

The High Court of Madhya Pradesh

M.A. No. 998 of 2012

Shivraj Singh Jadon & ors. Vs. Krishan Murari Dubey & ors.

Gwalior, Dated : 28-01-2020

Shri G.S. Chouhan, Counsel for the appellants.

Shri B.N. Malhotra, Counsel for the respondent/Insurance Company.

Heard finally.

This Misc. Appeal under Section 173 of Motor Vehicles Act has been filed against the award dated 05-07-2012 passed by Additional Motor Accident Claims Tribunal, Datia in Claim Case No. 33/2011 for enhancement of compensation amount. The Insurance Company has filed a cross objection challenging the award.

The necessary facts for the disposal of the present appeal are that the appellants filed a claim petition under Section 163-A of Motor Vehicles Act on the pleading that on 25-06-2011 the appellant No.1 and his wife deceased Nirmala Jadon were going on a motor cycle. All of a sudden, one cow came in front of the motor cycle, and the motor cycle collided with the cow as a result of which the deceased Nirmala fell down and sustained serious injuries. She was immediately taken to hospital. On 27-06-2011, the deceased was referred to Delhi and while

they were on their way to Delhi, the deceased breathed her last. It was further pleaded that the appellant No.1 is the husband of the deceased whereas the appellants No. 2 to 4 are the children of the deceased and appellant No.1. It was further pleaded that since, the appellant No.1 was busy in the treatment of his wife therefore, he could not give an information to the police immediately after the accident. It was further pleaded that the deceased was doing stitching work and her yearly income was in between 26,000 to 40,000.

The defendant No.1/owner of the motor cycle admitted that the deceased was the wife of the appellant No.1. He further pleaded that the appellant no.1 had borrowed his motor cycle, however, he has not seen the accident.

The Insurance Company filed its written statement and denied the averments made in the claim petition. A specific objection was raised, that in fact the appellant No.1 was driving his own motor cycle and has falsely taken a stand that he was driving the motor cycle of his friend. It was further stated that the appellant No.1 was not having valid driving license.

The Claims Tribunal after framing issues and recording evidence of the parties, allowed the claim petition and awarded Rs. 3,37,816/- with 7% interest from the date of claim petition till realization.

Challenging the quantum awarded by the Claims Tribunal, it is submitted by the Counsel for the appellants, that the Claims Tribunal has awarded less compensation amount under different heads, whereas in support of the cross objection it is submitted by the Counsel for the Insurance Company, that since, the appellant No.1, himself was driving the motor cycle, therefore, he cannot file the claim petition against himself. Thus, it is prayed that the claim petition be dismissed as not maintainable.

In reply it is submitted by the Counsel for the appellants, that it is true that the appellant No.1 himself was driving the motor cycle, but the claim petition filed by the children is maintainable.

Heard the learned Counsel for the parties.

The undisputed fact is that the appellant No.1 was driving the motor cycle and it is his case that since, his motor cycle was out of order, therefore, he had borrowed the motor cycle from his friend.

Whether the appellant No.1 was driving the motor cycle of his friend?

The defendant No.1/Krishna Murari Dubey has filed his written statement and has pleaded that the appellant No.1 had borrowed his motor cycle, but the defendant No.1 did not enter the witness box to prove his contention.

The appellants/claimants have relied upon the initial medical treatment sheet, Ex. P.5 in which the following declaration was given by the appellant No. 1 :

मै शिवराज सिंह जादौन अपनी पत्नि निर्मला को धायल अवस्था मे इलाज के लिए जिला अस्पताल लाया हूं। मेरी पत्नि मेरी स्वयं की मोटर साइकिल से गिर गई है रास्ते मे जाते वक्त मुझे कोई पुलिस कार्यवाही नही करना है।

हस्ताक्षर

Thus, the initial stand of the appellant No.1 was that he was driving his own motor cycle and his wife had fallen from the same. Therefore, it is held that in fact the appellant No.1 was driving his own motor cycle and accidentally, his wife Late Nirmala fell from the same, as a result of which She sustained grievous injuries.

Whether the motor cycle driven by the appellant No.1 had collided with a Cow?

