

(2005) 04 BOM CK 0114

In the Bombay High Court

Case No : First Appeal No. 228 of 1996 (Arising out of M.A.C.P. No. 165 of 1986) with Civil Application No. 1909 of 1996 with First Appeal No. 149 of 1999 (Arising out of M.A.C.P. No. 166 of 1986) with Civil Application No. 3065 of 1995 with First Appeal No. 229 of

Manikchand Pukhraj Katariya

APPELLANT

Vs

Kumari Hirabai and Others

RESPONDENT

Date of Decision : 13-04-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 112, 3

Citation : (2005) 3 ACC 588 : (2007) ACJ 118 : (2005) 3 ALLMR 279 : (2005) 107 BOMLR 394

Hon'ble Judges : V.G. Munshi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.G. Munshi, J.—Before proceeding with the merits of the case, points to be decided, etc., it is necessary to acquaint ourselves, with the facts of the case, with which we are concerned.

On 25.7.1986, at about 2.30 p.m. in the noon, one goods vehicle-dumper, bearing R.T.O. No. MWA 3347, was passing by Nagar-Solapur road. It was loaded with about 200 bags of cement and the dumper was proceeding towards Navsarwadi. The said dumper was driven by the appellant (driver), Savleram Dipaji Shinde. It was owned by the appellant (owner), Manikchand Pukhraj Katariya and it was insured with the respondent (insurer), the Oriental Insurance Company Ltd. One Shivram Devram Dudhwade was working as a labour on the said dumper on daily wages and one Bhanudas Maruti Mengade, was travelling by the said dumper, by paying hire charges Rs. 4/- to the driver. The said dumper crossed about 1 and 1/2 kms. distance and it was running with a speed of 60 to 65 kms. per hour. It was rashly and negligently driven by its driver. As he could not control the vehicle, the dumper turned turtle and met with an accident. In all, three persons, the occupants of the dumper, including the

abovementioned two persons, did sustain fetal injuries and succumbed to the fatal injuries.

2. The respondents (claimants), in M.A.C.P. No. 165 of 1986, are the legal representatives of labour, Shivram Doodhwade, while respondents (claimants), in M.A.C.P. No. 197 of 1986, are the legal representatives of the passenger, Bhanudas Mengade. They did file these petitions before the Tribunal and claimed compensation from all these persons.

3. The Motor Accident Claims Tribunal, on 19.6.1995, passed the award in both these petitions and directed the owner and driver of the dumper to pay the amount of compensation, to these claimants. The Tribunal, however, did not pass any award against the respondent (The Oriental Insurance Company Ltd.), holding that, the respondent (insurance company), was not liable to pay the amount of compensation, as there was breach of terms and conditions of the insurance policy.

4. The owner of the dumper, being aggrieved by the said award, did prefer First Appeal Nos. 228 of 1996 and 229 of 1996, mainly on the grounds that, the Tribunal was wrong in holding them alone liable, to pay the amount of compensation and was further wrong in exonerating the respondent (insurance company), from paying the amount of compensation. The appellant (driver of the dumper), being displeased with the award, also filed First Appeal No. 149 of 1999 and First Appeal No. 150 of 1999, mainly on the ground that, he was not responsible for the said accident and, therefore, he was not liable to pay the amount of compensation.

5. All these appeals arise out of the same accident and arise out of the same award, passed by the Tribunal. Therefore, they all are decided by a common judgment.

6. The appellants, owner and driver of the offending vehicle, did file these appeals only because, the Tribunal directed them to pay the amount of compensation and the respondent (insurance company), was exonerated from the liability. Therefore, the only point arises for consideration in these appeals, is whether the respondent (insurance company) is liable to pay the amount of compensation. It was argued by Shri Palod, learned Counsel for the respondent (insurance company) that, insurance company is not liable to pay the amount of compensation, for the reasons, firstly, the deceased, Bhanudas Maruti Mengade, who was travelling by the dumper, was a gracious passenger and secondly, the appellant (driver), Savlaram Shinde was not holding the licence to drive the vehicle and committed breach of the terms and conditions of the policy. The appellants, however, denied and disputed all these things. Therefore, we have to view the case of the appellants, in the light of grounds taken in appeal memo.

