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Somvati Gupta and ors. Vs. Ashok Kumar Bhatt and ors.

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Court : Madhya Pradesh

Decided On : Aug-20-2002

Reported in : 2004ACJ1605; 2003(3)MPLJ63

Judge : Bhawani Singh, C.J. and ; S.L. Jain, J.

Acts : Motor Vehicles Act, 1988 - Sections 147(2) and 168(1); Motor Vehicles Act, 1939 - Sections 95(2)

Appeal No. : M.A. Nos. 273 and 274 of 1993

Appellant : Somvati Gupta and ors.

Respondent : Ashok Kumar Bhatt and ors.

Advocate for Def. : Amrit Ruprah, Adv.

Disposition : Appeal allowed

Judgement :

Bhawani Singh, C.J.

1. Both these appeals (M.A. No. 273 of 1993, Somvati Gupta v. Ashok Kumar Bhatt and M.A. No. 274 of 1993, Lalmani Gupta v. Ashok Kumar Bhatt) are decided by this judgment since they arise out of same accident and common award of the Motor Accidents Claims Tribunal, Satna in Claim Case No. 1 of 1990 and Claim Case No. 54 of 1992.

2. Ram Salone Gupta and Lalmani Gupta were travelling by truck No. MIA 3715 along with their goods on 2.8.1989 towards Satna. Ashok Kumar Bhatt was the driver of mini truck No. MIA 3715, Methilisharan Gupta owner thereof and United India Insurance Co. Ltd., insurer of the vehicle. The truck turned turtle as a result of which Ram Salone Gupta died while Lalmani Gupta sustained injuries and was shifted to the hospital. Allegation is that truck was being driven rashly and negligently, therefore, it could not be controlled by the driver and the accident took place. Defence of insurance company is that its liability is limited to Rs. 1,50,000 under Section 95(2) (a) of Motor Vehicles Act, 1939 and that driver did not possess valid driving licence at the time of accident. The owner and driver have disputed that driver was driving the vehicle rashly and negligently. They also submit that excessive compensation has been awarded. The vehicle was insured with the insurance company, therefore, liability if any is to be suffered by it.

3. The Claims Tribunal holds that the vehicle was being driven rashly and negligently on 2.9.1989 and as such, it turned turtle resulting into accident. In this accident, Ram Salone Gupta died while Lalmani Gupta suffered serious injuries. In the case of Ram Salone Gupta, compensation of Rs. 75,000 has been awarded against the claim of Rs. 3,00,000. Insurance company has been made liable to pay Rs. 50,000 while in the case of Lalmani Gupta, compensation of Rs. 70,000 has been awarded against claim of Rs. 5,10,000 limiting liability of insurance company to Rs. 50,000. Both these appeals have been filed by the claimants challenging the extent of compensation and the liability for payment thereof. The insurance company has not filed any appeal, therefore, matter has to be examined with this background, more so taking into consideration I.A. No. 1574 of 2002 seeking amendment of written statement in the case to the extent that the liability of insurance company is up to Rs. 1,50,000 and not Rs. 50,000 mentioned in the written statement filed before the Claims Tribunal.

M.A. No. 273 of 1993:

4. First of all, M.A. No. 273 of 1993 (Somvati Gupta v. Ashok Kumar Bhatt) is taken into consideration with regard to assessment and payment of compensation. According to the Claims Tribunal, Ram Salone Gupta was 40 years old at the time

of accident but Somvati Gupta describes age of deceased as 35. It is not understood why it has been fixed 40 years by the Tribunal, particularly in absence of evidence. Best evidence, therefore, is of Somvati Gupta, the wife of late Ram Salone Gupta. Consequently, finding to the contrary recorded by the Claims Tribunal is set aside and it is held that late Ram Salone Gupta was 35 years old at the time of accident.

