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HIGH COURT OF MADHYA PRADESH : JABALPUR

Misc. Appeal No. 2680/2010

Shyamwati and others
Vs.
Sagir-ul-Majid Ansari and another

Misc. Appeal No. 2686/2010

Gulab Das and others
Vs.
Sagir-ul-Majid Ansari and another

Shri Amit Upadhyay, Advocate for appellants.

Shri Suresh Raj, Advocate for respondent No. 2.

Date of hearing: 22.3.2011

Date of Order : 25.3.2011

O R D E R

As Per : G.S. Solanki, J.

1. Both the appeals arise out of the common award, hence they are being decided by this common order.
2. The appellants have preferred these appeals being aggrieved by award dated 5.3.2010 passed Additional MACT, Mandla in Claim Case Nos. 214/2008 (*Smt. Shyamwati Vs. Sagir-ul-Majid Ansari and another*) and 212/2008 (*Gulab Das and another Vs. Sagir-ul-Majid Ansari and another*), respectively for enhancement of compensation.
3. Respondent No. 1 remained absent before the Claims Tribunal and Claims Tribunal proceeded ex-parte against him.

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4. In Claim Case No. 214/2008 (*Smt. Shyamwati Vs. Sagir-ul-Majid Ansari and another*) on 29.5.2008 at about 4 PM deceased Somadas was going towards village Barai as pedestrian and when he reached near Madakol hill, a Commander Jeep MP-17-B-1451, rashly and negligently driven by respondent No. 1, insured with respondent No. 2, dashed him, due to which he sustained grievous injuries and succumbed to them on the spot. It was alleged that Somadas was aged 52 years at the time of accident, he was a Carpenter and used to earn a sum of Rs. 150-200/- per day. Claimant claimed compensation of Rs. 7,80,000/-.
5. In Claim Case No. 212/2008 (*Gulab Das and another Vs. Sagir-ul-Majid Ansari and another*), claimants claimed compensation on account of death of Laxmi Bai, who died on the spot in the aforesaid accident due to rash and negligent driving of respondent No. 1. It was alleged that she was aged 25 years of age at the time of accident and she used to earn a sum of Rs. 3000/- per month. Claimants claimed compensation of Rs. 7,42,000/-.
6. A criminal case was registered against respondent No. 1 (driver cum owner) under section 279, 337, 338, 304-A of IPC.
7. Respondent No. 2 United India Insurance Company denied the factum of accident and other contentions raised by the claimants. In alternative, it was submitted

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that the offending vehicle was driven in violation of conditions of insurance policy. The driver of the offending vehicle was not having valid and effective driving licence.

8. Learned Tribunal framed as many as 4 issues and on appraisal of evidence on record awarded compensation of Rs. 3,14,020/- in Claim Case No. 212/2008 and Rs. 1,40,540/- in Claim Case No. 214/2008. The Insurance company was held liable to pay only to the extent of Rs. 25,000/- to the claimants in both the cases. Being aggrieved thereby, these appeals have been preferred by the claimants for enhancement of compensation.

9. Learned counsel for the appellants has submitted that learned Claims Tribunal failed to appreciate the evidence on record in its proper perspective and proper multipliers have also not been applied in both cases. He has further submitted that the Claims Tribunal wrongly held the liability of insurance company to the extent of Rs. 25,000/-, hence prayer has been made to set aside the impugned award and to suitably enhance the compensation in both the appeals.

10. Learned counsel for insurer justified the findings recorded and supported the impugned award passed by the Claims Tribunal.

11. I have perused the impugned award, evidence and other material on record. In M.A. No. 2686/2010, claimant Gulab Das deposed in his statement that his wife Laxmi

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Bai was going towards village Barai as pedestrian at the time of accident but in the cross examination he admitted that his wife Laxmi Bai, Sushma Bai, Ku. Vimleshwari, Somadas, received injuries in the accident who were sitting in the offending vehicle. He further deposed that he and his family only were going as pedestrians and denied the fact that they were sitting in the offending vehicle. Learned Claims Tribunal after considering the aforesaid statement on record and comparing the same with the FIR (Ex.P-2) and other documents of criminal case and relied upon the decision of **Arun Kumar Patel and anr. Vs. Smt. Terasi Saket and others - ILR (2008) MP 282**, in which it was held by this Court that the FIR which is the immediate document, lodged just after the incident and filed and relied by the claimants, in these circumstances, the entire evidence should be considered in the light of the FIR. I am also of the same view. In the instant case in the light of the FIR (Ex.P-2), which was lodged just after the incident, the story that deceased Laxmi Bai and Gulab Das that were pedestrian, seems to be unbelievable and same has been rightly disbelieved by the Tribunal.

