(2016) 08 MP CK 0061

In the Madhya Pradesh High Court

Case No : M.A. No. 3129 of 2005

Mangilal APPELLANT

Vs

Baldev Singh RESPONDENT

Date of Decision : 31-08-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 147, Section 149

Citation : (2017) AAC 275

Hon'ble Judges : Shri Justice Alok Verma, J.

Bench : Single Bench

Advocate : Shri V.S. Chouhan, Learned Counsel, for the Applicant; Shri Bhaskar Agrawal, Learned Counsel, for the Respondent No. 3

Final Decision : Disposed Off

Judgement

Shri Justice Alok Verma, J.—This Miscellaneous Appeal is directed against the award passed by the learned First Motor Accident Claims Tribunal, Mhow in Claim Case No. 23/2005 dated 30.07.2005 whereby the learned Tribunal allowed the total amount of Rs. 40,000/- against third party property damage, however, the tribunal limited liability of the insurance company to Rs. 6,000/- under the provisions of Section 147 Motor Vehicle Act.

2. It is admitted that offending vehicle truck bearing registration No. PB-12-B-5169 belong to respondent No. 1, who was registered owner of the vehicle. At the time of incident, the respondent No. 2 was driving vehicle and it is further admitted that the vehicle was covered under an insurance policy issued by respondent No. 3.

3. According to the applicant, on 01.04.2001 the applicant/claimant was driving his tractor bearing registration No. MP-09-MA-0413 which was attached to trolley bearing registration No. MP-09-MA-0554. He was driving the vehicle on the left side of the road when the respondent No. 2 brought the offending vehicle truck bearing registration No. MP-PB-12-B- 5169 driving it in rash and negligent

manner and dashed the truck against the tractor and trolley belonging to the applicant. Due to the impact of the accident, the tractor and the trolley turned and fell under a culvert due to which intensive damage was caused to the tractor and the trolley. According to the applicant, he spent about Rs. 85,000/- to get the tractor and the trolley repaired. The applicant filed this claim application to recover the amount from insurance company of the offending vehicle.

4. In reply, the insurance company denied all the facts stated in the application and stated that the applicant is also liable for contributory negligence. It was brought that the present applicant was not entitled to any claim.

5. The learned Tribunal allowed the application in part and held that the incident took place due to the negligence of respondent No. 2. It was also held that the tractor and the trolley suffered extensive damages in the accident and further held that the applicant is entitled to receive Rs. 40,000/- against the third party property damage from the non-applicants. However, the liability of insurance company/respondent No. 3 was limited to Rs. 6,000/- under the provisions of Section 147 Motor Vehicle Act.

6. This appeal is filed by the applicant mainly on the ground and against the finding given by the learned Tribunal that respondent No. 3 is only liable upto the extent of Rs. 6,000/-.

7. Before the Tribunal, applicant was examined as AW-1. Jivan Singh examined as eye witness, Maansingh was driving the tractor at the time of incident. No evidence is produced by the insurance company.

8. The copy of the insurance policy is on record, though it was not exhibited in the evidence still as insurance is admitted by the respondent No. 3 it may be taken into consideration. In the cover note of the policy the premium of Rs. 75/- was made against the third party property damage (TPPD). The policy is silent about the extent of liability of the insurance company against the third party property damage. The burden was on the insurance company to prove that even after paying additional premium by the owner of the vehicle, their liability is limited and the amount to which the liability is limited, no such evidence is produced by the insurance company, and therefore, the Tribunal erred while not fixing the liability on the insurance company for payment of entire amount of compensation. Accordingly, this appeal deserves to be allowed.

9. As a result, the appeal is allowed. The portion of award that limited liability of the insurance company to Rs. 6,000/- is set aside. It is directed that the insurance company is allowed to pay entire amount of Rs. 40,000/- to the respondents. The remaining portion of the award is hereby confirmed.

10. Parties to bear their own costs. The counsels fee is assessed @ Rs. 12,000/- is set aside. The appeal stands disposed of.