

(2017) 07 MP CK 0038
In the Madhya Pradesh High Court
Case No : 385 of 2009

Dr. Sunil Singh Baghel

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 20-07-2017

Acts Referred:

Citation : (2017) 07 MP CK 0038

Hon'ble Judges : Vivek Agarwal

Bench : Single Bench

Advocate : Shrinivas Gajendragadkar, R.K. Sharma, Arun Sharma

Judgement

1. This Miscellaneous Appeal has been filed by the appellant/ Insurance Company being aggrieved by the award dated 24.02.2009 passed by the Court of Second Additional Judge to First MACT, Gwalior, whereby the Claims Tribunal has directed the Insurance Company to pay the amount of compensation and recover the same from the owner and driver of the vehicle.

2. It is the contention of learned counsel for the appellant that this pay and recover order is incorrect inasmuch as the vehicle was admittedly driven by a minor who was not having a valid driving license and therefore, Insurance Company has no liability to pay the compensation. He has placed reliance on the judgment of the Supreme Court in the case of National Insurance Co. Ltd. Vs. Swaran Singh & Others as reported in 2004 ACJ 1 and has relied on Para-77 of the judgment, wherein it has been held that the owner of a motor vehicle in terms of Section 5 of the Act is responsible to see that no vehicle is driven by a person who does not satisfy the provisions of Section 3 or 4 of the Act. In a case, therefore, where the driver of the vehicle admittedly did not hold any license and the same was allowed consciously to be driven by the owner of the vehicle by such person, the insurer is entitled to succeed in it's defence and avoid liability. Thus, placing reliance on such proposition, he submits that the order for pay and recover suffers from infirmity and deserves to be set-aside. He has also placed reliance on the judgment of the Supreme Court in the case of United India

Insurance Co. Ltd. Vs. Rakesh Kumar Arora & Others as reported in 2008 ACJ 2855.

3. Learned counsel for respondents No.6 and 7, on the other hand has placed reliance on this very judgment i.e. of Swaran Singh and referring to Para- 102(iii) submits that the breach of policy conditions, i.e. disqualification of driver or invalid driving license of the driver, as contained in Sub-section (2)(a)(ii) of Section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving license or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid it's liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

4. He has also placed reliance on the judgment of the Supreme Court in the case of Lal Singh Marabi Vs. National Insurance Co. Ltd. & Others as reported in 2017 ACJ 1362, wherein the Supreme Court had refused to disturb the order of pay and recover. He has also placed reliance on the judgment of the Supreme Court in the case of Jawahar Singh Vs. Bala Jain & Others as reported in 2011(3) TAC 12 (SC) and submits that in that case also the Insurance Company was not exonerated. He further submits that in fact DW/2- Dinesh Sharma owner of the insured vehicle had categorically deposed before the Tribunal that his motorcycle was taken by his son, namely- Ravindra and he was having a license to drive the motorcycle and if Ravindra had allowed somebody else i.e. Amit Bhargava unauthorizedly, then it cannot be said that there was concurrence of the owner of the motorcycle i.e. Dinesh Sharma to permit Amit Bhargava to drive such motorcycle and therefore, the provisions laid-down in Para-77 of the judgment in the case of Swaran Singh (supra) shall be read in toto and cannot be applied in isolation. He has further placed reliance on Ex.-D/1, which is a Naksha-E-Mauka to show that the driver of the motorcycle was coming on it's own side from Tighra, whereas the other party which suffered grievous hurt, was coming on the wrong side and therefore, he tried to invoke the principle of contributory negligence.

5. Learned counsel for respondents No.1 to 5, on the other hand submits that there is no question of any contributory negligence and claimants have been rightly compensated by the Claims Tribunal. He supports the award and further submits that the order of pay and recover is not only humanitarian but is also just and correct under the circumstances inasmuch as family of the deceased is in urgent need of help and Insurance Company can always recover the amount from the driver and owner of the offending vehicle.

6. A close look at second part of Para-77 of the judgment rendered by the Supreme Court in the case of Swaran Singh (Supra) reveals that it has been held that the matter, however, may be different where a disputed question of fact

arises as to whether the driver had a valid license or where the owner of the vehicle committed a breach of the terms of the contract of insurance as also the provisions of the Act by consciously allowing any person to drive a vehicle who did not have a valid driving license. In a given case, the driver of the vehicle may not have any hand at all, e.g., a case where an accident takes place owing to a mechanical fault or vis major.

7. In the present case, it is evident from the evidence of DW/2- Dinesh Sharma that his defence was that his vehicle was taken by his son who was authorized to drive the said vehicle and therefore, there was no nexus between him and the driver the vehicle inasmuch as if Ravindra had lent his vehicle to the driver of the vehicle i.e. Amit Bhargava, then he cannot be held responsible for such transfer of vehicle and it cannot be said that the owner of the vehicle committed a breach of the terms of the contract to insurance by deliberately permitting a minor to drive the vehicle without having a proper license.

8. In view of such decision of the Supreme Court in the case of Swaran Singh (Supra), it is admitted that in the present case, the Insurance Company was required to prove beyond doubt that the owner of the vehicle had direct nexus and concurrence for driving of his insured vehicle in the hands of the driver- Amit Bhargava, who was admittedly a minor and was not having any driving license. Therefore, in view of the aforesaid evidence on record, this Court is of the opinion that Swaran Singh's judgment will not create any equitable right in favour of the Insurance Company to avoid the order of the Claims Tribunal to pay and recover, therefore, this Court is of the opinion that there is no shortcoming or imperfection or illegality in the impugned order calling for interference, thus, the appeal fails and is dismissed.