
(1992) 02 MP CK 0007
Madhya Pradesh High Court
Case No: None

United Insurance Co. Ltd.

APPELLANT

Vs

Vesta and Others

RESPONDENT

Date of Decision: Feb. 19, 1992

Acts Referred:

- Motor Vehicles Act, 1939 - Section 110D

Citation: (1992) 2 ACC 88

Hon'ble Judges: S.K. Dubey, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

S.K. Dubey, J.

This order shall also govern the disposal of Miscellaneous Appeal Nos. 132 of 1991 (United India Insurance Co. Ltd., Indore v. Motla and Ors.), 133 of 1991 (United India Insurance Co Ltd. Indore v. Shantabai and Ors.) and 134 of 1991 (United India Insurance Co. Ltd. Indore v. Jamsingh and Ors.).

2. The appellant/United India Insurance Company Ltd., Indore (for short, the "Insurance Company"), aggrieved of the awards passed in Claim Cases No. S5/1989, decided on 13.12.1990; 53/1989, decided on 1.1.1991; 38/1989, decided on 8.3.1991 and 52/1989, decided on 11.1.1991, by the Motor Accidents Claims Tribunal, Kukshi, District Dhar (for short, the "Tribunal"), has preferred the appeals u/s 110-D of the Motor Vehicles Act, 1939 (for short, the "Act").

3. The Facts. All the four claimants, namely, Vesta, Motla, Shantabai and jamsingh, were travelling as passengers in a Motor Vehicle (Bus No. CPF 8321), driven by respondent No. 2, owned by respondent No. 3, and insured with the appellant, going from Kuksi to Talawadi; because of the rash and negligent driving of the driver, at about 2.30 p.m. (on 3.3.1989) the bus did not remain under control and

toppled down near Talawadi. All the four claimants sustained injuries and were taken to the Primary Health Centre, Jobat, where they were given first aid. They sustained the following injuries:

1. Vesta. (i) One swelling present on left wrist joint, size 5cm x 1.5 cm.

(ii) One abrasion on left knee joint anterior in direction, size 4 cm x 2 cm. Advised for X-ray of left wrist. Referred to District Hospital, Jhabua for X-ray and treatment

2. Motla. (i) Lacerated wound on left cheek, size 4 cm. x 1 cm x .5 cm.

(ii) Bleeding from nose and mouth.

(iii) Swelling on left eye.

Injuries were simple in nature.

3. Shantabai (1) Lacerated wound on left parotal region, posterior in direction, size cm x 1/2 cm 1/4 cm.

4. Jamsingh. (1) One abrasion on right leg upper 1/3rd Portion, lateral, 3cm x 3 cm.

(ii) One contusion on upper lip posterior, size 3 cm x 2 cm.

(iii) Tenderness on left side of "chest. Advised X-ray. Referred to District Hospital, Jhabua for X-ray and treatment.

The claimants presented applications u/s 10-A of the Act and respectively claimed compensation of "Rs. 1,92,000/- 56,000/-, 46,000/- and 1,20,000/-. The owner and the driver of the bus remained ex parte and did not contest the claim. Therefore, the appellant u/s 11-G(2-A) of the Act was allowed to contest the claim on all grounds which were available to the owner and the driver against whom the claim was . made. The appellant did not lead any evidence except cross- examining the claimants" witnesses in all the four cases. The Tribunal awarded claimant Vesta Rs.20,000/- towards expenses of medicines and for loss of earnings at the rate of Rs. 10/- per day for the period during which he remained under plaster. Rs. 5,000/- were awarded for pain and sufferings and Rs. 17,000/- as general damages. Thus, in all, Rs. 24,000/- were awarded as compensation.

4. The claimant/respondent No. 1 Jamsingh (in M.A. No. 134/1991) was awarded Rs. 1500/- towards expenses of medicines and special diets; Rs. 15,000/- for physical disability and loss of earning capacity, and Rs.2500/- for pain and sufferings; in all, Rs. 19,000/- were awarded as compensation.

