

Sunil Sethi Vs. Gopal and ors.

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Court : Madhya Pradesh

Decided On : Oct-04-2005

Reported in : II(2006)ACC43

Judge : N.K. Mody, J.

Appellant : Sunil Sethi

Respondent : Gopal and ors.

Advocate for Pet/Ap. : Mr. V.K. Jain

Judgement :

ORDER

N.K. Mody, J.

1. This order shall also govern the disposal of MA No. 235/2000.

Being aggrieved by inadequacy of the amount awarded vide award dated 20.11.1999 passed by 14th MACT, Indore in Claim Case No. 68/1999, whereby the claim petition filed by respondent No. 1 has been allowed in which award of Rs. 26,000 along with interest @ 12% per annum from the date of application has been passed against the appellant, the present appeal has been filed.

2. Short facts of the case are that on 23.4.1984 the accident took place on MG Road, Indore in which respondent No. 1 was travelling on scooter bearing

registration No. CPF 5485 which was owned by respondent No. 2, driven by respondent No. 3. It was alleged by respondent No. 3 that the scooter was insured with respondent No. 4. In the accident respondent No. 1 sustained injuries. Claim petition was filed on 28.1.1985 wherein it was alleged that accident of scooter bearing Registration No. CPF 5485 took place with car bearing Registration No. MPN 2249, which was owned by Smt. Subdhra Sethi and was driven by the appellant.

3. During pendency of the claim petition, Smt. Subdhra Sethi and the appellant filed a joint written statement on 20.12.1985 wherein the allegations made in the claim petition as alleged were denied. However, it was stated that on the relevant date, three persons were going on the scooter bearing registration No. CPF 5485. It was alleged that the accident took place on account of negligence of respondent No. 3, who was driving the scooter. It was also submitted that appellant e was driving the car bearing registration No. MPG 8301 at the relevant time and the vehicle was insured and the intimation of the accident was immediately given to the concerned police station. It was also alleged that in the accident the car which was being driven by the appellant and belongs to respondent No. 6 was damaged. Counter-claim was also filed wherein it was prayed that award be passed for a sum of Rs. 50,000.

4. After filing of the reply on 15.1.1990, the application was filed by Smt. Subdhra Sethi for deleting her name as respondent. The application was allowed on that very date and the name of Smt. Subdhra Sethi was also deleted. Thereafter, the application was filed by the respondent No. 1 under Section 152 of C.P.C. for reviewing the order dated 15.1.1990, which was dismissed vide order dated 9 22.4.1991. Thereafter, again an application was filed wherein the same type of prayer was made for joining Smt. Subdhra Sethi as party. This application was also dismissed on 1.10.1994 against which the matter came up before this Court and the same was dismissed on 17.9.1998. Thus, the net result was that the name of Smt. Subdhra Sethi was deleted from the era of non-applicants, who was initially party to the proceedings and she was not allowed to join inspite of repeated requests made by respondent No. 1. Thereafter, the respondent No. 4 who is appearing for United India Insurance Company submitted the written

statement wherein it was specifically denied that scooter bearing Registration No. CPF 5485 was insured with respondent No. 4. Hence liability of respondent No. 4 was also denied. Respondent No. 5 also denied its liability.

5. Issues were framed. After recording of evidence learned Tribunal passed award in favour of respondent No. 1 for a sum of Rs. 20,000 along with interest @ 12% per annum, against which the present appeal has been filed by the appellant, who has been held responsible for payment of amount awarded.

6. Another appeal was filed by respondent No. 1 which was numbered as M.A. No. 235/2000, wherein it is submitted that amount awarded is at lower side. Same be enhanced. So far as M.A. No. 235/2000 is concerned, learned Counsel for respondent No. 1 submits that on account of accident respondent No. 1 has suffered a lot. He was hospitalized. There was fracture in the right leg of respondent No. 1. Tibia and fibula bones were broken. Respondent No. 1 was operated and remained in hospital for a period of twenty days. Rod was inserted in his leg which was having length of 11 inches. Thereafter, there was a plaster for a period of three months. After three months it was found that bone has not been properly united, therefore, again there was a plaster for a period of three months. It is submitted that appellant was bed ridden for a long period, but the amount awarded is at lower side. No amount has been awarded towards pain and sufferings, loss of income for the period when the appellant was under treatment and also loss of future income. It is submitted that there was shortening of leg of 1/2 inch and the permanent disability has been assessed as 15%. It is submitted that all these aspects has not been considered and the Insurance Company has wrongly been exonerated.

