
(2011) 01 MP CK 0053
In the Madhya Pradesh High Court
Case No : M.A. No. 889 of 2010

Bhupati Dwivedi

APPELLANT

Vs

The Oriental Insurance Company and Another

RESPONDENT

Date of Decision : 21-01-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33
Motor Vehicles Act, 1988 — Section 173(1)
Penal Code, 1860 (IPC) — Section 279, 338

Citation : (2011) 01 MP CK 0053

Hon'ble Judges : U.C Maheshwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

U.C. Maheshwari, J.—The Appellant, registered owner of the offending vehicle has preferred this appeal u/s 173(1) of the Motor Vehicle Act, 1988 (in short the Act) being aggrieved by the award dated 9.12.2009 passed by the Addl. Motor Accident Claims Tribunal (Fast Tract) Umaria in Claim Case No. 75/09 whereby exonerating the Respondent No. 1/insurer, the claim of the Respondent No. 2 with respect of the injuries sustained by him in the alleged vehicular accident has been awarded against the Appellant for the sum of Rs. ,105,000/-along with the interest at the rate of 7% P.A from the date of the award.

2. The facts giving rise to this appeal in short are that on 21.8.04 at about 5 O" Clock in the evening when the Respondent No. 2, after answering the call of nature, was returning to his home in village Akhrad, on the way he was dashed by the offending Jeep bearing registration No. MP 54-D-177 driven by the Appellant in a rash and negligent manner, resultantly, he sustained various injuries on his person. He was taken to the hospital Katni and thereafter shifted to Jabalpur in Jamdar Hospital where subsequent treatment was taken by him. In such accident, besides the other injuries, he sustained some fracture of Tibia Febula bone in the left leg whereby, as per the available record and the findings

of the tribunal, he sustained 40% permanent disability. The vehicle was registered in the name of the Appellant while the same was insured with Respondent No. 1. With these averments, the Respondent No. 2 has preferred his claim before the tribunal for the sum of Rs. 17,77,700/-against the Appellant and Respondent No. 1 with a prayer to saddle the liability to indemnify the same against the Appellant and Respondent No. 1 jointly and severally.

3. In reply of the Appellant, by denying the facts stated in the petition, relating to the alleged accident, it is stated that Respondent No. 2 himself was riding his bicycle in rash and negligent manner consequently he fell down and sustained the alleged injury with some stone and subsequently he demanded the money for his treatment from the Appellant. When the Appellant denied to give the same then by fabricating the false story, a false FIR was lodged against the Appellant vehicle and, in such premises, the prayer for dismissal of the claim is made.

4. In the reply of Respondent No. 1/insurer, by admitting the insurance of the offending vehicle with it, it is stated that the alleged liability to indemnify the claim could not be saddled against it because the alleged vehicle was plied by the Appellant contrary to the terms and conditions of the insurance policy. As per the case of the Insurance Company the vehicle was insured as a private vehicle but at the time of accident it was used for carrying the passengers contrary to the terms of the policy. It is also the case of the insurance company that the Respondent No. 2 claimant was neither riding the bicycle nor was on the road, in fact, he was traveling inside of the Jeep as a fare paid passenger and, in such premises, prayer for exonerating the insurance company to indemnify the alleged compensation is made.

5. In view of the pleadings of the parties, after framing the issues and recording the evidence, on appreciation of the same holding that the Respondent No. 2 was traveling as a fare paid passenger in the alleged offending Jeep contrary to the terms and conditions of the Insurance Policy, by exonerating the Respondent No. 1/insurance company from indemnifying the alleged liability, the award was passed against the Appellant for the sum as mentioned above, on which, the Appellant has come to this Court only with a limited prayer to saddle the liability jointly and severally along with him against the Respondent No. 1/insurer also.

6. Shri Mukesh Agarwal, learned appearing counsel of the Appellant before making his submission, has referred the judgment dated 28.10.2010 passed by the JMFC, Umari in Criminal Case No. 1191/2010 acquitting the Appellant from the charges of Section 279 and 338 of the IPC. It is noted that in the aforesaid criminal case the Appellant was prosecuted with respect of the alleged accident. Such judgment being public document in accordance with the provision of the Evidence Act, could be considered without marking any exhibit hence after taking the same on record, it is held that such document could be considered to decide this appeal also.

