
(2013) 04 MP CK 0137

In the Madhya Pradesh High Court

Case No : M.A. No"s. 695 and 668 of 2011

Abdul Sattar

APPELLANT

Vs

Ramjan and Others

RESPONDENT

Date of Decision : 17-04-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2)(a)(ii)

Citation : (2014) 2 ACC 32 : (2014) ACJ 226

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Advocate : J.M. Punegar, for the Appellant; Lokesh Mehta, Abhay Jain, Romil Malpani and Mr. S.V. Dandwate, for the Respondent

Judgement

N.K. Mody, J.—This order shall also govern the disposal of M.A. No. 668 of 2011, which is an appeal filed by respondent No. 2 against the award dated 3.12.2010 passed by M.A.C.T., Khargone in Claim Case No. 100 of 2009, whereby claim petition filed by the appellant was allowed and the compensation of Rs. 1,45,000 was awarded holding the respondent Nos. 1 and 2 liable for payment of compensation and respondent Nos. 3 to 6 were exonerated. In M.A. No. 695 of 2011, the prayer is for enhancement of the amount of compensation and for quashment of the findings whereby respondent Nos. 3 to 6 were exonerated.

2. In M.A. No. 668 of 2011, which is the appeal filed by respondent No. 2, the prayer is for quashment of findings of exoneration of respondent Nos. 3 to 6.

3. The short facts of the case are that the appellant filed a claim petition before learned Tribunal alleging that on 3.1.2009 appellant was a passenger in Maruti van bearing registration No. MP 10-B 9111, which was owned by respondent No. 5, driven by respondent No. 4 and insured with respondent No. 6. It was alleged that the said vehicle met with an accident with pickup van bearing registration No. MP 10-G 0334, which was being driven by respondent No. 1 rashly and negligently, owned by respondent No. 2 and insured with the respondent No. 3, with the result appellant sustained injuries. It is submitted that the claim petition

be allowed and compensation be awarded.

4. The claim was contested by the respondents. After framing of issues and the recording of evidence, learned Tribunal allowed the claim petition and awarded the compensation as Rs. 1,45,000 and exonerated respondent Nos. 3 to 6, against which present appeals have been filed. Mr. J.M. Punegar, learned counsel for the appellant, submits that appellant sustained fracture of femur bone. It is submitted that the accident occurred because of rash and negligent driving of respondent No. 1 and the respondent No. 1 was possessing licence, but the learned Tribunal exonerated respondent No. 3 on the ground that the licence which the respondent No. 1 was possessing was not valid driving licence. Learned counsel submits that looking to the injuries sustained, amount awarded is on lower side. It is submitted that the appeal be allowed, findings regarding exoneration of respondent No. 3 be quashed and the amount awarded be enhanced.

5. Mr. Lokesh Mehta, learned counsel for the respondent No. 2, submits that since unloaded weight of the vehicle was below 7,500 kg, therefore, as per the provision of Motor Vehicles Act, the offending vehicle was a light motor vehicle for which respondent No. 1 was possessing licence, hence, learned Tribunal committed error in exonerating respondent No. 3. So far as amount of compensation is concerned, the learned counsel for the respondent No. 2 submits that the amount awarded is just and proper. It is submitted that the appeal filed by the respondent No. 2 be allowed.

6. Mr. Abhay Jain, learned counsel for the respondent No. 3, submits that respondent Nos. 1 and 2 appeared before learned Tribunal and adduced evidence. It is submitted that in the evidence of respondent No. 1 it has come that he was informed by the R.T.O. that the licence which is being given to respondent No. 1 is not valid for driving transport vehicle. It is submitted that the type of licence which the respondent No. 1 was possessing was not valid for driving transport vehicle. It is submitted that in the circumstances learned Tribunal committed no error in exonerating the respondent No. 3. For this contention reliance is placed on a decision in the matter of National Insurance Co. Ltd. Vs. Swaran Singh and Others, , wherein the Apex Court has observed that in case the owner consciously allowed the driver to drive the vehicle who did not hold any licence then insurance company is entitled to succeed in his defence and avoid liability. The Hon"ble Apex Court has further observed that the breach of policy condition, i.e., disqualification of driver or invalid driving licence of the driver, as contained in subsection (2)(a)(ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the

policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time. Learned counsel further placed reliance on a decision in the matter of Oriental Insurance Co. Ltd. Vs. Syed Ibrahim and Others, , wherein plea by insurer that it was not liable to pay compensation as there was breach of terms of policy inasmuch as driver was not having licence to drive heavy motor vehicle and the plea by insured that he did not know as to what type of licence driver possessed could not be believed as insured was father of driver and insurer not liable to indemnify award. It is submitted that the appeal filed by the appellant and respondent No. 2 has no merits and the same be dismissed.

7. From perusal of the record, it is evident that to prove the case appellant has filed the documents from Exh. P1 to Exh. P41, out of which Exh. P1 to Exh. P11 relate to the criminal case and rest of the documents relate to the treatment of the appellant. Apart from this, appellant has examined himself as AW 1, Hafiz alias Habib as AW 2 and Dr. Chetan as AW 3. Respondent No. 3 has examined Vijay Singh Rane, clerk of R.T.O., Khargone, and Kamal Kishore, Development Officer, has also been examined by the respondent No. 3 as NAW 3. The respondent No. 2 has examined his son Ravi, son of Shobharam, who has stated that pickup van was being driven by respondent No. 1 and also the respondent No. 1 was possessing driving licence. He has further stated that after verification of the licence, respondent No. 1 was kept on job. He has further stated that he has obtained the licence in the year 2009 and by that time he was not knowing that for driving a different type of vehicle, different type of licence is required.

8. From the statements of the aforesaid witnesses, it can safely be said that respondent No. 2 consciously did not allow the respondent No. 1 to drive the vehicle. Respondent No. 3 has also failed to establish that respondent No. 2 was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicle.

9. In the facts and circumstances of the case, this court is of the view that the learned Tribunal was not justified in exonerating respondent No. 3.

10. So far as amount of compensation is concerned, the break-up of the amount awarded is as under:

11. Looking to the injuries, the amount awarded is just and proper. The appeal filed by the appellant and the respondent No. 1 stands allowed in part. The finding regarding exoneration of respondent No. 3 stands quashed holding that appellant shall be entitled for compensation from the respondent Nos. 1 to 3.

12. With the aforesaid, appeals stand disposed of. A copy of the order be placed in the connected case.