
(2011) 04 MP CK 0066
In the Madhya Pradesh High Court
Case No : M.A. No. 3281 of 2009

Keshar Singh

APPELLANT

Vs

Bhana and others

RESPONDENT

Date of Decision : 21-04-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2012) ACJ 1119

Hon'ble Judges : P.K. Jaiswal, J

Bench : Single Bench

Advocate : Manish Jain, Mr. K. Mandloi and Mr. K.C. Yadav, for the Appellant;
Manoj Jain, for the Respondent

Final Decision : Allowed

Judgement

P.K. Jaiswal, J.—All these appeals involve a common question of law as to whether the insurance company can be held to be liable for payment of compensation to the passengers travelling in a goods vehicle in breach of the terms and conditions of the insurance policy. Since the facts in all these appeals are same, the facts in M.A. No. 3281 of 2009 (Kesharsingh v. Bhana) are referred to in this judgment.

2. Ismail, respondent No. 2, obtained an insurance policy insuring his pickup van loading vehicle (Bajaj Tempo) bearing registration No. MP 46-G 0139, which was registered as loading vehicle with seating capacity of two persons, vehicle was insured with Bajaj Allianz General Insurance Co. Ltd., respondent No. 3, for the period covering 18.3.2007 to 17.3.2008. The said vehicle was insured by policy No. OG-07-2302-1807-00000612.

3. On 26.1.2008 at about 4 p.m. when deceased Jwaharsingh was going with his friends and relatives in the aforesaid pickup van, the driver of the said pickup van was driving the said vehicle very rashly and negligently. The said vehicle turned turtle near village Kathora, as a result of which all the occupants of the

vehicle sustained grievous injuries and the deceased Jwaharsingh too sustained grievous injury. He died during treatment. F.I.R. was lodged by one Jairam, s/o Premsingh Bhilala, on 21.6.2008 at about 1920 hrs in which it is stated that he is a resident of Simlipura Ambada of Police Station Kukshi, District Dhar. He along with his family members, friends and relatives totalling 25 in numbers hired the said vehicle for Rs. 1,300 for going from village Palia and return back to Palia. The driver of the offending vehicle was driving the vehicle very rashly and negligently and, therefore, vehicle turned turtle. Out of 25 passengers 11 sustained injuries. Deceased Jwaharsingh sustained grievous injuries and died during his treatment.

4. Legal heirs of Jwaharsingh had filed a claim petition vide Claim Case No. 76 of 2008 u/s 166 of the Motor Vehicles Act, 1988 against the insurance company, owner and driver of the vehicle for compensation of Rs. 14,00,000. The learned Tribunal after appreciating the evidence on record allowed the claim petition and awarded a sum of Rs. 1,77,000 in favour of claimants against the insurer, owner and driver of the vehicle and held them liable jointly and severally to pay the amount of compensation.

5. M.A. No. 3300 of 2009 has been filed by the insurance company, M.A. No. 3636 of 2009 has been filed by the legal heirs of deceased Jwaharsingh, M.A. No. 3281 of 2009 has been filed by the claimant Kesharsingh, M.A. No. 3296 of 2009 has been filed by the insurance company and M.A. No. 2932 of 2009 has been filed by the injured Sohan for enhancement of compensation.

6. As per insurance policy Rs. 5,580 was paid for third party liability, Rs. 100 was paid towards personal accident cover for owner and driver of vehicle and Rs. 150 was paid for operation/maintenance for 6 persons, who were working as labourers in the said loading vehicle for doing the work of loading and unloading of goods.

7. Claim Case No. 116 of 2008 had been filed by the claimant Kesharsingh for compensation of Rs. 6,00,000. The Claims Tribunal after appreciating the evidence on record came to the conclusion that the permanent disability of the injured Kesharsingh is to the extent of 45.92 per cent and awarded a sum of Rs. 1,25,003 to injured Kesharsingh.

8. Claim Case No. 131 of 2008 had been filed by Sohan Chouhan. The Claims Tribunal vide award dated 12.8.2009 awarded a sum of Rs. 1,000 as compensation to Sohan Singh.

9. It is submitted by learned counsel for the insurance company that the vehicle was insured as commercial goods vehicle and not for hire or reward, but the said vehicle was carrying claimants and other persons on hire and reward basis, which is evident from the F.I.R., Exh. P2, that a fare of Rs. 1,300 was paid, hence, it is clear that vehicle was used for hire and reward, therefore, the insurance company is not liable for compensation due to breach of insurance policy. It is lastly submitted that the vehicle was insured only for third party and

Personal Accident Package Policy. The Tribunal has grossly erred in not considering the fact that the said vehicle was having capacity of two persons, whereas as per F.I.R. about 25 persons were travelling in the said vehicle in violation of the insurance policy. The learned Tribunal committed an error in imposing the liability on the insurance company. It is further submitted that no premium was paid for the persons travelling in the said vehicle, i.e., occupants of the vehicle, whereas as per F.I.R. and other documents, it is clear that deceased and injured were occupants in the said vehicle, the Tribunal committed an error in not exonerating the insurance company from its liability of compensation. It is lastly submitted that a large number of passengers were being carried in the vehicle in violation of the terms of insurance policy, the insurance company would not be liable to pay the amount of compensation.

