
(2007) 03 MP CK 0002

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 1596 of 2005

Manibai and others

APPELLANT

Vs

Mohd. Ismile and others

RESPONDENT

Date of Decision : 14-03-2007

Acts Referred:

Motor Vehicles Act, 1939 — Section 95

Citation : (2007) 3 MPLJ 310

Hon'ble Judges : S.K. Seth, J;S.K. Kulshreshtha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.K. Seth, J.

This order shall also govern the disposal of cross objection preferred by the Respondent No. 2 herein (owner of the offending vehicle). The appeal is for enhancement of the compensation awarded by the 4th Motor Accident Claims Tribunal, Mhow in Claim Case No. 119/03. As against the claim of Rs. 8,50,000/- the tribunal awarded Rs. 3,03,000/- for the death of Dhan Singh in an accident. Cross objection is against the finding of the tribunal that Insurance Company is not liable to pay compensation.

Undisputed facts in short emerging from the record of the tribunal are that on 19-5-2002, deceased was travelling in a loading autoriksha bearing Registration No. MP-09-K.C./2556. It overturned because of rash and negligent driving of Respondent No. 1 as a result deceased met with untimely death. On the fateful day, said vehicle belonged to Respondent No. 2 and was insured with Respondent No. 3. Claims Tribunal, considering the evidence, and after deducting conventional 1/3 amount for the personal expenses of the deceased, assessed the annual loss of dependency at Rs. 16,000/-. Applying the multiplier of 18, tribunal determined Rs. 2,88,000/- as the future loss of dependency. Adding another sum of Rs. 5,000/- for loss of consortium and Rs. 10,000/- towards the

loss of love and affection to the children (Appellant Nos. 2 to 5), Tribunal ordered Respondent No. 1 and 2 to pay to the appellants, jointly and severally, an amount of Rs. 3,03,000/- together with interests thereon @ 9% from the date of application till realisation. Tribunal discharged the Insurance Company from its liability to pay the compensation on the ground that the risk of the deceased was not covered. Hence this appeal not only for enhancement but,also to fasten the liability on the Insurance Company. In the cross-objection, Respondent No. 2 has assailed the finding whereby the Claims Tribunal completely exonerated the Insurance Company from payment of the compensation.

We have heard counsel for parties at length and perused the record.

The controversy in this appeal is whether Tribunal was justified in absolving the Insurance Company from its liability to pay compensation jointly or severally along with the owner and driver of the offending vehicle. Secondly, whether Tribunal awarded just and proper amount of compensation. It is indisputable that owner had taken out a statutory policy covering the third party risk. In addition, the owner had also paid extra premium of Rs. 15 to cover the risk of driver/workmen. Based on this, learned counsel appearing for the claimants, owner and driver argued that deceased was travelling in the auto-riksha as cleaner/workman, and not as gratuitous passenger, therefore, his risk was covered and Insurance Company is also jointly and severally liable. Per contra, learned counsel appearing for the Insurance Company submitted that Tribunal rightly held that deceased was a gratuitous passenger and in absence of contract policy, Insurance Company is not liable. He further contended that even if it is assumed that deceased was travelling as cleaner/workman, then also his risk was not covered because premium of Rs. 15/- was paid to cover the risk of driver only.

After bestowing our careful considerations, we have reached to the conclusion that in facts and circumstances of the case in hand, Tribunal rightly held that deceased was a gratuitous passenger and his risk was not covered. As pointed out above, Respondent No. 2 had taken out only Act Policy in respect of the offending vehicle, which is a goods vehicle. Law with regard to the liability of Insurance Company under the Motor Vehicles" Act, 1988 after the 1994 amendment is very clear. The effect of amendment in Section 147 of the Act was considered by the Supreme Court in National Insurance Co. Ltd. Vs. Baljit Kaur and Others, and it was held by Their Lordships that after the amendment, in view of unambiguous language employed in Section 147, it is no longer possible to include and cover the risk of the owner of the goods or his authorized representative travelling in a goods vehicle. u/s 147, Parliament made a departure from Section 95 of the Motor Vehicles" Act, 1939 and there is no statutory liability enjoined upon the owner of a vehicle to compulsorily cover the risk of a gratuitous passenger or a person travelling in a vehicle pursuant to contract of employment. In view of the aforesaid legal position, we have no hesitation to hold that Tribunal rightly held that Insurance Company is not liable to indemnify the Insured in respect of the liability for the death of a gratuitous

