
(2013) 03 MP CK 0052
In the Madhya Pradesh High Court
Case No : M.A. No. 2026 of 2012

Bajaj Allianz General Insurance Co. Ltd.	APPELLANT
Vs	
Ahsish Patel, Ajay Patel and Praveen Kumar Singh	RESPONDENT

Date of Decision : 14-03-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 166

Citation : (2013) ACJ 2487 : (2013) ILR (MP) 1943 : (2014) 2 MPHT 232 : (2014) 2 MPLJ 702

Hon'ble Judges : M.C. Garg, J

Bench : Single Bench

Advocate : T.S. Lamba, for the Appellant; Kapil Patwardhan, learned counsel for respondents No. 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

M.C. Garg, J.—This appeal has been filed by the Insurance Company aggrieved by the award of the Tribunal dated 22nd March, 2012 in MACT Case No. 90/2011 which was instituted by first responded and another claimant, legal heirs of late Shri Shiv Prasad, who was driver of Truck bearing registration No. CG-04-JA-2770 and was murdered by his clearer. According to the respondents, it was a case of an accident arising out of the motor vehicle and, therefore, they claimed compensation from the appellant and the owner of the truck. The Tribunal by impugned award dated 22nd March, 2012 allowed the claim petition in favour of the respondents by awarding a sum of Rs. 1,78,000/- u/s 166 of the Motor Vehicles Act. Consequently, as the truck was insured with the appellant, the liability was fastened on the Insurance Company.

2. Appellant has come before this Court by filing the present Miscellaneous Appeal alleging that, in this case, death of the deceased was a clear cut case of murder by the cleaner which was not a case where death was caused in an accident arising out of the use of motor vehicle. Reference has been made by the appellant to the judgment of Hon''ble Supreme Court delivered in the case of

Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another, Relying upon the aforesaid judgment, it has been argued that in the peculiar facts of this case, the case is covered by the exception as discussed in para 10 of that judgment and therefore, the appellant is not liable to pay any compensation to the respondents. The relevant observation is reproduced hereunder:-

10. The question, therefore, is can a murder be an accident in any given case? There is no doubt that "murder" as it is understood, in the common parlance is a felonious act where death is caused with intent and the perpetrators of that act normally have a motive against the victim for such killing. But there are also instances where murder can be by accident on a given set of facts. The difference between a "murder" which is not an accident and a "murder" which is an accident, depends on the proximity of the cause of such murder. In our opinion, if the dominant intention of the Act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simpliciter, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder.

3. On the other hand, learned counsel for the respondents, relying on various judgments, submits that in the instant case, the murder of deceased Shiv Prasad has taken place during the course of his employment and during the course of the use of motor vehicle and, therefore, liability was that of the insurer.

4. Judgments relied upon by the learned counsel for the respondents are the judgments delivered in the cases of M/s. National Insurance Co. Ltd. Vs. Smt. Sheela Rani and Another, the judgment of this Court delivered in the case of Ghanshyam Vs. Manager, MPSRTC Depot and Another, and the judgment of this Court delivered in the case of National Insurance Company Ltd. Vs. Harish Kumar and Another, . Reliance has also been placed on the judgment of Allahabad High Court delivered in the case of Divisional Manager, National Insurance Co. Ltd. Vs. Smt. Shimla and Others,

5. I have gone through all these judgments. The facts in those judgments are entirely different. The facts in the case of Divisional Manager vs. Smt. Shimla (supra) were different and could not be considered similar to that of the case in hand. In that case, relevant discussion is in para 8 which reads as under:-

8. Initially, we were under an impression that this term cannot be used as accident at all, but an incident which leads to a murder. But from the aforesaid definitions and the judgment cited in Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another, , we are of the firm view that this type of accident may be distinct, but not different in the course of use of a motor vehicle. The Supreme Court, in the aforesaid judgment has categorically specified the definition between the accidental murder and intentional murder. The accidental murder is a non-felonious act, which can be separated from the murder caused by felonious act. If it is other than felonious act, in such case we

can define the term as an accidental murder. Therefore, it can also be termed as incident; in the course of use of the motor vehicle. In the relevant para of the case of Rita Devi (supra) it has been held by the Supreme Court as follows:

In our opinion, if the dominant intention of the act of felony is to kill any particular person then such killing is not an accident murder but is a murder simpliciter, while If the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder.

6. The facts given in para 2 of this case are distinguishable than the judgment delivered in Rita Devi's case (supra) as well as facts of the instant case. Same is the position of other judgments cited at bar by the learned counsel for the respondents.

7. Counsel for the respondents submits that the case of New India Assurance Company Ltd. vs. Budhsen Mishra (supra) was similar to the case in hand, however, the contention is not acceptable in view of the facts of case which reads as under:-

Facts giving rise to the claim for compensation and passing of award thereof, briefly are that, on 28-10-2005 at Village Baillwa Paikkon on NH-7 opposite shop of Birjwasi Singh at 7:30 p.m., on the road, Surendra Kumar (the deceased) was engaged in chit-chatting with one Dhirendra Singh when one Rajrakhan Singh come from his house and started talking with Surendara Kumar during course whereof he, i.e., Rajrakhan Singh pushed Surendra Kumar towards the Highway and at that very moment he was run over by truck bearing Registration No. UP-70U-9346, driven by respondent No. 5, owned by respondent No. 4. Consequent whereof, Surendra Kumar died on spot.

Alleging that the death of Surendra Kumar was due to rash and negligent driving by respondent No. 5, the legal representatives of the deceased filed a claim petition u/s 163-A of Motor Vehicles Act, 1988 for compensation of Rs. 8,61,000/-.

8. These facts clearly goes to show that it was a case of accident arising out of motor vehicle.

9. In the present case, it has come on record that the cleaner of the truck caused fatal injuries to the deceased. This fact has been discussed by the Tribunal in para 10 of the judgment. The trial Court has also relied upon the statement of Shri Ashish, the son of the deceased, who on oath has stated that on 9/11/2008 when the truck was standing in the site and his father was sleeping therein, the truck cleaner caused fatal injuries to his father and it was on that basis he succumbed to the injuries. A report to that effect was also lodged on 9/11/08 at about 6:05 P.M. by him. There is no other evidence available on record to show that the death of the deceased was hot taken place in the manner stated and it occurred by way of accident while the truck was being plied. There are no

circumstances available on record to show that the death of the deceased was on account of the accident arising out of use of motor vehicle. In view of the aforesaid, the appeal filed by the appellant is allowed. The award dated 22nd March, 2012 passed by Motor Accident Claims Tribunal against the Insurance Company in MACT Case No. 90/2011 is set aside. However, the respondents shall be at liberty to claim the amount from the owner of the truck under the provisions of Workmen Compensation Act. The amount if any deposited by the appellant shall be refunded to the appellant except for the payment of no fault liability.