
(2005) 09 MP CK 0075
In the Madhya Pradesh High Court
Case No : M.A. No. 1555 of 2004

Baghelkhand Filling Station and Another	APPELLANT
Vs	
Brijbhan Prasad and Others	RESPONDENT

Date of Decision : 28-09-2005

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 9(2), 9(3), 9(4)
Motor Vehicles Act, 1988 — Section 149(2), 173

Citation : (2006) ACJ 2503 : (2006) 3 JLJ 60 : (2006) 2 MPJR 28 : (2006) 2 MPLJ 211

Hon'ble Judges : Deepak Verma, Acting C.J.; A.K. Saxena, J

Bench : Division Bench

Advocate : J.P. Sanghi and Aditya Sanghi, for the Appellant; N.S. Ruprah, Amrit Ruprah, Sanjay Agrawal and Suresh Raj, for the Respondent

Final Decision : Allowed

Judgement

Deepak Verma, Actg. C.J. and A.K. Saxena, J.

This order shall govern the disposal of M.A. Nos. 1556, 1557, 1558, 1559, 1560, 1561 and 1562 of 2004.

This and the connected appeals are being heard analogously as all of them arise out of the common award passed by the Second Additional Motor Accidents Claims Tribunal, Rewa in motor vehicle cases decided on 24.2.2004.

All the aforesaid appeals have been preferred by the owners of tanker No. MP 17-C 0103, which had met with an accident with jeep bearing registration No. MP 19-A 8155 on 16.4.1999 at about 9 p.m. In the said accident five persons had died and three had sustained bodily injuries. One of the deceased also happened to be driver of the jeep. Shyam Sunder Rajak, respondent No. 3, was driver of the tanker. Manoj Kumar, respondent No. 4, was owner of the jeep and tanker was insured with Oriental Insurance Co. Ltd., respondent No. 5, whereas jeep was insured with United India Insurance Co. Ltd., respondent No. 6. Since five deaths

had occurred on account of the aforesaid accident between the two vehicles and three had sustained injuries, the legal representatives of the deceased and the injured, all had filed separate claim petitions. All of them were heard together and were disposed of by a common award. The learned Tribunal had allowed all the claim petitions and held that it was the tanker which was being driven rashly and negligently by its driver, Shyam Sunder Rajak, respondent No. 3. The said tanker admittedly belonged to the appellants and was insured with Oriental Insurance Co. Ltd., respondent No. 5. Tribunal also came to the conclusion that on the relevant date, driver was not holding proper and valid driving licence to drive the tanker. Therefore, no liability for payment of compensation has been fastened on the insurance company, instead it is the appellants who have been held liable to pay the amount of compensation. Appellants being the owner of the tanker, on whom liability has been fastened to pay amount of compensation, are before us challenging the said award on various grounds.

Mr. J.P. Sanghi, the learned senior counsel appearing with Mr. Aditya Sanghi, strenuously contended the following points:

That Satya Narayan Chamadhiya, appellant No. 2, had appeared in the witness-box and had categorically deposed that before hiring the services of respondent No. 3, he had seen his driving licence. After going through the driving licence as shown by the respondent No. 3, he was apparently and prima facie satisfied that he was holding a proper and valid driving licence to drive the tanker. He has further deposed that he had also seen him driving a similar tanker belonging to Hindustan Petroleum Limited. Hindustan Petroleum Limited had also given a certificate in this regard. After having gone through the licence and the certificate given to him by the Hindustan Petroleum Limited, he was apparently satisfied that respondent No. 3 was having a valid and proper licence to drive.

It was also contended that nothing more was required to be done by the appellants to find out the correctness and genuineness of the licence shown to them, as it was not expected from them that they would have gone to get it verified from the issuing authority.

Lastly, it was contended that similar question has already been answered in favour of the appellants while deciding *Satya Narayan Chamadhiya v. Saroj Devi Dwivedi* M.A. No. 34 of 2003; decided on 16.9.2005, in which similar question had cropped up for consideration.

Both the counsel appearing for the parties have placed reliance on two judgments of the Supreme Court reported in *United India Insurance Company Ltd. Vs. Lehu and Others*, and a later judgment in *National Insurance Co. Ltd. Vs. Swaran Singh and Others*, . It is contended on behalf of insurance company that the burden that lay on the appellants to have satisfied themselves with regard to the correctness and genuineness of the licence, had not been discharged. The Tribunal committed no error in exonerating the insurance company from payment of compensation, instead to hold the appellants liable to

pay the compensation.

On the other hand, learned Counsel for the appellants submitted that whatever best evidence was available and whatever precaution and care was required from a prudent man having been done, nothing more was required to be done and thus the burden that lay on the appellants as owner of the tanker, had been fully discharged. Tribunal committed an error in not fastening the liability on the insurance company.