12. In M.A. No. 2680/2010, claimant Shyamwati deposed that her husband Somadas was going towards village Barai as pedestrian and the offending vehicle dashed him, due to which he died on the spot. In her cross

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examination, she admitted that she was not present at the time of incident, therefore, she is unable to depose about the incident. Thus the Tribunal rightly arrived at the conclusion on the basis of documentary evidence on record like FIR and other documents of criminal case, that deceased Somadas was travelling in the offending vehicle in question.

13. Coming to the question of liability of insurer; respondent No. 2/insurance company examined Shri S.R.Soni (DW-1), who deposed that in the insurance policy (Ex.D-1), maximum limit is of Rs. 25,000/- for 9 unknown passengers sitting in the vehicle, for which premium of Rs. 113/- was received. He admitted in his cross examination that insurance company received premium of Rs. 2,500/- for the purpose of third party liability. He has also admitted that in Section II(2) of insurance policy, liability has been limited upto Rs. 7,50,000/-, but it has not been mentioned anywhere in the policy that the aforesaid liability has been fixed in which context.

14. As discussed hereinabove, it is proved that deceased Somadas and Laxmi Bai were travelling in the offending vehicle at the time of accident. The insurer received premium of Rs. 113/- for 9 unknown passengers sitting in the vehicle and maximum limit for each passenger is Rs. 25,000/-. Thus, in my opinion, the Tribunal has rightly

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held the liability of insurer to the extent of Rs. 25,000/- only in both the cases.

15. Now coming to the question of quantum of compensation to be awarded to the claimant in M.A. No. 2680/2010; claimant Shyamwati deposed that her husband was carpenter and used to earn a sum of Rs. 150-200/- per day. His age was 50 years at the time of incident. The testimony regarding income of deceased has not been challenged in her cross examination by the insurer. Learned Tribunal assessed age of Somadas on the basis of post mortem report (Ex.P-8), as 60 years. Since there is no other evidence on record, I am also of the view that deceased Somadas was aged 60 years at the time of accident. Learned Tribunal assessed his income at Rs. 90/- per day, but as mentioned hereinabove, statement of Shyamwati, regarding income of deceased, was not challenged in her cross examination, hence I am of the view that learned Tribunal committed error in disbelieving the statement of Shyamwati regarding income of the deceased. He was a carpenter and carpenter is a semi skilled labour and naturally his income must be more than an unskilled labour. Thus, it would be appropriate to assess his income at Rs. 125/- per day for 26 days in a month, thus monthly income comes to Rs. 3,250/- and annual income comes to Rs. 39,000/-. After making one third deduction towards self expenditure,

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annual loss of dependency comes to Rs. 26,000/-. Learned Tribunal applied multiplier of 7, but as per the decision of Apex Court in **Sarla Verma and others Vs. Delhi Transport Corporation and others - 2009 ACJ 1298**, appropriate multiplier would be 9, thus compensation on account of loss of dependency comes to Rs. 26,000 x 9 = 2,34,000/-. In addition claimants are entitled for a sum of Rs. 17,000/- towards funeral expenses, loss of estate and loss of consortium. Thus, total compensation comes to Rs. 2,34,000 + 17,000 = Rs. 2,51,000/-, out of which the insurer is liable to pay only a sum of Rs. 25,000/- and liability of rest of the amount is on driver cum owner of the offending vehicle. The enhanced compensation to carry the interest @ 6% per annum from the date of filing of the claim petition till realization.

16. Coming to the question of quantum of compensation to be awarded to the claimants in M.A. No. 2686/2010; appellant No. 1 Gulab Das deposed that his wife was aged 25 years at the time of accident but in the post mortem report her age was mentioned 30 years. Since there is no other oral or documentary evidence on record, in my opinion, the Tribunal has rightly assessed her age as 30 years. Gulab Das further deposed that deceased Laxmi Bai used to earn a sum of Rs. 100/- per day as labour as well as being a housewife but no other evidence in this regard was adduced. The Tribunal assessed her income at Rs.

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90/- per day for 26 days, thus monthly income was assessed at Rs. 2340/- and annual income at Rs. 28,080/-. After making one third deduction towards self expenditure, annual loss of dependency was assessed at Rs.18,720/-. In my opinion, learned Tribunal has properly assessed the income of the deceased but has failed to apply the appropriate multiplier. As per Sarla Verma's decision (supra) the appropriate multiplier would be 17, thus loss of dependency would be $18,720 \times 17 = 3,18,240/-$. In addition, claimants are entitled for further sum of Rs. 14,500/- awarded by the Claims Tribunal for funeral expenses, loss of estate and loss of consortium. Thus, total compensation comes to Rs. 3,32,740/-, out of which the insurer is liable to pay only a sum of Rs. 25,000/- and liability of rest of the amount is on driver cum owner of the offending vehicle. The enhanced compensation to carry the interest @ 6% per annum from the date of filing of the claim petition till realization.

17. Resultantly, the appeals are allowed in part to the aforesaid extent. No costs.

(G.S.Solanki)
Judge

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