10. Mr. Manish Jain and Mr. K.C. Yadav, Advocates appearing on behalf of the claimants, supported the award passed by the Claims Tribunal and submitted that as per policy, Rs. 100 was paid for personal accident cover for owner and driver of the vehicle and Rs. 150 was paid for risk of 6 persons. They would contend that the injured Kesharsingh was working as cleaner in the offending vehicle. Deceased Jwaharsingh and injured Sohan were engaged for loading and unloading of the vehicle as labourers by the owner of vehicle and they were being paid their wages. The risks of the deceased and injured are covered by IMT 39, the learned Tribunal rightly held that the insurance company is liable to indemnify the award and at the time of accident there was no breach of terms and conditions of the policy and prayed for dismissal of appeals filed by the insurance company and the cross-objection filed in M.A. No. 2932 of 2009.

11. As per F.I.R., 25 persons were travelling in pickup van bearing registration No. MP 46-G 0139. Jairam, lodger of the F.I.R., was never examined before the Tribunal. Claimant Kesharsingh was working as cleaner in the offending vehicle and his statement was recorded before the Claims Tribunal and as per his statement none of the injured and deceased were travelling as gratuitous passengers in the said vehicle. Kesharsingh was cleaner of the offending vehicle. Contents of F.I.R. have not been proved by examining the lodger of F.I.R. Kesharsingh, legal heirs of the deceased Jwaharsingh and injured Santubai in their statements have very categorically stated that they were travelling in the offending vehicle in the capacity of cleaner and labourer, their risk was covered by paying additional premium of Rs. 150, there was no breach of terms and conditions of the policy and the insurance company has rightly been held liable to pay the amount of compensation.

12. In the case of National Insurance Co. Ltd. Vs. Rattani and Others, the accident took place on 15.5.2002, when deceased Sunil Kumar along with others was travelling in the capacity of barati in a TATA 407 vehicle, which was registered as goods vehicle. The F.I.R. was lodged by one barati and driver of the vehicle was made an accused. The Hon'ble Apex Court held that ordinarily an allegation made in the first information report would not be admissible in

evidence per se but as the allegation made in the first information report had been made a part of the claim petition, there is no doubt whatsoever that Tribunal and consequently the appellate courts would be entitled to look into the same. The F.I.R. as such may or may not be taken into consideration for the purpose of arriving at a finding in regard to the question raised by the appellant herein, but when the first information report itself has been a part of the claim petition, there cannot be any doubt whatsoever that the same can be looked into for the aforementioned purpose.

13. In *Narbada Devi Gupta Vs. Birendra Kumar Jaiswal and Another*, whereupon reliance has been placed, the Hon'ble Apex Court held that contents of documents are not automatically proved only because the same is marked as exhibit.

14. In the case of *Oriental Insurance Co. Ltd. v. Premalata Shukla*, 2007 ACJ 1928 (SC), the Apex Court held that once a part of the contents of the document is admitted in evidence, the party bringing the same on record cannot be permitted to turn round and contend that the other contents contained in the rest part thereof had not been proved. The Supreme Court has further held that the party objecting to the admissibility of a document must raise its objection at the appropriate time. If the objection is not raised and the document is allowed to be marked and that too at the instance of a party which had proved the same and wherefor consent of the other party has been obtained, the former in our opinion cannot be permitted to turn round and raise a contention that the contents of the documents had not been proved and, thus, should not be relied upon.

15. *Kesharsingh*, AW 2, injured, in his statement has deposed that he was working as cleaner in pickup van. He also admitted that the F.I.R. was lodged by *Jairam*, but he disputed the fact that he and other persons were travelling as fare-paying passengers and pickup van was hired for Rs. 1,300. *Daryab Singh*, NAW 1, investigator of the insurance company, and *Ved Vyas Tri-pathi*, NAW 2, in their statements have very categorically admitted that as per insurance policy, risk of 6 labourers of offending vehicle was covered by the said policy.

16. In the case of *Oriental Insurance Co. Ltd. v. Kamli*, 2010 ACJ 1340 (MP), it was clearly mentioned that the deceased *Khema* was travelling in the tractor-trolley and when it was negotiating a culvert, the deceased fell down from the trolley and the rear wheel of trolley ran over the head of the deceased and as a result, deceased died on the spot. The F.I.R. was lodged by *Nansingh*. *Nansingh*, PW 2, in his statement on oath had clearly stated that the deceased was going on foot when he was hit by the tractor-trolley, which came from behind. He denied that the deceased was travelling in the vehicle and stated that he was not aware as to how this fact was mentioned in the F.I.R. The Claims Tribunal, after appreciating the evidence of PW 2, came to the conclusion that there was no breach of the insurance policy as well as of law, and held that the insurance company is liable to indemnify the owner of the offending vehicle by making payment of compensation to the claimants. This court has held that the F.I.R. is

not a substantive piece of evidence and it cannot be placed on a pedestal higher than the statement on oath.

