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Court : Madhya Pradesh

Decided On : Oct-05-2001

Reported in : 2003ACJ49; 2002(2)MPLJ493

Judge : Bhawani Singh, C.J. and ;Arun Mishra, J.

Appeal No. : M.A. No. 1504 of 2000

Appellant : Abhilasha Bai

Respondent : Arvind Kumar and ors.

Advocate for Def. : Divesh Jain and ; V.R. Rao, Advs.

Advocate for Pet/Ap. : Mantosh Mishra and ;Ashok Lalwani, Advs.

Judgement :

Bhawani Singh, C.J.

1. This appeal is directed against the award of Motor Accidents Claims Tribunal, Katni, in Claim Case No. 94 of 1990, dated 17.4.2000.

2. Accident took place on 10.7.1990, at 11.30 a.m. on Katni Highway when truck No. CPK 199 hit Shiv Shanker who was moving on a cycle. As a result of the accident, Shiv Shanker died. It is stated that Shiv Shanker was 16 years old, studying in the X class. He was the only son of the claimant. The accident, it is contended, v/as the result of rash and negligent driving by the driver. Due to the

death of Shiv Shanker, the claimant has undergone great pain and suffering. After coming of age, he would have become a teacher and earned Rs. 1,000 per month and the family could depend on him. In this accident, the cycle was also damaged. Thus, compensation of Rs. 5,41,800 has been claimed.

3. Arvind Kumar is the driver, while Madhuri is the owner of the vehicle which was insured with Oriental Insurance Co. Ltd. Owner and driver have been proceeded ex parte. They did not furnish any written statement against the claim.

4. Respondent No. 3 has denied the allegations of the claimant. It is stated that the truck was being plied against the terms and conditions of the policy of insurance; driver was not in possession of valid driving licence, therefore, claim was not maintainable against the insurance company.

5. The Claims Tribunal has found that deceased was hit by the truck which was being driven rashly and negligently by the driver. Against the claim of Rs. 5,41,800, compensation of Rs. 1,00,000 with interest at the rate of 9 per cent per annum has been awarded. Claimant is not satisfied with this award, therefore, it has been challenged through this appeal seeking enhancement of compensation with liability for payment on the insurance company.

6. The owner and driver of the vehicle have filed cross-objections under Order 41, Rule 22 of the Code of Civil Procedure, through M.O.P. No. 1690 of 2001, praying that liability for payment of compensation be fastened on the insurance company, since the finding of the Claims Tribunal that the driver did not possess valid driving licence to drive the vehicle is not supported by evidence. It is also contended that the insurance company, on which lies the burden to prove that the driver did not possess valid driving licence at the time of accident, failed to substantiate it.

7. Counsel for parties heard and record perused carefully.

8. At the outset, we turn to examine the objection raised by Mr. V.R. Rao, the learned Counsel for the insurance company. Precisely, the contention is that the cross-objections under Order 41, Rule 22 of the Code of Civil Procedure are not maintainable till these parties follow the command of Section 173 of the Motor

Vehicles Act, 1988 (for short, 'the Act') by making mandatory deposit to the extent of 25 per cent of the compensation awarded by the Claims Tribunal. Permitting/admitting such cross-objections would militate against the object and intention of the legislature requiring deposit of 25 per cent of compensation to safeguard the interests of the claimants in the case. The cross-objections are filed without deposit of the mandatory amount which not only violates the provisions of Section 173 of the Act, but also go against the interests of the claimants.

9. Mr. Divesh Jain for respondent Nos. 1 and 2 submits that he is aggrieved by the award of the Claims Tribunal since it holds them liable for payment of compensation. That being so, he can file cross-objections and requirement of Section 173 of the Act would not be applicable when he is not filing an appeal, but coming to the court through the cross-objections. Giving our consideration to the submissions so raised, we are of the opinion that owner and driver are 'persons aggrieved' by the award in this case. Therefore, any aggrieved per-son(s) challenging such an award must fulfil the requirement of depositing the mandatory amount provided in the first proviso to Sub-section (1) of Section 173 of the Act. Order 41, Rule 22 of the Code of Civil Procedure has to be read along with Section 173 of the Act. Therefore, cross-objection is an appeal within the meaning of Section 173 of the Act. It survives for consideration even if the appeal filed by the appellant is withdrawn or dismissed for any reason. Consequently, the objection is sustained and in the absence of mandatory deposit, the cross-objections are not maintainable, therefore, dismissed.

10. Next, we turn to examine the appeal on merits. There is no dispute about the taking place of the accident in which Shiv Shanker, son of the claimant, died. He was the only son of the claimant aged 16 years, studying in class X. There was every possibility of Shiv Shanker completing his studies and taking up some assignment and earning livelihood on which the family could depend. By his death, the mother (widow) has been deprived of the male member of the family. He was the only brother of 7 sisters. Naturally, they have suffered by his death and will continue to suffer in times to come. Consequently, with this background, we proceed to assess the compensation in this case. Shiv Shanker was a non-earning member of the family. Therefore, his yearly income can be put at Rs. 15,000. After

deducting !/3rd towards personal expenditure, the yearly dependency would come to Rs. 10,000. The multiplier applicable in this case is 16, therefore, the figure would come to Rs. 1,60,000. In addition to this amount, the claimant shall also be entitled to Rs. 10,000 for loss of expectancy of life and Rs. 2,000 towards funeral expenses taking the total amount of compensation to Rs. 1,72,000 payable with interest at the rate of 9 per cent per annum from the date of application till realisation.

11. Now the question is who is liable to pay the compensation. Evidence on this aspect has been perused. We find that the Claims Tribunal has not considered and analysed this aspect of the matter carefully with the result that wrong finding has been arrived at. Case of the insurance company is that the vehicle was being driven by the driver who did not possess valid driving licence at the time of accident, meaning thereby he was not possessing a driving licence for driving heavy motor vehicle. Onus to prove this defence was on the insurance company. This defence has not been proved in accordance with law, meaning thereby the insurance company should have produced the record from the office of the R.T.O. and proved the same by production of the R.T.O. or any other official from the office, but this has not been done. The surveyor has also not been examined, therefore, the burden has not been discharged. From the record, we find copy of the driving licence of Arvind Kumar with an endorsement by the District Transport Officer, Bhagalpur, authorising the driver to drive heavy motor vehicles.

12. In the circumstances aforesaid, it is not difficult to conclude that the insurance company has failed to prove that the driver was not holding valid driving licence at the time of accident. There is no dispute about the vehicle being insured with the insurance company. Consequently, liability to pay compensation shall be of Oriental Insurance Co. Ltd., being the insurer of respondent Nos. 1 and 2. Oriental Insurance Co. Ltd. shall pay the compensation to the claimant within three months.

Costs on parties.

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