passenger arising out of the accident. Coming to second limb of the argument that Insured had paid extra premium of Rs. 15/- therefore Insurance Company is liable to satisfy the Award. Even if we assume, for arguments sake, that the deceased was travelling in the offending vehicle as cleaner/workman, then also we do not think that the Insurance Company could be saddled with the liability in view of the evidence of Pranoy Joshi (DW-3-1) examined by the Insurance Company. He clearly stated that owner of the offending vehicle had paid extra premium of Rs. 15/- to cover the risk of driver only. During the course of hearing learned counsel appearing for appellants, owner and driver, invited attention to proposal for insurance which is on record of the Tribunal and also produced the Certificate-cum-Policy schedule" to contend that the carrying capacity of the vehicle was 1+1, and extra premium of Rs. 15 was paid to cover the risk of cleaner, hence the Insurance Company could not escape from its liability to indemnify the Insured. From the Certificate-cum-Policy - Schedule, it is clear that Policy was subject to Endorsement No. 71,10,24,70,17. It was admitted at the Bar that in the present appeal, we are concerned only with the Endorsement No. 17. To satisfy us what is Endorsement No. 17, we directed learned counsel for the Insurance Company to produce Endorsement No. 17. In compliance of the direction, learned counsel for the Insurance Company produced the "India Motor Tariff prepared by the Tariff Advisory Committee (General Insurance) containing Endorsement No. 17 which reads as under:

17. Legal Liability to person employed in connection with the operation and/or maintaining and/or Loading and/or Unloading of Motor Vehicles. (For GOODS VEHICLE)-

In consideration of the payment of an additional premium of it is hereby understood and agreed that notwithstanding anything contained herein to the contrary the Company shall indemnify the Insured against his legal liability under:

The Workmen's Compensation Act, 1923 and subsequent amendments of that Act prior to the date of this endorsement, the Fatal Accidents Act, 1855 or at the Common Law in respect of personal injury to any paid driver (or cleaner or conductor or person employed in loading/or unloading but in any case not exceeding seven in numbers including driver and cleaner) whilst engaged in the service of the Insured in such occupation in connection with the and not exceeding seven in numbers and will addition be responsible for all costs and expenses incurred with its written consent.

The premium having calculated at the rate of Rs. 15/- per driver (and/or cleaner or conductor and or person employed in loading and/or unloading but not exceeding seven in numbers including driver and cleaner).

Provided always that:

(1) This endorsement does not indemnify the Insured in respect of any liability in cases where the Insured holds or subsequently effects with any Insurance Company or Group of Underwriters a Policy of Insurance in respect of liability as

herein defined for his general employees.

(2) The Insured shall take reasonable precautions to prevent accidents and shall comply with all statutory obligations.

(3) The Insured shall keep a record of the names of each driver cleaner conductor or person employed in loading and/or unloading and the amount of wages salary and other earnings paid to such employees and shall at times allow the Company to inspect such record.

(4) In the event of the Policy being cancelled at the request of the Insured no refund of the premium paid in respect of this Endorsement will be allowed.

Subject to terms exceptions conditions and limitations of this Policy except so far as necessary to meet the requirement of the Motor Vehicles Act, 1988.

From a careful reading of Endorsement No. 17 supra, it is clear that the risk of personal injury of a paid driver and/or Cleaner/conductor and/or a person engaged in the employment of Insured for loading or unloading of goods vehicle but not exceeding seven in number could be covered provided premium at the rate of Rs. 15 is paid in respect each such person. Even if we stretch the concept of personal injury to death, then that would be of no avail to the appellants or Respondent No. 2. Later did not enter the witness box nor produced Insurance Policy to establish that he had paid the premium only to cover the risk of the paid cleaner/loader/unloader nor he produced records as contemplated under Clause (3) supra of Endorsement No. 17. We have already referred to the evidence of Pranoy Joshi examined by the Insurance Company and in the light of his evidence; the inevitable result is that we cannot direct the Insurance Company to indemnify the Insured. We have no option but to uphold the award in this respect.

Now coming to adequacy of compensation, suffice it to say that Tribunal rightly determined the monthly income of the deceased and the multiplier. However, looking to number of dependents left behind, we feel that Tribunal should have deducted only 1/4th amount towards the personal expenses of the deceased. Taking that into consideration, the annual loss of dependency comes to Rs. 18,000/- ($2000 \times 12 = 24,000 - 6000 = 18,000$). Tribunal has rightly applied the multiplier of 18. Thus, the future loss of dependency works out to Rs. $18,000 \times 18 = 3,24,000/-$. To this, when the amount awarded by the Tribunal for loss of consortium, love and affection is added the amount comes to Rs. 3,39,000/-. Tribunal has not awarded any amount for the funeral expenses and loss of estate.

We are inclined to grant Rs. 2,000/- as funeral expenses and Rs. 3,000/- towards the loss of estate. Thus the total amount comes to Rs. 3,45,000/-, which the appellants are entitled to recover from Respondent Nos. 1 and 2 jointly and severally together with interests at the rate of six percent per annum on the enhanced amount from the date of claim application till realisation.

In view of the foregoing discussion, the cross-objection preferred by the

Respondent No. 2 is dismissed and the appeal is partly allowed to the extent as indicated above with costs throughout to be borne by Respondent Nos. 1, and 2. Counsel's fee Rs. 1500/-.

Appeal partly allowed.