Hema Vs. Narayan and ors.

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Court : Madhya Pradesh

Decided On : Jan-18-2000

Reported in : 2001ACJ61

Judge : A.M. Sapre, J.

Appeal No. : M.A. No. 62 of 1997

Appellant : Hema

Respondent : Narayan and ors.

Advocate for Def. : A.H. Khan, Adv.

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

Judgement :

A.M. Spare, J.

1. This appeal is at the instance of claimant filed under Section 173 of Motor Vehicles Act questioning the legality and propriety of an award dated 27.9.96 rendered by M.A.C.T., Mandsaur in Claim Case No. 38 of 1994. Facts in short for the disposal of this appeal need mention infra.

2. On 6.7.1992, when claimant Hema aged about 6 years was going on the road, a tractor belonging to respondent No. 1 and insured with respondent No. 3 dashed

her resulting in some injuries on her body such as on head and legs. This led to filing of claim petition before the M.A.C.T., out of which this appeal arises, claiming compensation for the loss and disability that the claimant suffered.

3. The claim was contested by the respondents (non-applicants). So far as the insurance company was concerned the defence was that at the time of accident the vehicle in question was not insured with the insurance company. According to insurance company, the accident had occurred at 11 a.m. on 6.7.1992 whereas the policy was issued at 5 p.m. on 6.7.1992, i.e., subsequent to the occurrence. On this basis, the case of insurance company was that no liability can be fastened on the insurance company.

4. Learned Member of the Tribunal by impugned award was pleased to award a sum of Rs. 6,000 by way of compensation payable to the appellant (claimant) and expenses. It was further held that since the insurance cover was issued though on the same day, i.e., on 6.7.1992 but at. 5 p.m. after the occurrence of the accident, the insurance company was exonerated from the liability. It is against this award the claimant feels aggrieved and files this appeal.

5. Heard Ms. Indira Vyas, the learned counsel for the appellant and Mr. A.H. Khan, learned counsel for the respondent No. 3.

6. The submission of learned counsel for the appellant (claimant) was that the learned Member of Tribunal erred in awarding only a sum of Rs. 6,000 by way of compensation and secondly in any event the finding relating to exoneration of insurance company from liability is not only perverse but without jurisdiction.

7. In reply the submission of Mr. Khan, learned counsel for the insurance company, was to uphold the award in its totality as according to him both the findings are in accordance with law and do not need any interference.

8. After having heard the counsel, I am of the opinion that this appeal deserves to be partly allowed.

9. In my opinion, so far as the finding regarding quantum of compensation is concerned, the same does not need any interference. The finding of the Tribunal

on this issue is contained in paras 12 to 16 of the impugned award. I do not find any infirmity in this finding so as to enhance the compensation already awarded by the Tribunal to the claimant. The Tribunal has in clear terms held that in the absence of any documentary evidence and the details filed by the claimant showing any actual expenditure incurred, it is not possible to award any amount. It is held that looking to the nature of fracture and its period it cannot be held that it has really resulted in any physical disability much less permanent one so as to entitle the claimant to claim any more compensation. Even at the cost of appreciation of evidence, I could not persuade myself to enhance the compensation amount.

10. Now coming to the next submission of learned counsel for the appellant, I am inclined to hold that insurance company should have been held liable to pay the awarded sum. Exh. D-1 is the copy of insurance cover note filed by the insurance company. Perusal of this certificate of cover note No. 34597 shows that it was issued on 6.7.1992. This cover note has one column which is as follows:

Effective date of commencement of insurance and date of expiry of insurance.

From 5.10 o'clock a.m./p.m. 6.7.1992 to midnight on 5.7.1993.

11. The aforesaid column though mentions 5.10 but it is not clear whether it is a.m. or p.m. because the printed words a.m. or p.m. in the cover note are not scored. It is, therefore, not clear as to whether the intention of insurance company was to bring the said policy in force from 5 a.m. or from 5 p.m. The learned counsel for the company relied on a document Exh. P-6 filed by the claimant which according to learned counsel makes a reference 5.10 p.m. I do not agree. These words are handwritten. They cannot be relied upon in view of original documents filed by the company itself referred supra and in particular Exh. D-1. If the insurance company really intended to show that the insurance was done subsequent to the occurrence of accident, i.e., at 5.10 p.m. on the same date, then it should have been so specifically mentioned in all the documents such as insurance policy, cover note, etc. In my opinion, the insured was entitled to get the benefit of lapses on the part of company. Indeed, since the defence of insurance company resulted in avoiding the contractual liability, it needed to be proved satisfactorily and by proper

evidence. I am also inclined to hold that insurance company was somehow trying to avoid its liability on such technical grounds after receiving the premium from the insured same day. Learned counsel for the insurance company relied on National Insurance Co. Ltd. v. Jikuhhai Nathuji Dabhi 1997 ACJ 351 (SC). In my opinion, this case is distinguishable on facts. In that case, it was on facts held that the accident had occurred at 11 a.m. whereas in view of special contract contained in the policy, it would come in force from 4 p.m. Their Lordships held on these facts found proved that company is not liable. In the present case, on facts and on appreciation of evidence, the insurance company failed to prove that policy was made operative from 5.10 p.m.

12. In view of aforesaid discussion, I am of the view that the finding relating to exoneration of insurance company is liable to be set aside and it is accordingly set aside. Instead, I hold that insurance company is held liable jointly and severally along with owner and driver.

13. Appeal is accordingly partly allowed by modifying the award to the extent indicated above. No costs.