
(2001) 03 MP CK 0079
In the Madhya Pradesh High Court
Case No : Miscellaneous Appeal No. 1458/97

Hamid Khan

APPELLANT

Vs

Smt. Guddibai and Others

RESPONDENT

Date of Decision : 08-03-2001

Acts Referred:

Citation : (2001) 5 MPHT 558

Hon'ble Judges : Bhawani Singh, C.J.;A.K. Mishra, J

Bench : Division Bench

Advocate : Imtiyaz Hussain, for the Appellant; Mamta Billore, for the Respondent No. 7, for the Respondent

Final Decision : Dismissed

Judgement

Bhawani Singh, C.J.—This appeal is directed against the award dated 30th September 1997 of Motor Accident Claims Tribunal, Hoshangabad in Claims Case No. 67 of 1995.

2. Accident took place on 18-2-1995 when deceased Suresh Ahirwar was travelling in Jeep No. MP 05/7211 which met with accident resulting in his death. Allegation is that accident took place due to rash and negligent driving of the Jeep by the driver. It turned turtle resulting in the death of deceased Suresh Ahirwar who has earning Rs. 100.00 per day.

3. Defence taken is that vehicle was being driven carefully. Accident took place due to bursting of tyre resulting in death of deceased Suresh Ahirwar. Neither passengers were sitting in it nor it was being driven rashly. Deceased was not going by this vehicle which was insured. The vehicle had been sold prior to the taking place of the accident. Deceased was not earning Rs. 100.00 per day, nor are the claimants entitled to compensation. The jeep was going to Piparia for servicing and deceased was accommodated since he was a known person.

4. Insurance Company has stated that claim for compensation is exaggerated. Vehicle was insured for self use but it was being used against the terms and

conditions of insurance policy. The driver did not possess licence nor transfer of the vehicle was informed. Therefore, the Insurance Company is not liable to pay the compensation.

5. Claims Tribunal has found on evidence that accident took place on 18-2-1995 when Suresh Ahirwar (deceased) was travelling by the Jeep which was being driven rashly and negligently resulting in his death. It was found that Suresh Ahirwar was not earning Rs. 100.00 per day but Rs. 1500.00 per month. The Driver did possess a valid driving licence at the time of accident. It was insured at the time of accident. The Tribunal found that Jeep was being used against the terms and conditions of the insurance policy, therefore, the Insurance Company is not liable to pay compensation. As a result, compensation of Rs. 2,00,000.00 with interest at the rate of 12% per annum has been awarded and made payable by respondent Nos. 5 and 6, apart for the appellant jointly and severally. Appellant Hamid Khan is not satisfied with this award because he has been made liable to pay the compensation with others jointly and severally, exempting the Insurance Company from the liability.

6. The matter has been examined on the basis of evidence on record. Accident has taken place due to the bursting of tyre, cause for which appears to be rash and negligent driving coupled with the fact that number of persons were being carried through it. The finding of the Tribunal is, therefore, confirmed.

7. There is no dispute with respect to the amount of compensation awarded by the Tribunal to the claimants in this case. Only dispute is with respect to liability to pay the same. Shri Imtiyaz Hussain, learned counsel for appellant, contends that the Insurance Company is liable to pay the compensation since the vehicle was insured with it. Learned counsel submits that the deceased was not a fare paying passenger and he refers to the claim application which mentions that the deceased was passenger in this Jeep but does not mention that he paid the fare. Ms. Mamta Billore, learned counsel for Insurance Company submits that award is absolutely correct and based on evidence. The deceased was a fare paying passenger, therefore, the Insurance Company is not liable to pay the compensation. With a view to buttress this submission, Ms. Mamta Billore refers to the statement of Rakesh Kumar (P.W. 1). This witness states that he paid fare not only for himself but also for others including the deceased. Apart from this witness, Santosh Kumar (P.W. 3) also states that the deceased was his real elder brother. At the time of accident, the Jeep was carrying 12-13 passengers from Sohagpur to Shobhapur. They had paid Rs. 5/5 by way of fare. In face of this statement, it is difficult to accept the version of Deepak Singh, the driver of the vehicle that the deceased was his friend, therefore, he made him sit in the vehicle but he has not stated that he did not charge any fare from deceased.

8. In the circumstances, it is absolutely clear that the deceased was travelling in the Jeep as fare paying passenger. That being so, terms and conditions of insurance policy prohibited the owner from doing so. Consequently, the owner of the Jeep and its driver breached the policy conditions by carrying fare paying

passengers in the Jeep, therefore, the Insurance Company is absolved of the liability to pay the compensation. Contention of Shri Imtiyaz Hussain that after the transfer of the vehicle in favour of Smt. Gangabad (respondent 6), the appellant is not liable to pay compensation, is not sustainable since, Hamid Khan is still registered owner of the vehicle and transfer has not been effected in the name of Smt. Gangabad.

9. Consequently, we find no merit in this appeal and the same is dismissed.