(2003) 09 MP CK 0063

In the Madhya Pradesh High Court

Case No : M.A. No. 260 of 2000

Balvir Singh and Another APPELLANT

Vs

Mahendra Kumar and Others RESPONDENT

Date of Decision : 02-09-2003

Acts Referred:
Motor Vehicles Act, 1988 — Section 149(2)

Citation : (2006) 1 ACC 625 : (2005) ACJ 2120

Hon'ble Judges : P.C. Agrawal, J

Bench : Single Bench

Advocate : Mahesh Haswani, for the Appellant; O.P. Mathur and S. Gajendragadkar, for the Respondent

Final Decision : Allowed

Judgement

P.C. Agrawal, J.—The learned Motor Accidents Claims Tribunal awarded in all Rs. 36,734.05 with interest at the rate of 10 per cent in favour of respondent Nos. 1 to 3 against the appellants exonerating insurance company, respondent No. 4. Ground taken by the learned Tribunal has been that the motor bus in question was insured as a contract carriage for tours while the same was being used as regular stage carriage and, thus, permit conditions were contravened. He has relied upon Ashok Kumar Agrawal v. Om Prakash 2000 ACJ 445 (MP), in which case though a jeep registered and insured as a private car was being used as a taxi car and the insurance company was exonerated from the liability.

2. The respondent insurance company has relied upon Section 149(2)(a)(i)(c) of the Motor Vehicles Act, which reads as follows:

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:

xxx xxx xxx (c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

It is argued that a vehicle insured as a contract carriage for tours could not have been plied as a regular stage carriage and this being a breach of permit condition the insurance company was rightly exonerated. However, it is noteworthy that neither the insurance policy nor the permit was filed before the Claims Tribunal. However, the appellants have submitted a photocopy of insurance policy and a certificate for payment of tax under Madhya Pradesh Motor Yan Karadhan Adhiniyam, 1995. In the insurance policy the limitations as to use are expressed in these words:

Use only for carriage of passengers in accordance with the permit (contract carriage or stage carriage) issued within the meaning of the Motor Vehicles Act, 1988.

A certificate for payment of tax refers the vehicle as a passenger bus. Amount of Rs. 600 per seat has been paid. There is no such reference in this certificate that the motor bus had to be plied either as a contract carriage for conduct of tour or as a stage carriage. In absence of any evidence on the point the insurance company could not have been exonerated and the appeal merits to be allowed.

3. The advocate for the appellants has relied upon B.V. Nagaraju Vs. M/s. Oriental Insurance Co. Ltd., Divisional Officer, Hassan, , National Insurance Co. Ltd. v. Anjana Shyam 2000 ACJ 1585 (HP) and Radhey Shyam Agarwal v. Gayatri Devi 1998 ACJ 1177 (MP). However, these are the cases in which overloading of the vehicle was not held to be a fundamental breach of the permit conditions. National Insurance Co. Ltd. v. Uma Devi 2000 ACJ 1451 (MP), was a case in which truck was used for carrying passengers. The goods vehicles were allowed to carry passengers according to the rules. The presence of owner when the passengers had mounted the vehicle or permitted them to travel could not be proved and no breach of permit conditions by the owner of vehicle was held proved. Such is certainly not the case here. Actually, in the present case permit conditions are not proved. Thus, it cannot be said that there has been any breach of permit condition. In these facts, United India Insurance Company Limited, Bangalore Vs. Chandamma and Others, , the judgment of Division Bench of Karnataka High Court did help the appellants to this extent only that the insurance company has to prove the defences available to it.

4. Certainly, Ashok Kumar Agrawal v. Om Prakash 2000 ACJ 445 (MP), is clearly distinguishable on facts from the present case. That was the case of private jeep plied as taxi. Here a passenger bus has been plied as a passenger bus. Such passenger bus had to carry the passengers on payment of fare only.

5. Thus, the appeal is allowed. Oriental Insurance Co. Ltd. (R 4) shall indemnify the appellant Nos. 1 and 2, against whom the impugned award has been given. They shall also be joint judgment-debtors with the appellants and shall be liable to pay Rs. 36,734.05 with interest at the rate of 10 per cent per annum from 18.1.1996 and costs of litigation to respondent Nos. 1 to 3. Costs of the appellants shall be borne by respondent No. 4. The amount deposited by the

appellants shall be refunded to them on respondent No. 4''s depositing the amount of award.