

(1993) 09 MP CK 0036
In the Madhya Pradesh High Court

Jagdishchandra

APPELLANT

Vs

Jalam Singh

RESPONDENT

Date of Decision : 14-09-1993

Acts Referred:

Citation : (1994) 1 ACC 459

Hon'ble Judges : R.D. Shukla, J

Bench : Single Bench

Judgement

R.D. Shukla, J.—This order shall dispose of M.A.No. 196/82 and M.A.No. 225/82 (Jalamsingh v. Jagdishchandra and Ors.).

2. Both these appeals arise out of the judgment and award dated 16th April, 1982 of Motor Accident Claims Tribunal, Ujjain whereby the Award of Rs. 10,300/- has been granted in favour of claimant-appellant in appeal No. 196/82 and while exonerating the National Insurance Co. the liability of payment has been saddled on Jalamsingh, owner of the motor-tempo (appellant in Appeal No. 225/82 and respondent No. 1 in appeal No. 196/82).

3. The brief history of the case is that appellant Jagdishchandra filed a claim petition before the Claims Tribunal with the assertions that on 30th March, 1977 the claimant had come to Ujjain. He was going to Bherugarh in motor Tempo No. 3023. It was being driven rashly at an excessive speed and was not slowed despite protest from the claimant. As a result of rash and negligent driving it over-turned. Accident occurred at 12-15 in the day. The claimant sustained injuries on right hand, fingers and on the right knee. There was a fracture of supra condylor of left elbow. The claimant had to remain in hospital and had to special diets and further had to remain out of work for many months.

4. The respondent No. 1 Jalamsingh who has been shown as N.A.2 in the claim petition denied the claim and submitted that the motor tempo was insured with respondent No. 2 National Insurance Co. (which has been shown as N.A. No. 5 in the claim petition) but he had transferred the vehicle by agreement of sale to

one Omprakash and thus, disclaimed the liability of payment.

5. The respondent No. 2 National Insurance Co. also denied the claim and pleaded that the contract was with Jalamsingh and as the vehicle was transferred without the connivance and notice to insurance company and, therefore they are not entitled for making any payments.

6. The claimant actually did not know the name of owner of the vehicle, as such, three other persons Shri Omprakash, Abdul Rashid and Prahlad Singh were also made parties in the case and as the claimant did not know the name of the driver and, therefore, that name was not disclosed.

After hearing the learned Tribunal has awarded Rs. 10000/- compensation as general damages and Rs. 300/- towards the special damages (expenses of treatment) and respondent No. 1 Jalamsingh has been made liable for payment as the transfer was not found proved. Since the name of the driver was not disclosed and it was not known as to whether driver was having a driving licence, the Insurance Co. respondent No. 2 here was also exonerated from the liability of payment. Three persons i.e. Omprakash, Abdul Rashid and Prahladsingh were also exonerated holding it having un-necessarily been made parties in the case.

7. This appeal No. 196/82 has been filed by the claimant for enhancement while appeal No. 225/82 has been filed by Jalamsingh disclaiming the liability of payment.

8. Apart from other grounds raised in the memo of appeal the claimant-appellant Jagdishchandra has urged in paras 4 and 5 of memo of appeal that since he did not know the name of the driver, therefore, he could not show as to whether the driver was having a licence. The Insurance Co., has been exonerated of liability of payment and, therefore, the claimant could not get payments as yet from respondent No. 1 Jalamsingh.

9. It has also been submitted that the general damages have been estimated on the lower-side and that deserves to be enhanced.

10. As against it respondent No. 1 Jalamsingh (appellant in Appeal No. 225/82), has submitted that his plea of transfer of vehicle has been rejected. There was a contract of indemnity between him and National Insurance Co. and therefore, the Insurance Co. was liable to make payments. It was also submitted that it was for the Insurance Co., to have shown that the driver was not having licence.

11. During the course of arguments learned Counsel for the appellant in appeal No. 196/82 submitted that an application for amendment in the pleading (accepting the ownership and disclosing the name of driver) was made by Jalamsingh but that was wrongly rejected and was for this reason that the Insurance Co., has been held not liable for payment. The respondent No. 1 and appellant in appeal No. 255 of 1982 conceded to this submission, However, the Insurance Co., respondent No. 2 in appeal No. 196/82 and respondent No. 6 in appeal No. 225/82 disputed this assertion and submitted that the amendment

was rightly refused as the same was brought nearly 2-1/2 years after the presentation of the petition. I have perused the application dated 7-4-1982 filed by N.A. Jalamsingh and the order of learned Claims Tribunal that was passed the same day.

12. It is not in dispute that the claimant did not know the name of the driver and it was for the owner of the vehicle to disclose it and after this disclosure the liability shifted on the Insurance Co. to show breach of terms if any including driving of the vehicle without licence. In the absence of any breach of terms of contract the Insurance Co. was liable to make payments.

13. In this case Jalamsingh wanted to show at the first instance that there was a transfer of vehicle but the transfer was not taken to be valid in absence of registration and valid documents and, therefore, he ought to have been allowed to disclose the name of the driver. He tried to disclose that by making "an alleged amendment, but that opportunity was refused to him merely on the ground of delay. This was not proper approach. The other parties could be compensated for the delay in the matter and such an important amendment ought not to have been refused for that reason alone. In the opinion of this Court, therefore, that amendment deserves to be allowed with a direction to the Tribunal for deciding the case afresh after giving him (the driver) an opportunity for putting up his case and to the parties also for rebutting the contentions of owner and driver of the vehicle.

14. In view of the discussion above the appeals succeed. The impugned judgment and Award is set-aside. The files are remanded to the Tribunal with a direction that the application dated 7-4-1982 for amendment be allowed subject to cost of Rs. 300/- to claimant and the similar amount to the Insurance Co., and the parties should be allowed to amend after the payment of the cost. If the amendment is effected the driver if made a party be allowed to put up his case and, thereafter, the owner of the vehicle Jalamsingh and Insurance Co. be allowed to rebut it. Other persons i.e. Omprakash, Abdul Rashid and Prahadsingh who have been shown as respondents No. 2, 3 and 4 in appeal No. 225/ 82 need not be noticed as parties before the Tribunal as there is no dispute on that point. That means now the case will proceed between the claimant Jagdishchandra, Jalamsingh owner of the vehicle, the driver, if disclosed, and the Insurance Co; The parties shall appear before the Tribunal on 1-10-93. No further notice would be required. Looking to delay in the case it is further directed that the case be decided by 31st January, 1994. The hearing in the case may be taken-up every week if so required.

The parties shall bear their own cost of these appeals. Counsel fee Rs. 150/- each.