Savitri Devi and ors. Vs. Subhash Acharya and ors.

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SooperKanoon Citation : sooperkanoon.com/512009

Court : Madhya Pradesh

Decided On : Nov-28-2001

Reported in : 2003ACJ1304

Judge : Deepak Verma and ;S.L. Kochar, JJ.

Appeal No. : M.A. Nos. 712 and 696 of 1998

Appellant : Savitri Devi and ors.

Respondent : Subhash Acharya and ors.

Advocate for Def. : V.P. Saraf, Adv.

Advocate for Pet/Ap. : J.M. Punegar, Adv.

Judgement :

Deepak Verma and S.L. Kochar, JJ.

1. Both these miscellaneous appeals (M.A. Nos. 712 and 696 of 1998) arise out of common award dated 13.5.1998 passed by III Motor Accidents Claims Tribunal in Claim Case No. 28 of 1997 allowing the claim petition of the appellants and rejecting the defence of the insurance company, respondent No. 3.

2. The facts in narrow compass are that on 11.2.1995, in the night between 9.30 p.m. and 10 p.m. deceased Ramesh Kumar, husband of appellant No. 1 and

father of appellant Nos. 2 and 3 was going on the bicycle for attending duty at Moti Tabela, Government College, Indore at the same time, he met with an accident near the shop of Parichaya Tailor situated in Nandlalpura, Indore, with mini truck bearing registration No. CII 7104 coming from the side of Gautampura, Indore. The said truck was being driven rashly and negligently by respondent No. 2 Ramesh. Ramesh Kumar died instantaneously on the spot. The incident was reported to the Police Station, Pandharinath, where offence was registered against the driver. It was contended by appellants that Ramesh Kumar was Class IV employee drawing a monthly salary of Rs. 2,300 and total earning of Ramesh Kumar was about Rs. 30,000 per year. Respondent No. 1 was the owner of the truck and the same was insured with respondent No. 3. In total, the appellants have claimed Rs. 10,30,000 as compensation. They have also claimed interest at the bank rate from the date of filing of the application. The case was proceeded ex parte against respondent Nos. 1 and 2.

3. Respondent No. 3, insurance company mainly contended in reply that no intimation in prescribed form was given to the company and the driver was not possessing licence at the time of accident. The insurance company has pleaded complete denial about the claim sought by appellants. According to the insurance company, since the driver was driving the vehicle contrary to the terms of insurance policy, the insurance company was not responsible for any compensation amount.

4. The Claims Tribunal, on the basis of rival contentions, framed in total 9 issues and after recording the statements of the witnesses of both the parties, came to the conclusion that the driver Ramesh was driving the vehicle rashly and negligently and Ramesh Kumar died because of the accident on 11.2.1995. Respondent No. 1 was the owner of the truck. The Claims Tribunal has passed award of Rs. 2,08,000 in favour of the appellants. The Claims Tribunal has also given finding that the insurance company has failed to prove that at the time of accident driver was not having valid licence and respondent Nos. 1 and 2 committed no breach of the conditions of the insurance policy.

5. Learned Counsel for the appellants submitted in appeal for enhancement that the Tribunal has not properly assessed the monthly income of the deceased and also committed an error in fixing Rs. 1,100 per month dependency on the basis of monthly income of the appellant whereas it should have been Rs. 1,400 per month when the monthly income was assessed Rs. 2,100 and after deducting 1/3rd income which could be used by the deceased Ramesh Kumar for himself. It was also contended by the learned Counsel for the appellants that instead of applying multiplier of 17 the Claims Tribunal has applied multiplier of 15, which is contrary to the Second Schedule of Section 163A of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act').

6. On the other hand, learned Counsel for the respondent No. 3 has submitted that since the driver was not having any valid licence, the insurance company could not be held liable for any compensation. The award should have been passed only against respondent Nos. 1 and 2. Combating with this argument, learned Counsel for appellants relying on the judgment in New India Assurance Co. Ltd. v. Kamla 2001 ACJ 843 (SC), submitted that when a valid insurance policy has been issued in respect of a vehicle as evidence by a certificate of insurance the burden is on the insurer to pay to third parties, whether or not there has been any breach or violation of the policy conditions.

7. We have heard learned Counsel for the parties and perused the entire record. The appeal of appellants for enhancement of compensation to some extent is liable to be accepted so far as use of multiplier and fixation of monthly dependency of the appellants. The appeal of insurance company (M.A. No. 696 of 1998) is liable to be dismissed. The Claims Tribunal should have used multiplier of 16 because according to the evidence and conclusion arrived at by the Claims Tribunal the deceased was between 35-40 years of age.

According to the chart, multiplier of 16 would be the proper multiplier required to be applied in the present case and the income has rightly been assessed by the Claims Tribunal at Rs. 2,100 per month on the basis of pay slip of the year 1996. After deducting 1/3rd amount, total dependency should have been assessed at Rs. 1,400 per month. After multiplying Rs. 1,400 by 12 and then by 16, amount of compensation would be Rs. 2,68,800 plus Rs. 10,000 for loss of consortium, thus the appellants are entitled for getting the total compensation amount of Rs. 2,78,800.

8. The contention of the insurance company that driver was not having any valid licence at the time of accident has rightly been rejected by the Claims Tribunal because no conclusive evidence was adduced by insurance company before the Claims Tribunal. The insurance company should have examined the in-charge person of the Licence Department of the R.T.O. to prove this fact. While dealing with issue Nos. 7 and 8 in para 19 of the impugned award, the Claims Tribunal has dealt with the argument of the Counsel for the insurance company and held that the evidence of Udaykumar Songara, DW 1 and Rajesh Pariyani, DW 2, about the fact that the driver was not having any valid licence at the time of accident, could not be accepted. The insurance company has pressed its arguments on the basis of document Exh. P-3 prepared by police, disclosing that at the time of accident, the driver was not possessing licence. This fact itself is not sufficient to establish that the driver was not at all having any licence for driving purpose. Report Exh. D-2, submitted by Rajesh Pariyani, DW 2, is also based on Exh. P-3 hence, the same has no legal basis for coming to the conclusion that the driver was not having any valid licence.

9. In view of aforementioned factual and legal position, with the modification as stated above, the award passed by the Claims Tribunal is accepted and stands modified as mentioned above in this appeal. Connected Miscellaneous Appeal No. 696 of 1998 is liable to be dismissed and is hereby dismissed with no orders as to costs.

10. Copy of this order be placed in connected Misc. Appeal No. 696 of 1998, United India Insurance Co. Ltd. v. Savitri Devi w/o late Ramesh Kumar.