
(2002) 09 MP CK 0062
In the Madhya Pradesh High Court

Arun Kumar

APPELLANT

Vs

Smt. Gulabbai and Others

RESPONDENT

Date of Decision : 09-09-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 173

Citation : (2003) 1 ACC 296

Hon'ble Judges : A.K. Gohil, J

Bench : Single Bench

Judgement

A.K. Gohil, J.—This order shall also govern the disposal of Misc. Appeal No. 269 of 1999, Arun Kumar s/o Anandilal Agrawal v. Mangilal s/o Rugnath and Ors., as common facts of the case and questions are involved in both these appeals.

2. This appeal is directed u/s 173 of the Motor Vehicles Act, 1988, against a common award dated 15.12.1998 passed by Member, Motor Accident Claims Tribunal, Biaora, District Rajgarh in Claim Case No. 104 of 1997, whereby exonerated the Insurance Company from its liability of compensation of Rs. 86,800.00 in favour of claimants/respondents.

3. The brief facts of the case are that the appellant is the owner of tanker bearing registration number MP-09/K-3470 which was being driven by deceased Abul Hasan. On 28.9.1992 the said tanker was loaded with diesel going to Biaora from Narsingharh. Near Sonkutch turning there was some mechanical defect in the said tanker and the said tanker met with an accident. On account of the accident tanker caught fire and due to the said fire driver Abul Hasan and two Coolies Phoolsingh and Biramlal were burnt. The matter was reported to the police station. It was stated in the claim petition that Phoolsingh was working as a Coolie and was earning Rs. 30.00 per day and Biramlal was earning Rs. 20.00 per day. The legal representatives of the deceased Phoolsingh and Biramlal filed claim petitions. Legal representatives of the deceased Abul Hasan also filed claim petition which is not before me at present. The appellant/owner of the vehicle remained ex parte and he did not file any written statement. Insurance Company

filed reply and denied the claim and their defence was that the deceased driver was not having a valid driving licence and the deceased Phoolsingh and Biramlal were not working as Coolies but they were travelling as passengers after payment of fare. Before the Tribunal, the Insurance Company examined one witness Ramesh Chandra Dubey, Administrative Officer in the New India Assurance Company, Ujjain. As per his evidence the matter was investigated by Mr. G.S. Gend and his report was also produced as Ex. D/2. Policy is Ex. D/I. He has stated that on the day of accident deceased were travelling as passengers. As per the policy of the insurance no body is permitted to travel in the tanker as a passenger and the Insurance Company has also dismissed the claim of the owner for claiming damages for loss of vehicle. The Tribunal decreed the, claim of the claimants against appellant/ owner of the vehicle and exonerated the Insurance Company on the ground that : as per the terms of the policy, the driver was carrying as many as 8 passengers in the tanker and if he had allowed the gratuitous passengers, the Insurance Company is not liable for the same. The Tribunal has also found that the claimants have failed to prove that deceased Phoolsingh and Biramlal were working as Coolies on the tanker. In fact the burden of proof was on the owner of the vehicle to prove that the deceased were employed on the said tanker and they were working as Coolies, but the owner remained ex parte and he has neither filed any written statement nor produced any evidence. Thus, after appreciating the evidence and the documents on record, the Tribunal exonerated the Insurance Company and held the owner of the vehicle liable for payment of compensation and awarded a compensation of Rs. 86,800.00 to each of the claimants along with interest and costs, against which the appellant/owner of the vehicle has preferred this appeal.

4. I have heard Mr. G.K. Neema, learned Counsel for appellant; Mr. T.N. Sinh, learned Counsel for respondents Nos. 1 to 4; Mr. S.V. Dandwate, learned Counsel for respondent No. 5; and perused the record.

5. Mr. Neema, learned Counsel for appellant vehemently submitted that the Insurance Company cannot be exonerated in this case because as per the terms and conditions of the policy, Ex. D/1 additional premium was paid for two Coolies and the deceased were working as Coolies and they were not travelling as gratuitous passengers. Therefore, the Insurance Company cannot be exonerated and is liable for payment of compensation and cited various decisions before me.

6. Mr. Dandwate, learned Counsel for respondent No. 5/Insurance Company submitted that after appreciating the evidence on record, the Tribunal has already recorded a positive finding that the deceased were not working as Coolies but they were travelling in the tanker as gratuitous passengers and in the tanker no such passengers are allowed and, therefore, on the basis of the conditions of the policy and the evidence on record and finding recorded by the Tribunal, the Insurance Company has rightly been exonerated. He further submitted that in the case of Smt. Mallawwa Etc. Vs. The Oriental Insurance Co. Ltd. and Others, it has been held by three Judges Bench of the Supreme Court

that u/s 147(1)(b) of Motor Vehicles Act, 1988, (Prior to amendment of 1994) Insurance Company is not liable for death injury sustained by persons carried in a goods vehicle or either along with their goods or after paying fare or as gratuitous passengers.

7. In this case what is material for consideration before this Court is the evidence on record and to evaluate what was the status of the deceased, whether they were working as Coolies or they were travelling as gratuitous passengers. No doubt after amendment in 1994 in Section 147 of the Motor Vehicles Act, the legal position has changed. Admittedly in this case accident took place on 28.9.1992. Therefore, it is a case prior to the amendment in Section 147. Mangilal (P.W. 1) father of the deceased Biramlal was examined in Claim Case No. 157 of 1997. In the cross-examination he has admitted that deceased Biramlal was a labourer. On that day he had gone to Bhopal from Biaora and while returning he was burnt due to the accident in the tanker. He has denied that his son was working as a Coolie on the tanker. He has stated that he was travelling in the tanker as a passenger. In Claim Case No. 104 of 1997 Gulabbai (P.W. 1) wife of the deceased Phoolsingh was examined. Though she stated on oath that her deceased husband was working on tanker, and was earning Rs. 30.00 per day, he was burnt and died in the tanker. In fact, it was the burden on the owner to prove that the deceased were working on his tanker as Coolies but he has neither filed any written statement; nor entered ex parte before the Tribunal. Therefore, in this appeal without any pleadings and evidence his arguments cannot be considered. Therefore, in view of the evidence on record the Insurance Company has rightly been exonerated from its liability. In view of the unamended provisions of Section 147, the Insurance Company is not liable for payment of compensation. Thus the findings recorded by the Tribunal appear to be legal and justified as the appellant has failed to discharge his burden. Therefore, both the appeals are liable to be dismissed.

8. Considering the evidence on record, this appeal and connected appeal fail and are hereby dismissed. Record be returned.