
(1980) 04 MP CK 0025
In the Madhya Pradesh High Court
Case No : M.F.A. No. 275 of 1973

Chandralekha and Others

APPELLANT

Vs

Anantram Pandey and Others

RESPONDENT

Date of Decision : 21-04-1980

Acts Referred:

Citation : (1982) ACJ 405

Hon'ble Judges : M.L. Malik, J;J.S. Verma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.L. Malik, J.—This order shall be read as order in Miscellaneous (First) Appeal Nos. 241 Bhagwandas Jindal v. Chandralekha and Ors. 242 Bhagwandas Jindal v. Anantram Pandey and two others) all of 1973.

2. In a motor accident which took place on 30.9.1966, on National Highway No. 26, two miles this side of Narsinghpur, Ayodhya Prasad Verma died at the spot and Jugal Kishore Rai died five days after in the hospital. Ayodhya Prasad's widow and children filed a claim petition on 21.11.1966, which was renumbered as claim case No. 6 of 1970. The Motor Accidents Claims Tribunal, Narsinghpur, made an award of Rs. 24,684/- with interest at 3% per annum and held Bhagwandas Jindal and Durga Prasad jointly and severally liable. The Tribunal found that Bhagwandas Jindal was the owner, in control of the vehicle then and Durga Prasad was his driver.

Jugal Kishore Rai's widow and children preferred a claim petition renumbered as claim case No. 5 of 1970 and an award made in their favour is for Rs. 11,187.61 with interest at 3% per annum.

Jindal has come up in appeal against the two awards. His appeals are numbered as Miscellaneous Appeals Nos. 241 and 242 both of 1973.

The three appeals are being disposed of by this common order.

3. Admittedly, the vehicle involved in the accident was jeep No. MPJ 9245, which was carrying Jindal, Ayodhya Prasad, Jugal Kishore Rai, Shyamlal Rai, Anirudh Singh and a few others. Durga Prasad was at the wheel. This has been stated by Shyamlal Rai (A.W.2) and Anirudh Singh (A.W.15). Durga Prasad also admitted that he was driving the vehicle at the relevant time. In his written statement, he had tried to attribute the accident to Jindal by saying that Jindal was holding the steering wheel despite his protests since he wanted to learn driving. But from the witness-box he made it clear that he was at the driver's seat and the accident occurred all too suddenly. He could not say how the vehicle turned turtle- The plea taken was that the jeep over-turned due to tyre-burst. This was also given up. Under the circumstances the Maxim *res ipsa loquitur* squarely applied. A vehicle would not normally over turn unless there was excessive speed and the brakes were suddenly applied or some such cause attributable to the negligence of the driver. The finding as to driver's negligence and that at the relevant time Durga Prasad was at the driving wheel, could not be seriously assailed.

4. The Tribunal also rightly held that the insurance company could not be made liable under the policy which stood in the name of Bhagat Singh. Bhagat Singh had transferred the vehicle without intimation to the insurer. The vehicle came in possession of Dr. Belapurkar who got the registration transferred in his favour. The insurance policy continued in the name of Bhagat Singh. Dr. Belapurkar transferred the vehicle to Anantram Pandey vide receipt Exh. P-8 for a consideration of Rs. 9,000/-. The real controversy is whether the vehicle was purchased by Jindal and Poonam Chand Kothari or by Anantram Pandey. The second disputed point is whether Durga Prasad was engaged as a driver by Anantram Pandey or by Jindal and even if by Anantram Pandey, was he under the control of his master when the accident occurred or was he lent to Jindal under an arrangement that so long he did Jindal's work, he would be in his exclusive control and would become on ad hoc his servant.

5. The evidence material for the decision of this controversy is the testimony of Anantram Pandey, Dr. Belapurkar and driver Durga Prasad. Dr. Belapurkar has affirmed that Anantram Pandey had purchased the vehicle from him for Rs. 9,000/- and it was Pandey who had paid him entire consideration. He had delivered possession of the vehicle to Anantram Pandey. Dr. Belapurkar asserted that he had no talks with Jindal and Kothari. He meant thereby that he had talks with Anantram Pandey alone. Dr. Belapurkar, as the deposition sheet indicated, is an old man of 73. It appears, he got confused in the cross-examination and said that he had no talks with Anantram Pandey either. Obviously, the witness had not understood the question or some error crept in noting down the answer. Be that as it may, the receipt Exh. P-8 passed by Anantram Pandey clinches the issue. He was the purchaser of the vehicle. On the basis of this receipt, he got the vehicle released in his favour from the criminal Court. The registration papers and the insurance policy were seized from Anantram's possession by the police so also a spare wheel. Had he not been a purchaser, these papers could not be found in his possession.