7. The Appellant counsel, after referring the pleadings, evidence led by the parties and also the exhibited documents along with the aforesaid judgment acquitting the Appellant said that the tribunal has exonerated the Respondent No. 1 contrary to the papers of the criminal case as well as the deposition of the claimant/Respondent No. 2 and also the other available record. In continuation, by referring the deposition of the claimant Mohd. Shafiq, he said that at any place in the deposition, he did not state anything showing that he was traveling inside of the offending vehicle but, contrary to that, while passing the impugned award, in para-9, the tribunal has stated that Respondent No. 2/claimant has admitted that he was traveling in the offending vehicle after paying fare of Rs. 20/-as a fare paid passenger. According to his submission, the presiding officer of the tribunal has stated such version in the impugned award contrary to the record, only on his whims, without perusing the deposition of Respondent No. 2 or for any other reason best known to him. If such part is excluded from the impugned award then in view of the available evidence and the papers along with the judgment of the aforesaid criminal case, having requisite information with respect of the alleged accident and the negligence of the Appellant in the alleged accident, this is a fit case to saddle the joint and several liability to indemnify the claim against the Appellant along with Respondent No. 1. With these submission the counsel has prayed to saddle the liability to indemnify the awarded sum against Respondent No. 1/insurer also by allowing this appeal.

8. Although the aforesaid prayer is opposed by the counsel of Respondent No. 1/insurer saying that at the stage of the appeal, the deep appreciation of the evidence is not required and, in such premises, the approach of the tribunal could not be interfered at this stage but in view of the deposition of Respondent No. 2/claimant, on making some query from the court where the claimant has stated he was traveling as a fare paid passenger in the offending vehicle then after perusing such deposition, the insurer counsel fairly conceded that no such statement was made by the claimant in his deposition. He could not point out from which source the averments are made by the tribunal in para-9 stating that the claimant himself has stated that he was traveling as fare paid passenger and in such premises, he prayed to dismiss this appeal.

9. Having heard, keeping in view the arguments advanced by the counsel, I have carefully examined the record along with the impugned award as well as the judgment of the aforesaid criminal case acquitting the Appellant from the alleged criminal case. In the pleadings of the claim petition, the factual story of the incident stated in the judgment of the aforesaid criminal case, the alleged accident was happened due to rash and negligent driving of the above mentioned Jeep by the Appellant. As per further averments of the same, at the time of the accident, the Respondent No. 2claimant after answering the call of nature was returning to his home and, in such premises, it could not be deemed that he was inside of the offending vehicle. After going through the deposition of Mohd. Shafiq Respondent No. 2, I have not found the single line showing that he was traveling as a fare paid passenger in the offending Jeep driven by the Appellant

in a rash and negligent manner. But it appears that only in order to exonerate the Insurance Company, for the reasons best known to the presiding officer of the tribunal, without any foundation, some averments are made in para-9 of the impugned award with the name of Respondent No. 2/claimant that he has stated such thing and, in such premises, the insurance company Respondent No. 1 has been exonerated. Thus, in the available circumstances, in the lack of any evidence, showing that Respondent No. 2 was traveling inside of the Jeep as fare paid passenger contrary to the terms and condition of the insurance policy, it could not be said that the Appellant has plied the aforesaid vehicle under violation of any terms of the insurance policy. So, in such premises, it is held that the alleged accident was the cause and consequence of the rash and negligent driving of the aforesaid offending vehicle by the Appellant in which the Respondent No. 2 sustained the alleged injuries and, in such premises, there was sufficient circumstance before the tribunal to pass the award of compensation against the Appellant and Respondent No. 1 by saddling their joint and several liability to indemnify the same. But the tribunal has committed error in exonerating the insurer to indemnify such liability.

10. In the aforesaid premises, this appeal is allowed and the liability to indemnify the awarded sum by the tribunal is saddled jointly and severally against the Appellant and Respondent No. 1/insurer. By invoking the provision of Order 41 Rule 33 of the CPC, I deem fit to award the interest on the awarded sum from the date of filing the claim petition to the claimant instead from the date of the impugned award. Such direction is being given keeping in view the settled preposition of the law in this regard that if there is no delay on the part of the claimant then the interest on the awarded sum should be awarded from the date of filing the claim petition.

11. In the facts and circumstances of the case, there shall be no order as to the cost. Till this extent, the impugned award of the tribunal is hereby modified while the other findings of the same are hereby affirmed.