5. The claimant respondent No. I Motla(in M.A. No. 132 of 1991) was awarded Rs.1500/- for pain and. sufferings; Rs 10,000/- for physical disability and loss of earning capacity and Rs. 500/- towards costs of medicines, special diet and transportation charges; in all, Rs. 12,000/- were awarded as compensation.

6. The claimant/respondent No. 1 Shantabai (in M.A. No. 133/1991) was awarded Rs. 10,000/- as compensation in the head of general damages, and Rs. 5,000/- towards the expenses incurred in medicines and transportation charges.
7. Shri S.K. Pawnekar, counsel appearing for the respondents/ claimants, raised a preliminary objection that as the appellant/ Insurance Company has challenged the quantum, the appeals are not maintainable, as there is no ground available to the appellant * u/s 96 (2) of the Act. Shri V. V. Dandavatre, counsel for the appellant, placing reliance on a Division Bench Decision of this Court in case of [Parmanand and Others Vs. Manohardas](#), contended that as the owner and the driver were ex parte and the Tribunal allowed the Insurance Company u/s 110-C (2-A) of the Act to contents the claim on all grounds which were available to the owner and the driver, the appeals are maintainable.
8. In view of the decision in Paramanana"s case (supra), I am on opinion that the preliminary objection has no merit, and the appeals are held to be maintainable.
9. On merits, learned Counsel for the appellant did not challenge the findings of rash and negligent driving of the vehicle by the driver, but the counsel challenged the quantum by contending that the injuries sustained by the claimants were not proved by medical evidence, and the compensation awarded in each case is excessive.
10. After hearing counsel on both sides, I am of opinion that the awards in all the four cases have to be set aside and the case remitted to the Tribunal.
11. The law is settled that in assessing evidence it is not open to the Court to look into and rely on documents not properly proved. It is only on admissible and legal evidences that the Court must Act. It may also be stated that in considering the evidence, the Court will not be bound to accept the statement of witnesses only because they have not been effectively cross-examined or evidence in rebuttal has not been adduced. The Judges are not computers. In assessing the value to be attached to oral evidence, they are bound to call into aid their experience of life. As Judge of fact it was open to the appellate Judge to test the evidence placed before him on the basis of probabilities. (See [Chaturbhuj Pande and Others Vs. Collector, Raigarh](#), and Modi P.R. v. Collector, Durg 1975 J LJ 595.
12. The injuries received by the claimants are not proved by legal evidence, i.e., by examining the Doctors who treated them and by producing the x-ray reports and prescriptions. The Tribunal only relied on the certified copies of the injury reports produced in the criminal case, pending against the driver which are also not properly proved. In my opinion, that is not sufficient to arrive at a finding of physical disability. In view of this, I have no option but to remit all the four cases to the Tribunal, who shall afford the parties an opportunity to lead evidence on the injuries received by the claimants in the motor accident as well as on the quantum of compensation. Thereafter, after hearing parties the Tribunal shall decide afresh the

entitlement of compensation in each case.

13. However, as the Insurance Company has deposited the amounts of compensation as per the awards in compliance with the order passed by this Court on 23.9.1991, 50% of which has been ordered to be withdrawn by each claimant without furnishing security, in the circumstances, it is ordered that till the decision of the cases by the Tribunal, the appellant/ Insurance Company would not be entitled to recover the amount already withdrawn by the claimants.

14. The appeals are disposed of in the manner aforesaid. Parties to bear their own costs of these appeals.

15. The records of the four claim cases be sent to the Tribunal so as to reach them on or before 25.4.1992. The parties shall appear before the Tribunal on 25.4.1992, for which no fresh notices need be issued by the tribunal, as they have been noticed here. On that date the Tribunal shall proceed with the cases in accordance with law and the directions given hereinabove.