5. According to Somvati Gupta, the deceased was earning Rs. 2,500 per month since he was a grain merchant, however, the Claims Tribunal fixes the income of the deceased between Rs. 1,500-2,000 per month settling dependency of Rs. 1,000. The deceased was grain merchant and the family consisted of five persons, therefore, with dependency settled by Claims Tribunal, it is not possible to maintain family of five persons. Consequently, it would be appropriate to fix the income of deceased at Rs. 2,100 per month. After deducting 1/3rd for personal expenditure, the monthly dependency would come to Rs. 1,400. Suitable multiplier in this case is of 17. Thus computed, amount of compensation comes to Rs. 2,85,600 (Rs. 1,400 x 12 x 17) plus Rs. 10,000 for loss of expectancy of life, Rs. 5,000 for consortium, Rs. 2,500 for loss to the estate and Rs. 2,000 for the funeral expenses. Therefore, total amount of compensation payable in this case comes to Rs. 3,05,100 (rupees three lakh five thousand one hundred only). The enhanced compensation will carry interest at the rate of 9 per cent per annum from the date of application till payment.

Contention that claimants have claimed compensation of Rs. 3,00,000, therefore, more compensation cannot be awarded is liable to be rejected. Duty of the court is to award just compensation and not what is claimed by claimants. Therefore, in case claimants have claimed less compensation, they cannot be deprived of just compensation which the court decides in the facts and circumstances of the case.

M.A. No. 274 of 1993:

6. Lalmani Gupta was also grain merchant. He sustained serious injuries in the accident. He sustained fracture and dislocation of C-6 over C-7 vertebra, locking of facet joints, injury to the spinal cord, leading to total paralysis of all the four limbs and loss of bladder control, etc. Doctor also states that the claimant Lalmani Gupta

would remain paralytic for rest of his life. Although doctor certifies that the permanent disability is to the extent of 80 per cent but looking to the injuries suffered by claimant Lalmani Gupta, it is not wrong to say that it is a case of permanent disablement since the claimant Lalmani Gupta is not in a position to make use of his limbs and earn livelihood. He would be required to be attended and looked after. Therefore, it would not be wrong to say that just compensation has not been awarded to the claimant. Lalmani Gupta was shifted to the hospital for treatment and remained there for eight months for the injuries he suffered in the waist. Evidence also points out that he took treatment at Bombay. Obviously during his treatment, he must have undergone shock, pain and suffering for which he must have spent sufficient amount on medical treatment, attendant and special diet. On treatment for 8 months, the claimant Lalmani Gupta must have spent sufficient amount, so also on transport, attendant, special diet and other ancillary items, apart from loss of earnings. Examined with this background, there is no doubt that the award passed by the Motor Accidents Claims Tribunal in this case is thoroughly inadequate. Consequently, the appeal is allowed. Award of Claims Tribunal is modified as under:

(i) Pain and suffering Rs. 1,00,000(ii) Medical treatment Rs. 50,000(iii) Loss of earnings Rs. 1,00,000(iv) Special diet Rs. 10,000(v) Attendant Rs. 25,000(vi) Travelling expenses Rs. 20,000---------- Total Rs. 3,05,000----------

Therefore, claimants shall be entitled to compensation of Rs. 3,05,000 (rupees three lakh five thousand) with interest at the rate of 9 per cent per annum on the enhanced amount of compensation from the date of application till payment.

7. Now the question arises who should pay the compensation. Mrs. Amrit Ruprah submits that liability of insurance company is limited to Rs. 1,50,000. This question cannot detain us for long in view of Section 95 (2) (a) of the Motor Vehicles Act, 1939 limiting the liability to Rs. 1,50,000. This view is supported by Supreme Court decision in New India Assurance Co. Ltd. v. CM. Jaya, 2002 ACJ 271 (SC).

8. Therefore, in each of these two cases, the liability is limited to Rs. 1,50,000 and remaining amounts shall be paid by the owner and driver of vehicle jointly and severally.

9. Accordingly, appeals are allowed. Costs on parties.

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