

(1996) 01 MP CK 0115
In the Madhya Pradesh High Court
Case No : M.A. No. 103 of 1992

Chatur Rao

APPELLANT

Vs

Manthu and Others

RESPONDENT

Date of Decision : 19-01-1996

Acts Referred:

Motor Vehicles Act, 1939 — Section 110D, 92A, 95(2)(c)

Citation : (1996) ACJ 711

Hon'ble Judges : Sreesh Chandra Pandey, J

Bench : Single Bench

Advocate : S.K. Gangrode and Virendra Verma, for the Appellant; Gulab Sohane, for the Respondent

Final Decision : Allowed

Judgement

S.C. Pandey, J.—This is an appeal against the award dated 4.10.1991 passed by Motor Accidents Claims Tribunal, Betul, in Motor Accident Claim Case No. 11 of 1988 u/s 110-D of the Motor Vehicles Act, 1939. The Claims Tribunal has awarded in favour of respondent Nos. 1 to 4 an award of Rs. 30,800/- with interest from 13.6.1988 at the rate of 12 per cent per annum. This award has been passed against the appellant, who is the owner and driver of the tractor-trolley registered as MKV 9785. The Claims Tribunal has declined to grant any amount against the respondent No. 5, the Oriental Fire and General Insurance Co. Ltd.

2. It is not in dispute that the appellant was owner and driver of tractor No. MKV 9785. The tractor and trolley was insured with the respondent No. 5. The insurance was for agricultural purposes. It is alleged that on 10.4.1988, the deceased Jhamla Bai and other labourers were going in the tractor-trolley towards the Tapti river for bringing sand for the purpose of constructing a well. The tractor-trolley was being driven rashly and negligently by the appellant. As a result of rash and negligent driving on the part of the appellant, the tractor-trolley turned turtle and Jhamla Bai, wife of respondent No. 1, Manthu, died on

account of the accident. At the relevant time, Jhamla Bai was aged about 30 years and she used to earn Rs. 15/- per day. In view of the death of wife of respondent No. 1, the respondent Nos. 1 to 4 claimed compensation worth Rs. 1,10,000 against the appellant and the respondent No. 5.

3. The appellant denied the claim of respondent Nos. 1 to 4 in totality. It was his case that he was not rash and negligent. He also claims, by way of amendment, that the tractor-trolley was being taken to Tapti river for bringing sand for repairing the agricultural well which had sunk. In Other words, by way of amendment the appellant pleaded that the tractor-trolley was being used for agricultural purposes.

4. The case of the respondent No. 5 was that the tractor-trolley No. MKV 9785 was not used for agricultural purposes. It was used for bringing sand and for this reason the respondent No. 5 claimed that it should not be liable to compensate the respondent Nos. 1 to 4 along with the appellant. It was also claimed that the tractor was being driven by a person who was not holding a licence.

5. It is not disputed by the Counsel for the appellant that the Claims Tribunal has wrongly assessed the compensation amounting to Rs. 30,800/- in respect of death of Jhamla Bai. However, the only point that has been raised in this appeal by the Counsel for the appellant is that the respondent No. 5 is also jointly and severally liable to pay the compensation to the respondent Nos. 1 to 4. In view of the policy (Exh. D-1), it was contended by the Counsel for the appellant that there is evidence on record that the tractor-trolley was being driven by the appellant and purpose for which the tractor-trolley was being driven was agriculture. The appellant, who was examined as witness, has said in para 1 of his evidence that he was going to Tapti river for bringing sand in order to repair his agricultural well. The evidence of Manthu, NAW 1, showed that his wife used to work as a labourer with the appellant. It is also not in dispute that the appellant had a field where he used to perform agricultural operation. This evidence of Manthu, AW 1, has not been challenged by the Counsel for the parties. It is true that NAW 1, the appellant, has said that for repairing of his well his brother had purchased cement from the shop of Takandas. The respondent No. 5 has also examined Murlidhar, son of Takandas, who has said in para 2 of his evidence that no cement was purchased from his shop by Balaji, brother of the appellant Chatur Rao. However, Murlidhar did not produce the bill book in the court of law and he was unable to say whether somebody else had purchased the cement in the name of the appellant. He admitted in his cross-examination that there is a possibility that a bill in the wrong name might have been issued from his shop. Since the matter was eight years old when he gave his evidence, his evidence is of no value. It is impossible to remember for any person after eight years that who had purchased cement from his shop. In view of the situation, the evidence of the appellant cannot be brushed aside, as was done by the Claims Tribunal, merely because an amendment application was made subsequently by him. I, therefore, set aside the finding of the Claims Tribunal

that the tractor was not being driven for agricultural purpose. There is sufficient evidence on record to come to the conclusion that the tractor was being driven for bringing sand for repairing the agricultural well of the appellant and this act of the appellant would amount to use of tractor for the purpose of agricultural operations. The respondent No. 5 has not led any evidence to the effect that it was the business of the appellant to carry sand on hire and, therefore, the aforesaid conclusion is affirmed.

6. Now the only question is whether the respondent No. 5 would be jointly and severally liable to pay compensation to the respondent Nos. 1 to 4 along with the appellant. It is sought to be urged by the Counsel for the respondent No. 5 that the company would not be liable because there was breach of terms of the policy. It is sought to be urged that a labourer travelling in a tractor-trolley is not covered by the policy. The contention is liable to be rejected in view of the provision u/s 95(2)(c) of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act"). Section 95(2)(c) of the Act covers the liability which is not covered by clauses (a) and (b) of Sub-section (2) of Section 95. The language of Clause (c) is comprehensive in nature because it covers all other vehicles of any other class. The accident by the use of tractor-trolley is not covered by Section 95(2)(a) and (b) and, therefore, it is covered by Clause (c) of the Act. The limit of liability is that as would be necessary to meet the requirements of the Act as per policy, Exh. D-1. Section II thereof deals with liability to third persons. The proviso (b) to Section II(i) and (ii) of the policy, Exh. D-1, specifically limits the liability of the insurance company to the extent provided by Sections 92-A and 95 of the Act in case of a person who suffers death or bodily injury during the course of his employment. Therefore, it is wrong to suggest that a labourer travelling in the tractor-trolley would not be covered by the policy. On the other hand, the proviso (b) clarifies the position that the liability to the extent provided u/s 95 would be covered but not more. In view of this situation, the argument that the insurance company is not liable to pay compensation in respect of death or bodily injury to a labourer is not accepted.

7. As a result of the discussion aforesaid, the award of the Claims Tribunal deserves to be modified. The award dated 4.10.1991 of the Claims Tribunal is modified to the extent hereinafter indicated. The appellant and respondent No. 5, Oriental Insurance Co. Ltd., are jointly and severally held liable to pay compensation to respondent Nos. 1 to 4. The appellant and respondent No. 5 shall pay jointly and severally to the respondent Nos. 1 to 4 the amount of Rs. 30,800/- plus interest at the rate of 12 per cent per annum from 13.6.1988. The amount of Rs. 15,000 paid by respondent No. 5 u/s 92-A of the Act shall be adjusted, if it has not been withdrawn by the respondent No. 5 pursuant to order of the Claims Tribunal. The appellant shall be entitled to reimbursement from respondent No. 5 for any amount he might have paid towards the award to respondent Nos. 1 to 4 during the pendency of this appeal.

8. In view of the foregoing discussion, the appeal succeeds and is allowed. The

award of the Tribunal dated 4.10.1991 shall stand modified as indicated in para 7 above. The appellant and respondent No. 5 shall pay to respondent Nos. 1 to 4 the costs awarded by the Tribunal. There shall be no order as to costs of this appeal.