17. In the present case, as per evidence on record injured Kesharsingh was working as cleaner in the offending vehicle while deceased and other injured were working as labourers of the owner of the vehicle and their work is of loading and unloading the goods from the pickup van. None of the witnesses has deposed that the deceased and other injured persons were travelling in the offending vehicle as fare-paying passengers. They have denied the facts mentioned in the F.I.R. Lodger of the F.I.R. has not been examined before the Claims Tribunal. The Claims Tribunal after appreciating the evidence on record has held that the insurer is liable to pay the amount of compensation.

18. In view of the above, I do not find any illegality in the approach of the Claims Tribunal while coming to the conclusion that the deceased along with injured was not travelling in the offending vehicle as a fare-paying passenger. This finding is based on proper appreciation of evidence and, as such, it does not call for any interference by this court. The decisions of the Hon"ble Supreme Court in the case of National Insurance Co. Ltd. Vs. Bommithi Subbhayamma and Others, United India Insurance Co. Ltd. Vs. K.M. Poonam and Others, Oriental Insurance Co. Ltd. v. Premrata Shukla, 2007 ACJ 1928 (SC) and National Insurance Co. Ltd. Vs. Rattani and Others, will not be applicable in the present facts and circumstances of the case. Miscellaneous Appeal Nos. 3296 and 3300 of 2009, filed by the insurer, have no merit and are, accordingly, dismissed.

19. Miscellaneous Appeal No. 3281 of 2009 has been filed by the injured Kesharsingh for enhancement of compensation. It is submitted by the learned counsel for the appellant that at the time of accident the injured was working as cleaner and his salary was Rs. 3,000 per month. Exh. A27 is the salary certificate issued by Ismail, the owner of the vehicle. Ismail, NAW 3, owner of the vehicle, in his statement has deposed that he was paying Rs. 100 per day as wages to the injured, but he denied that he is maintaining any register or document regarding salary of the appellant. Considering the fact that on the date of accident the injured was working as cleaner, it can safely be held that his salary was Rs. 100 per day, i.e., Rs. 3,000 per month. As per para 7 of the impugned award the learned Claims Tribunal assessed the permanent disablement of the injured to the extent of 45.92 per cent, but committed an error in holding that the injured has failed to prove his income and assessed his notional income at the rate of Rs. 15,000 per annum and awarded a sum of Rs. 1,17,096 under the head of permanent disablement. Taking into consideration income of the injured at the rate of Rs. 3,000 per month the amount of compensation is further enhanced to Rs. 1,17,096. The amount awarded by the Claims Tribunal under other conventional heads appears to be just and proper, therefore, no case for any enhancement, as prayed for by the appellant, is made out. Accordingly, the total enhancement comes to Rs. 1,17,096. The enhanced amount shall also carry interest at the rate of 7.5 per cent from the date of application till realization.

20. Miscellaneous Appeal No. 3636 of 2009 has been filed by the legal representatives of the deceased Jwaharsingh. As per statement of Santubai, AW 1, widow of the deceased, her husband was working as labourer in pickup van of Ismail and his work was loading and unloading the vehicle. Mohammad Ismail, NAW 1, owner of the vehicle, in his statement has deposed that he was paying Rs. 70 per day as wages to deceased Jwaharsingh. This witness in para 5 of his cross-examination has further deposed that because he was paying wages on daily basis, therefore, he was not maintaining any record. Considering the evidence of AW 1 and NAW 1 it can safely be held that the deceased was earning around Rs. 2,500 per month, i.e., Rs. 30,000 per annum. After deducting 1/3rd towards his personal and living expenses, the amount of loss of dependency comes to Rs. 20,000 per annum. At the time of death the deceased was 32 years of age, therefore, on applying multiplier of 17, the amount of compensation comes to Rs. 3,40,000. Under other conventional heads the Tribunal has awarded Rs. 7,000, which is on lower side, therefore, on other conventional heads the amount is enhanced to Rs. 25,000. Thus, total compensation comes to Rs. 3,65,000 (Rs. 3,40,000 + Rs. 25,000). After deducting Rs. 1,77,000, as already awarded by the Tribunal, the enhancement comes to Rs. 1,88,000 (Rs. 3,65,000 - Rs. 1,77,000). The enhanced amount shall also carry interest at the rate of 7.5 per cent from the date of application till realization.

21. Miscellaneous Appeal No. 2932 of 2009 has been filed by injured Sohan. As per material available on record it is a case of simple injury. Looking to the nature of injury of the appellant a sum of Rs. 1,000 has been awarded by the Claims Tribunal. Taking into consideration the nature of injury sustained by appellant the amount of compensation is further enhanced to Rs. 3,000. The enhanced amount shall also carry interest at the rate of 7.5 per cent from the date of application till realization. Consequently, the cross-objection filed by the respondent insurance company stands dismissed. In the result, Miscellaneous Appeal Nos. 3296 and 3300 of 2009, filed by the insurance company, are dismissed while Miscellaneous Appeal Nos. 3281, 3636 and 2932 of 2009 are allowed in part and to the extent indicated above. In the facts and circumstances of the case the parties are directed to bear their own costs.