

Rabai Devi and ors. Vs. Rajesh and ors.

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Court : Madhya Pradesh

Decided On : Oct-25-2007

Reported in : 2008ACJ1892

Judge : S. Samvatsar and; Sanjay Yadav, JJ.

Appellant : Rabai Devi and ors.

Respondent : Rajesh and ors.

Judgement :

S. Samvatsar, J.

1. This appeal is filed by the claimants under Section 173 of the Motor Vehicles Act, 1988, being aggrieved by the award dated 2.1.2001 passed by the Ninth Additional Member Judge, Motor Accidents Claims Tribunal, Gwalior, in Claim Case No. 71 of 1997 whereby the Claims Tribunal has awarded a sum of Rs. 2,39,900 towards compensation for the death of Ramgopal.

2. The brief facts of the case are that on 31.3.1997 Ramgopal along with his colleague Omi alias Om Narayan was going on scooter in slow speed on left side of the road. When they reached near the Urwai Gate near Shiv Temple, Rajesh, respondent No. 1, driving tractor-trolley No. MP 07-H 2696 dashed against the scooter, which has resulted in death of Ramgopal. Hence, the legal representatives of Ramgopal, i.e., his widow, sons and daughters and mother

have filed an application for compensation before the Claims Tribunal.

3. The Claims Tribunal found that the accident has occurred due to rash and negligent driving of the tractor driver, Rajesh Kumar, respondent No. 1 and the vehicle was owned by Gangaram Sharma, respondent No. 2 and was insured with insurance company, respondent No. 3. The Claims Tribunal also found that the deceased was about 35 to 40 years of age and he was earning a sum of Rs. 18,000 per annum from tailoring and accordingly assessed the compensation at Rs. 2,39,900.

4. Being aggrieved by this award, the claimants have filed this appeal on the ground that the amount of compensation awarded by the Claims Tribunal is on the lower side. While the insurance company has filed cross-objections on the ground that the deceased himself was negligent and the amount of compensation awarded by the Tribunal is at higher side.

5. So far as, the cross-objections are concerned, the counsel for the insurance company pointed out that the Claims Tribunal has granted permission to contest the claim under Section 170 of the Motor Vehicles Act by order dated 4.4.1998. From the perusal of the said order it appears that in the present case the owner and driver are represented and there is no application on record, filed by the insurance company seeking permission under Section 170 and the permission under Section 170 is granted by the court merely on oral request. That too, without assigning any reason the Claims Tribunal has merely stated that after considering the prayer the permission is granted.

6. Contention of the learned Counsel for the claimants is that such permission is not a permission in the eyes of law and, therefore, even such permission is granted by the court, the same does not satisfy the requirement of Section 170 of the Motor Vehicles Act, 1988 and, therefore, the cross-objections filed by the insurance company on the question of quantum of compensation and negligence are not maintainable. For this purpose he relied upon a judgment of this Court passed by learned single Judge in the case of Sudha Jain v. Mahendra Kumar Jain . While the counsel for the insurance company has relied upon a judgment of Apex Court in case of United India Insurance Co. Ltd. v. Jvotsnaben Sudhirbhai

Patel : AIR 2003 SC3127 . The Supreme Court in case of Jyotsnaben Sudhirbhai Patel (supra) has held that under Section 170, Sub-clause (b), the only thing which was required for granting permission was that the insured has failed to contest the claim which is apparent on the face of record and, therefore, even in absence of recording the said fact the permission granted by cryptic order cannot be said to be contrary to the section. This is not a situation in the present case, here the insurance company is seeking permission on the ground of collusion and for collusion the court has to record its satisfaction by reasoned order. In the present case the permission is sought only by making oral prayer and in such circumstances there is absolutely no material on record to support the allegations of collusion for granting permission on the ground of collusion. As per Section 170(a) of the Motor Vehicles Act, 1988, there should be material to support the allegations of collusion because the satisfaction about the collusion cannot be recorded without any basis. The collusion should appear from the facts of the case and in such circumstances merely granting permission under Section 170(a) on oral request by cryptic order is not sufficient. In the present case, the Claims Tribunal has not recorded any satisfaction to the effect that there is collusion between the parties. Even, the insurance company has not filed any application under Section 170 for alleging collusion between the parties. The essential ingredients of Section 170(a) are totally absent, therefore, we find that the cryptic order dated 4.4.1998 granting permission cannot be sustained in the eyes of law and the said permission cannot be said to be legal and the insurance company cannot be permitted to raise an issue on merits. In such circumstances, the cross-objections filed by the insurance company are not maintainable in absence of a valid permission under Section 170 of the Motor Vehicles Act and, are therefore, dismissed.

7. So far as quantum of compensation is concerned, it is alleged by the claimants that the deceased was 28 years of age at the time of accident. The Tribunal found that there is no documentary evidence on record to prove the age of the deceased. On the other hand, the post-mortem report, Exh. P6 and Exh. P7 shows that deceased was about 40 years of age. While the MLC report received from J.A. Group of Hospitals, Gwalior shows the age of deceased at about 35 years. In such circumstances, the Claims Tribunal has rightly held that the deceased was

between 35 and 40 years of age. In absence of any evidence we do not propose to interfere in the said finding of the Claims Tribunal.

8. So far as the question of income is concerned, the Claims Tribunal found that the deceased was earning Rs. 18,000 per annum. To prove the income of the deceased the claimants have examined the widow of deceased Rabai Devi as PW 1. PW 1 in her statement has stated that her husband was working as a tailor with one Anil Singhal and used to stitch 10-15 pants every day and for each pant he was getting Rs. 22 and thus, his income was Rs. 5,000 per month. While PW 2, Anil Singhal in para 2 of his statement has stated that the deceased used to stitch for him and he was stitching 10-12 pants every day and for each pant he was paying him Rs. 10 to Rs. 12. He further states that he was paying a sum of Rs. 500 to Rs. 550 to him per week and his monthly income was Rs. 2,500. The counsel for the claimants submitted that this witness has not stated the correct figure for evasion of tax. This argument cannot be accepted because, PW 2, Anil Singhal is examined by the claimants themselves hence, his statement is binding on them.

Thus, from the statement of Anil Singhal we hold that deceased was earning Rs. 2,500 per month. Thus, his annual income come to Rs. 30,000 and dependency comes to Rs. 20,000 per annum. Deceased was between the age of 35 and 40 years, at the time of accident so that multiplier of 16 would be used and after applying the multiplier of 16 the compensation comes to Rs. 3,20,000 (rupees three lakh twenty thousand). Apart from this the claimants would be entitled to Rs. 15,000 for various other heads like loss to estate, loss of consortium, loss of love and affection, funeral expenses. Thus, we award a total compensation of Rs. 3,35,000 (rupees three lakh thirty-five thousand) to the claimants.

9. Hence, appeal is allowed in part. The amount of compensation is enhanced from Rs. 2,39,900 to Rs. 3,35,000. The claimant shall also be entitled for interest at the rate of 6 per cent per annum on the enhanced amount of compensation from the date of filing of the appeal till realisation.

Appeal is allowed in part and cross-objection stands dismissed.

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