
(2004) 08 MP CK 0082
In the Madhya Pradesh High Court
Case No : M.A. No. 1004 of 2002

Bharti	Vs	APPELLANT
Gujubai and Others		RESPONDENT

Date of Decision : 03-08-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2), 173

Citation : (2006) ACJ 189

Hon'ble Judges : S.K. Kulshrestha, J;Rajeev Gupta, J

Bench : Division Bench

Advocate : Aditya Sanghi, for the Appellant; Sanjeev Mishra and Rakesh Jain, for the Respondent

Final Decision : Allowed

Judgement

Rajeev Gupta and S.K. Kulshrestha, JJ.—Since this appeal involves a short question, matter was finally heard.

2. This appeal by the owner of the vehicle involved in the accident u/s 173 of Motor Vehicles Act, 1988, assails the validity and propriety of the award dated 22.3.2002 passed by Motor Accidents Claims Tribunal, Umaria in Claim Case No. 54 of 2000 by which, exonerating the insurance company, compensation of Rs. 1,85,000 has been awarded to the respondents-claimants against appellantinsured.

3. The grievance of the learned counsel for the appellant is twofold, namely, (1) the Tribunal ought not to have proceeded exparte against the owner without satisfying itself that summon of the Tribunal had duly been served; and (2) the insurance company could not have been exonerated since it was not a case that vehicle was being driven by person without licence but only a case where it was alleged that the licence was fake with no evidence to suggest that the owner had any knowledge about the defect in the licence.

4. The learned counsel for the appellant has anchored his contention with regard

to the liability of the insurance company on the decision of the Apex Court in United India Insurance Company Ltd. Vs. Lehu and Others, and for the purpose of the defect in service of notice of the Tribunal, he has placed reliance on the decision in Sushil Kumar Sabharwal Vs. Gurpreet Singh and Others, .

5. Taking the first contention first, we have examined the record and we find that there is an acknowledgment of the appellant owner about the receipt of the registered A.D. post under which the notices were sent to the appellant. Nothing has been placed on record to suggest that the signatures on the acknowledgment are of a different person. In view of this factual position, we are not inclined to accept the contention of the learned counsel that the summon/notice of the proceedings was not received by the appellant.

6. Now coming to the second contention, learned counsel submits that liability of the insurance company towards third party does not get absolved or extinguished merely on the ground that the licence was fake but the insurance company has to place material to impute knowledge to the owner with regard to the defect in the licence. Para 17 of the report in which the observations are contained, reads as under:

(17) When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that insurance companies expect owners to make enquiries with R.T.O.'s, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus, where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii). The insurance company would not then be absolved of its liability. If it ultimately turns out that the licence was fake the insurance company would continue to remain liable unless they prove that the owner-insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly even in such a case the insurance company would remain liable to the innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in Skandia's case 1987 ACJ 411 (SC); Sohan Lal Passi Vs. P. Sesh Reddy and others, and New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., . We are in full agreement with the views expressed therein and see no reason to take a different view.

From the above decision, it is clear that where the owner has satisfied himself that the driver has a licence, there would be no case of breach of Section 149(2)(a)(ii) and in such a situation the insurance company would not be absolved of liability. Eventually, if the licence turns out to be fake, the insurance company would continue to remain liable unless it proves that the owner (insured) was aware or had notice that the licence was fake and still he permitted the driver to

drive the vehicle. In the present case, there is no finding that the owner knew about the defect in licence. Under these circumstances, the insurance company could not have been absolved of the liability to pay compensation to third party. However, the insurance company does not even in such a situation, forfeit its right to recover the amount from the owner by establishing before proper forum that the owner knew about the defect in the licence and still permitted the driver to drive the vehicle.

7. In the present, we modify the award only to the extent that in addition to the parties directed to pay the amount of award, the insurance company, respondent No. 7, shall also be liable, severally and collectively, to satisfy the award of the Tribunal subject to the condition that the insurance company will be at liberty to establish in an appropriate proceeding that the owner knew about the defect in the licence and to recover the amount paid to the claimants.

8. The appellant owner shall, however, be not entitled to recover the amount deposited towards satisfaction of the award or towards the no fault liability from the claimants.

9. This appeal is, thus, disposed of with no order as to costs.