In fact, the question that has been posed in this and the connected appeals stands answered by the judgment of this Court in *Satya Narayan Chamadhiya*, M.A. No. 34 of 2003; decided on 16.9.2005.

However, after having gone through the said judgment we think it necessary and proper to further clarify with regard to the fact situation of these cases. In these cases, the Tribunal has also not fastened the liability on the appellants on additional ground that as required under Sub-rules (3) and (4) of Rule 9 of Central Motor Vehicles Rules, 1989 (for short "the Rules"), there was no endorsement made on the licence of Shyam Sunder Rajak, respondent No. 3, by the licensing authority.

Thus, on the relevant date he was not holding a valid and proper driving licence. It has also been held that appellants, who are into transport business of petroleum and its products for long number of years and are owners of 8-9 tankers, must be fully aware of this provision of law, yet having not observed this precaution, was sufficient to hold them liable for payment of compensation.

For better appreciation of Sub-rules (3) and (4) of Rule 9 of the Rules, we deem it apposite to reproduce the same:

9. Educational qualifications for drivers of goods carriages carrying dangerous or hazardous goods.?

xxx xxx xxx (3) The licensing authority, on receipt of the application referred to in Sub-rule (2), shall make an endorsement in the driving licence of the applicant to the effect that he is authorised to drive a goods carriage carrying goods of dangerous or hazardous nature to human life.

(4) A licensing authority other than the original licensing authority making any such endorsement shall communicate the fact to the original licensing authority.

A perusal of the aforesaid relevant rules would show that endorsement in the driving licence of the applicant is necessary to the effect that he is authorised to drive a goods carriage carrying goods of dangerous or hazardous nature to human life. This endorsement was of course not seen on the driving licence of respondent No. 3, by the appellants. But, it is equally true that driver was holding a licence to drive a tanker. It is not the case of the respondents that accident had taken place on account of the fact that there was no endorsement to drive such a vehicle. The endorsement neither increases the efficiency of the

driver nor in its absence the efficiency of the driver is likely to be reduced in any manner whatsoever. It only certifies additionally that he is authorised to drive a goods carriage carrying goods of dangerous or hazardous nature. For driving such a vehicle, no further expertise or driving skill is required. This could be said to be a lapse on the part of the driver as well as on the part of appellants herein, but this lapse was not responsible for the cause of accident.

Even without the endorsement as contemplated under Sub-rule (3), the driving skill of the respondent No. 3 had not reduced. In fact the appellants having seen a certificate from Hindustan Petroleum Limited that respondent No. 3 was driving their tanker earlier appeared to be satisfied that the driver was holding a valid and proper licence and did not care to inquire with regard to endorsement. By taking the endorsement from the licensing authority, the nature of vehicle or the kind of the vehicle which the driver would be driving would not have changed, it would have remained the same. Thus, taking of the endorsement from the licensing authority was for some other purpose and not for giving him further certificate for driving the tanker, as he was already holding a valid licence for driving it. Precisely this is what has been said in *National Insurance Co. Ltd. Vs. Swaran Singh and Others*, , in para 102. It has been held so?

...To avoid its liability towards the 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.

It has further been held as under:

Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer u/s 149(2) of the Act.

Thus, the crux of the matter would be whether such a breach that is to say not having obtained necessary endorsement as required under Sub-rule (3) of Rule 9 of the Rules, the accident occurred due to that non-endorsement has been discussed hereinabove, the said endorsement is not required to be given to the driver after having gone through any specialised training or after having passed any special test. Any driver who has held a driving licence to drive a tanker would be entitled to this endorsement subject to fulfilling of other conditions as contemplated in Sub-rule (3) of Rule 9, but they do not deal with the professional skill of driving. With regard to professional skill of driving, he has already been clarified by the licensing authority at the time of granting of licence

to him. It is not the case of the respondents that his driving licence was not obtained properly.

For all these reasons, we are of the opinion that Tribunal committed a grave error in not fastening the liability on the insurance company and instead exonerating it from payment of compensation.

In the light of aforesaid facts and features, we are of the opinion that there was no fundamental or basic breach of the terms and conditions of the policy, which could have been sufficient to hold that insurance company would not be liable to pay the compensation.

Thus, appeals are allowed. The impugned award is modified holding therein that the liability to pay the compensation would be that of appellants, Shyam Sunder Rajak, respondent No. 3 and Oriental Insurance Co. Ltd., respondent No. 5, jointly and severally. Looking the facts and features of the case, the parties are directed to bear their own respective costs. Oriental Insurance Co. Ltd., respondent No. 5, is given 2 months time from today to make the payment of the amount awarded to each set of claimants.

In case any amount that has been deposited by the appellants, as condition precedent for filing an appeal u/s 173 of the Motor Vehicles Act, 1988, the same shall be payable to it by the insurance company.

A copy of the order be annexed in all the files.