7. Mr. V.K. Jain, learned Counsel for the appellant submits that it is the case in which the appellant was not negligent. On the contrary on account of negligence on the part of driver of the scooter, who is respondent No. 3 herein the accident has taken place. It is also submitted that from perusal of the site map which is prepared by the police authorities it is evident that in the accident appellant is not responsible. It is also submitted that accident took place with the vehicle No. MPG 8301 and no accident took place with the alleged vehicle MPN 2249. It is also

submitted that since the owner of the vehicle MPN 2249 Smt. Subdhra Sethi was deleted as party to the claim petition, therefore, no award could have been passed against the appellant.

8. Mr. V.K. Jain, learned Counsel for the appellant further submits that learned Tribunal committed error in awarding the interest @ 12% per annum for the entire period for which the claim petition was pending. It is submitted that claim petition was pending for such a long time on account of respondent No. 1 and for that the appellant cannot be held responsible. Learned Counsel for the appellant further submits that from the evidence adduced by respondent No. 1 it is not proved, satisfactorily that injuries were sustained by respondent No. 1 in the same accident. Learned Counsel submits that the case was pending before the Court below for a longtime on account of evidence which was adduced by respondent No. 1, but no sufficient opportunity was given to the appellant for adducing the evidence. After giving one opportunity only the case was closed while the appellant was abroad on account of further education. Learned Counsel submits that basic liability under the provisions of Motor Vehicles Act is upon the owner. Since the name of Smt. Subdhra Sethi was allowed to be deleted, therefore, learned Tribunal committed error in passing the award against the appellant.

9. Mr. S.V. Dandwate and Mr. H.G. Shukla, who are appearing for respondent Nos. 4 and 5 submits that award has rightly been passed against the appellant. From perusal of the record, it is evident that Smt. Subdhra Sethi was party to the claim petition. On 15.1.1990, an application was filed by Smt. Subdhra Sethi for deleting her name which was allowed on that very date and the amendment has also been incorporated on that very day by deleting the name of Smt. Subdhra Sethi from the record. It is surprising that the amendment which has been incorporated on 15.1.1990, whereby name of Smt. Subdhra Sethi has been deleted has not been signed by learned Presiding Officer of the Tribunal. Again in M.A. No. 235/2000, which has been filed by respondent No. 1, an application was filed by respondent No. 1 to implead Smt. Subdhra Sethi as party. This application was allowed by this Court vide order dated 3.9.2003 and Smt. Subdhra Sethi has been impleaded as respondent No. 7. In compliance of the order passed by this Court, the name of Smt. Subdhra Sethi has been impleaded in the original claim

petition also. Thus, it is clear that Smt. Subdhra Sethi was not before the Court below when the trial took place.

10. From perusal of the record it is also evident that in the claim petition which was filed in the year 1985, respondent No. 1 completed his evidence on 4.10.1999 and 15.10.1999 was the first date fixed for appellant's evidence. On this date the case was adjourned on 25.10.1999. On that date since the witness of the appellant were not present, the case was closed. Since, the respondent No. 7, herein Smt. Subdhra Sethi, who was party to the suit and whose name was deleted, and under the orders of this Court, her name has been included as respondent No. 7 and also in the claim petition she has been impleaded as non-applicant No. 7. In fact the foundation to remand the case was laid down on that very day when respondent No. 7 was impleaded as party to the appeal and also party to the claim petition. Since no award can be passed against her without giving an opportunity to cross-examination of the witnesses and also to adduce the evidence, therefore, in the interest of justice it is necessary to remit the case back for deciding the case afresh. One more ground to remand the case is not given to the appellant to lead the evidence. In view of this impugned award passed by the learned Tribunal is set aside. The case is remanded back to learned Tribunal with a direction to the parties to remain present before the Tribunal on 30.11.2005. On this date the respondent No. 1 shall be at liberty to further amend the pleadings, taking into consideration the subsequent changes in the circumstances and after issuing the notice to the unserved respondents, the learned Tribunal shall decide the claim petition within a period of six months. On account of setting aside the award, the appellant shall not be entitled to recover the amount which has already been paid by the appellant to the respondent No. 1. The amount which has been paid by the appellant shall be subject matter of final decision of the award.

With the aforesaid directions both the appeals stand disposed of. No order as to costs.