7. The first ground taken by the respondent (insurance company) and they have come with a case that, they are not liable to pay the amount of compensation, in case of deceased, Bhanudas Maruti Mengade in First Appeal No. 229 of 1996

(M.A.C.P. No. 197 of 1986) because, the deceased was then travelling by the dumper, as a gracious passenger. Admittedly, he paid Rs. 4/- to the driver of the dumper, as hire charges, travelled by the dumper, which met with an accident and which resulted into death of this passenger, Bhanudas Maruti Mengade. After pointing out all these things, it was argued by Shri Palod, there was breach of terms and conditions of the insurance policy and, therefore, they are not liable to pay the amount of compensation and relied on the decision in National Insurance Co. Ltd. Vs. Baljit Kaur and Others, . Thus, for the death of gracious passenger, Bhanudas Mengade, who travelled in goods vehicle (dumper), the insurance company is not liable. The learned Member properly considered this aspect.

8. The respondent (insurance company), by filing their written statement, strongly opposed the claim, made in the petition on another ground that, the driver of the dumper, who had driven the dumper, at the time of accident, was not holding licence, or valid licence and, therefore, the insurance company is not liable to pay the amount of compensation. The learned Counsel, in support of his contention, relied on the decision, reported in Arvindbhai Narsinbhai Patel v, Shardabehn Amarsing Thakore and Ors. 1993 A.C.J. 1053. In the decision, referred to above, the driver of the vehicle did not know driving and he did not possess driving licence at relevant time. There arose a question, as to whether the insurance company was to be exonerated from the liability and the said question was answered in affirmative. After pointing out all these things, it was argued by learned Counsel, Shri Palod, therefore, the insurance company is not liable to pay the amount of compensation. In reply, it was argued by the learned Counsel for the appellant that, even though the driver of the vehicle allowed some other person, to drive the vehicle and if the accident occurs, in that case, the insurance company cannot escape from the liability and they are liable to pay the amount of compensation and relied on the decisions in - (1) Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan and Others, (2) Sohan Lal Passi Vs. P. Sesh Reddy and others, .

Therefore, in view of the ratio laid down in the decisions, referred to above, we have to find out whether in the present case also the respondent (insurance company), is liable to pay the amount of compensation.

9. Before proceeding further, it is necessary to consider the pleadings made by the parties. The appellants, in their written statements, made contradictory statements. The appellant (owner of the vehicle), in his written statement, has mentioned that, one Subhash Shankar Bhakre was his driver. According to him, he had appointed Subhash Bhakre to drive the said vehicle. In other words, according to him, the appellant (driver), Savleram Shinde was never engaged by him, as a driver and he unauthorisedly driven the vehicle. The appellant (driver), in his written statement, says that, one Makare was engaged as a driver by the appellant (owner) of the vehicle. Thus, there is controversy on the point, as to who was working as authorised driver of the owner of the vehicle. Secondly, both the appellants (owner and driver of the vehicle), did not enter into the witness

box, in order to substantiate their respective cases. We know that, pleadings alone cannot take the place of proof. Therefore, for want of any such evidence on record, it cannot be held that, Subhash Shankar Bhakre or Makare was the duly appointed driver by the owner of the vehicle. Thirdly, for want of any evidence on record, it cannot be said that, the appellant (Savleram Dipaji Shinde), was authorised by this person to drive the vehicle. Thus, from the evidence on record, it is not clear whether appellant, Savleram Shinde was the duly appointed driver of the owner of the vehicle, or he has unauthorisedly driven the vehicle. Fourthly, from the evidence of the driver of the vehicle, it does not appear that, he anytime held driving licence. Notices were issued by the respondent (insurance company), to the appellant (driver) to produce before the Court, the driving licence, etc. However, he did not produce any licence. Even, the Regional Transport Office could not produce the licence. The evidence on record clearly goes to show that, this appellant, Savleram Shinde driven the vehicle without, holding licence. Fifthly, there is no evidence on record, which will indicate that, even the duly appointed driver was holding the driving licence. In the present case, it is not established that, duly appointed driver allowed the appellant, Savleram Shinde to drive the vehicle. Sixthly, the evidence on record, goes to show that, the appellant (driver), Savleram Shinde was prosecuted in a criminal case, which was filed u/s 3, read with Section 112 of Motor Vehicles Act, 1988, for having driven the vehicle without holding licence and for committing accident. As both, the owner and driver did not appear before the Court and did not lead any evidence, there is no scope to draw inference, as suggested by the learned Counsel. Therefore, the decisions, referred to above, are not of any use to the appellants, as the facts are different.

10. After going through the evidence on record, it has become clear that, the learned Member of the Tribunal properly considered all the aspects of the case, I, therefore, find no reason to interfere with the findings and the order, recorded by the learned Member. In the result, appeals must fail. I pass following order.

First Appeal Nos. 228 of 1996, 149 of 1999, 229 of 1996 and 150 of 1999 are dismissed. In the circumstances of the case, the parties are directed to bear their own costs in these appeals.