. She has contended that in view of the statement of all the witnesses the Claims Tribunal is right in giving the liberty to the insurer to recover the amount from the insured as jeep was plied for hire and reward whereas it has been insured for private use. She has further submitted that in M.A. No. 1730/04 this question was not raised and the finding of the Claims Tribunal was affirmed.

9. Coming to the question of quantum of compensation, it is clear that spleen of the claimant was removed. He has also sustained fracture of left clavicle bone. He was admitted in the District Hospital as indoor patient as apparent from certificate (P-5) issued by Dr. R.C. Agrawal of the District Hospital, Narsinghpur. The Claims Tribunal has given the finding that injuries were sustained, even the period has been mentioned by Doctor that he was admitted as indoor patient in District Hospital, Narsinghpur which is Govt. Hospital from 9-11-97 till 11-10-97; we find it to be established from the certificate that spleen was removed and the claimant has sustained fracture of left clavicle bone for which he was admitted as indoor patient for more than a month. It is surprising that even in the absence of evidence of permanent disability, even after giving the finding that injuries have been sustained, the Claims Tribunal has awarded only a sum of Rs. 10,000/-. Considering the nature of injuries sustained including removal of spleen, in our opinion, the amount awarded is inadequate. The claimant's Counsel has placed reliance on a decision of Punjab and Haryana High Court in Pepsu Road Transport Corporation, 1984 ACJ 316 (P & H), in which there was rupture of spleen and fracture of ribs before 2 decades, compensation of Rs. 20,000/- was awarded, thus, he has submitted that considering the lapse of 2 decades, adequate compensation be awarded considering the devaluation of the money

and reduced rate of interest. We find that as spleen was removed, which is a material part of the body, essential for proper functioning of other organs, in our opinion, it would be proper to award compensation for removal of spleen a sum of Rs. 50,000/-; for the medical expenses as supported by vouchers (P-6 to P- 32), we award a sum of Rs. 8,071/- which is round off to Rs. 8,100/-; as the claimant remained in the hospital for more than a month and was treated thereafter also, for 3 to 4 months, amount must have been incurred on account of special diet, we award a sum of Rs. 5,000/- in the head of special diet; for loss of earning for about one month, we award a sum of Rs. 6,000/-; as the claimant was confined to the bed as indoor patient in the hospital; on account of conveyance charges, we award a sum of Rs. 1,000/-; we award a further sum of Rs. 5,000/- on account of physical pain and mental suffering as fracture of clavicle bone was also suffered by the claimant and surgery was performed for removal of the spleen, thus, the total compensation awarded comes to Rs. 75,100/-. The compensation enhanced by us to carry interest at the rate of 6% per annum from the date of filing of claim petition.

10. Coming to the question of liability of insurer, we have gone through the order passed by this Court in M.A. No. 1730/04, this question was not raised that insurer is not liable nor the Claims Tribunal has held the liability of the insurer whereas in the instant case liability has been saddled on the owner and driver and insurer has been given liberty to make payment and recover from the insurer, As this Court has not adjudicated upon this question, as this was not raised in the M.A. No. 1730/04 decided by this Court on 2-3-05, hence, we are required to consider the correctness of the finding of the Claims Tribunal on the basis of pleading and the evidence adduced in the instant case, we find that it has been averred in the claim petition that jeep was hired by the claimant and the deceased from the owner Shri Vijay Kumar. Ramwatibai (C.W. 1), widow of Tarachand, has stated that jeep was hired by her husband from Shri Vijay Kumar for a sum of Rs. 500/-. This information was given to her by her husband. Claimant Netram has also stated that jeep was arranged by Shri Tarachand. He had paid the amount for filling of diesel. In case jeep was not hired, there was no question of making payment of diesel by the claimant. The payment made by the claimant indicates that the jeep was on hire as mentioned in the claim petition by the claimant. Ramgopal has also

stated that Shri Vijay Kumar has asked to take the vehicle for darshan of 'Banjari Mata', thus, the submission that owner was not aware, in case driver has taken the passenger for hire, can not be accepted as Ramgopal, driver, has stated that owner Vijay Kumar has sent the vehicle to Tarachand. There is nothing to doubt the statement of driver that vehicle was sent by the owner Vijay Kumar; he had the knowledge and the vehicle was hired for a sum of Rs. 500/- as averred in the claim petition and stated by Ramwatibai (C.W. 1); Shri Vijay Kumar has stated that he had given the key to the children and had not asked Ramgopal to take the vehicle, he has tried to submit that he had not authorized the driver to take the vehicle; we find that stand of Shri Vijay Kumar is not correct; he had given the jeep on hire otherwise there was no reason for the driver to take the jeep; owner's statement appears to be an attempt made in order to save himself from liability; he has violated terms and conditions of the policy of insurance. In such circumstances insurer has to make the payment to the 3rd party as held by the Apex Court in Pramod Kumar Agrawal and Anr. v. Mushtari Begum (Smt.) and Ors. (2004) 8 SCC 667, thus, we find that the direction given by the Claims Tribunal to the insurer to make the payment and to recover from the insured is proper as in the facts of the case. This question has not been decided by this Court in M.A. No. 1730/04 it was not raised, hence, decision can not be an authority on the issue which has been decided and is agitated in this appeal on the basis of the finding recorded by the Claims Tribunal.

11. Consequently, appeal is allowed in part. The cross-objection filed by owner is dismissed. No costs.