6. Anantram Pandey gave an incredible explanation for this. He said that Dr. Belapurkar induced him to pass an anti-dated receipt Exh. P-8 and claim on its basis possession of the vehicle, otherwise he was going to lose both the vehicle and Rs. 6,000/- which he had advanced to Jindal and Kothari. Anantram Pandey said that the jeep was needed for election propoganda by Jindal and Kothari. They had with them Rs. 3,000/- and they wanted him to contribute Rs. 6,000/-. They averred that after the elections the jeep would be his property for the amount of Rs. 6,000/- that he would advance. But so long the elections were not over, the jeep would be used by them for election campaign. According to Pandey, he paid Rs. 6,000/- but the jeep remained with Jindal and Kothari. He was to become owner after the elections.

The accident took place in the meantime.

7. Jindal, unfortunately, has not entered the witness box. But from Pandey's own evidence, it is clear that he had contributed major part of the consideration and therefore, the jeep was purchased in his name. Exh. P-8 is an admission on his part. It is difficult to believe that he had readily agreed to play fraud on the court to get the vehicle released. It is further inconceivable that the police would join hands with Belapurkar and though the registration and the spare wheel were seized from Belapurkar, they would prepare seizure memos as if they were seized from Anantram Pandey.

8. The evidence, reasonably appraised, leads us to a conclusion that Jindal, Kothari and Anantram Pandey had jointly purchased the vehicle from Dr. Belapurkar, the first two contributing Rs. 3,000/- and Pandey contributing Rs. 6,000/-. All of them belonged to Jansangh Party; interested in the election campaign and the vehicle Was needed for that purpose to be with Jindal, Kothari and Anantram Pandey and they were co-owners of the vehicle, is the legitimate inference from the fact that they contributed towards the purchase price. It is nobody's case that Jindal and Kothari had paid Rs. 3,000/- towards hire charges and the vehicle belonged to Pandey alone.

9. Durga Prasad's testimony is again of vital relevance. He says that he was engaged as a driver by Anantram Pandey. Anantram Pandey used to go in this jeep to see his patients. Only a day earlier, Anantram Pandey, Jindal and others were taken to Dungi Dhana. When they returned in the evening, Anantram Pandey told him that he would be carrying Jindal and his friends to Dungi Dhana the next morning. Anantram did not accompany but the jeep carried Jindal and others at the instructions of the master. While on way back, the accident occurred.

10. We see nothing in the cross-examination of this witness to discredit him. The conclusion, therefore, is irresistible that the jeep was on the business of his master. Anantram Pandey was equally interested in the election campaign. Even otherwise, the vehicle had carried Jindal and others on his instructions. The master had not divested himself of the control. The doing of an act, that is taking

Jindal and others to Dungi Dhana and bringing them back, was in Pandey's control, in the sense that it was he who had instructed the driver to do that job. It happened that the inferior master Jindal was also present in the vehicle and he could as well control the driver's activities. It is a clear case, where both the owners should have been made liable for the tort committed by the servant. Jindal could not be absolved of the liability since he was one of the co-owners and the vehicle was going on a business common to him and Anantram Pandey, everyone being interested in the election propaganda.

11. On quantum of compensation, we are not inclined to interfere with the figure. The yearly dependency of Ayodhya Prasad's heirs is worked out at Rs. 2,244/- by the Tribunal. The award is made for Rs. 24,684/-. If this amount is properly invested, the income by interest can reasonably be expected at the figure, of dependency. It works out to less than 10% per annum.

12. In the result, therefore, we maintain the two awards made in favour of Ayodhya Prasad's heirs and Jugal Kishore's heirs with this modification that Anantram Pandey would also be jointly and severally liable. The appeal for enhancement of compensation is dismissed.

Costs of the appeal shall be borne as incurred.