The wife of the appellant No.1 had fallen from the motor cycle on 25-06-2011 and She expired on 27-06-2011, whereas the report for the first time to the police was made on 17-09-2011. It is true that mere delay in lodging the F.I.R. is not sufficient to discard the case of the claimants, but in the present case, at the first instance, the appellant No.1 admitted that his wife has fallen down from his own motor and does not want any police action, but after approximately 2 and a half months, the appellant No.1 came forward with a new theory that as the

motor cycle had collided with a cow, therefore, his wife fell down. The wife of the appellant No.1 expired on 27-06-2011 and even after excluding the period of 13 days, it is clear that the appellant No.1 maintained silence for a considerable long time. Not only the F.I.R. lodged by the appellant No.1 was delayed but it was contrary to the written declaration given by the appellant No.1 on 25-06-2011 itself. Therefore in the light of the declaration given by the appellant No.1 in Ex. P.5, it is held that the F.I.R. Ex. P.1 lodged by the appellant No.1 is nothing but an after thought, lodged with a solitary intention to grab money from the Insurance Company.

Further, the appellant no.1 himself was driving the motor cycle and thus, it is clear that he had filed the claim petition against himself.

Section 163-A of Motor Vehicles Act reads as under :

163-A. Special provisions as to payment of compensation on structured formula basis.—(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation.—For the purposes of this sub-section, “permanent disability” shall have the same meaning and extent as in the Work-men’s Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.

Section 163A of Motor Vehicles Act, 1988 starts with a “non-obstinate Clause “. Liability to pay compensation is on the owner of the motor vehicle or authorized insurer. Since, in the present case, the appellant No.1 himself is the owner of the motor cycle and he himself was driving the motor cycle, therefore, it is clear that the claim petition is not maintainable.

The Supreme Court in the case of **Ramkhaladi and another Vs. The United India Insurance Company and another** by judgment **dated 07-01-2020** passed in **C.A. No. 9393 of 2019** has held as under :

5.6 In view of the above and for the reasons stated above, in the present case, as the claim under Section 163A of the Act was made only against the owner and insurance company of the vehicle which was being driven by the deceased himself as borrower of the vehicle from the owner of the vehicle and he would be in the shoes of the owner, the High Court has rightly observed and held that such a claim was not

maintainable and the claimants ought to have joined and/or ought to have made the claim under Section 163A of the Act against the driver, owner and/or the insurance company of the offending vehicle i.e. RJ 29 2M 9223 being a third party to the said vehicle.

It is submitted by the Counsel for the appellants, that even otherwise, the claim petition filed by the appellants No. 2 to 4 would be maintainable. Considered the submissions made by the Counsel for the appellants. Undisputedly, the appellant No.1 who admittedly was the driver and owner of the motor cycle involved in the accident, was not made party as a defendant. Even for the sake of arguments, if the appellant No.1 is considered to be the defendant, then it is clear that no evidence was led by the appellants No. 2 to 4 with regard to the income of the deceased, or they were dependent upon the deceased. Even the appellants No.2 to 4 did not enter the witness box.

On the contrary, the appellant No.1 has admitted that he is a constable in Home-guard. Thus, it is clear that the appellants No.2 to 4 are dependent upon the appellant No.1 and were not dependent upon their deceased mother.

Under these facts and circumstances of the case, it is held that in fact the appellant No.1 himself was driving his own motor cycle and by mistake his wife fell from the motor cycle resulting in her death and the

claim petition has been filed by concealing the correct facts.

Since, the claim petition has been held to be not maintainable, therefore, the quantum of compensation amount is not being considered.

Resultantly, the appeal filed by the appellants is hereby **Dismissed** and the **Cross Objection** filed by the Insurance Company is **Allowed** and the award dated 05-07-2012 passed by Additional Motor Accident Claims Tribunal, Datia in Claim Case No. 33/2011 is hereby set aside.

If the appellants have already received the compensation amount, then they shall return the same within a period of two months from today, otherwise, the delayed payment shall carry the interest of 6% p.a.

G.S. Ahluwalia
Judge