

(1995) 03 MP CK 0062
In the Madhya Pradesh High Court
Case No : M.A. No. 12 of 1994

Meera Bai and Others

APPELLANT

Vs

New India Assurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 20-03-1995

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 147, 166, 173

Citation : (1995) ACJ 1274 : (1996) MPLJ 51

Hon'ble Judges : Tej Shanker, J; S.K. Dubey, J

Bench : Division Bench

Advocate : R.D. Goyal, for the Appellant; Vinay Kant Sharma, K.B. Chaturvedi and B.B. Shukla, for the Respondent

Judgement

S.K. Dubey, J.

This is an appeal u/s 173 of the Motor Vehicles Act, 1988, (for short, "the Act"), by the claimants against the award dated 4.11.1993, passed in Claim Case No. 5 of 1991 by the Fifth Additional Motor Accidents Claims Tribunal, Gwalior.

Brief facts giving rise to this appeal are these: One Hukmi, the husband of appellant No. 1 and father of appellant Nos. 2 and 3, was travelling in truck No. CPW 7690 on 26.11.1990, which met with an accident because of rash and negligent act of the driver, the respondent No. 2, as a consequence of that, he died at the spot. A dehati nalis was lodged by one Ramua, who was also travelling as a labourer in the truck which was loaded with the gittis. The claimants filed an application u/s 166 of the Act and claimed total compensation of Rs. 4,25,000/-, averring therein that the deceased was travelling as a labourer in the truck, who was engaged on the same day at the rate of Rs. 30/- per day by the driver of the truck. The owner of the truck denied the rash and negligent act of the driver of the truck, but admitted that the deceased was engaged by the driver as a labourer to load and unload the gittis. Insurance company denied the claim and took a defence that the deceased was travelling as a gratuitous passenger and, therefore, in terms of the policy, the insurance company was not

liable to pay any compensation as the story of deceased Hukmi travelling as a labourer is concocted one which is apparent from the F.I.R. In accordance with term IMT 17 (3) of the policy, (Exh. D-4), no legal liability can be fastened against the insurance company and it cannot be made liable to indemnify the insured as the proviso No. 3 of IMT 17 casts a duty on the insured to keep a record of the name 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 have to allow all times the insurance company to inspect such record, but, insured, in the present case, at no time, communicated that the deceased was employed under him, therefore, no liability can be fastened on the insurance company.

The Tribunal, on evidence adduced by the parties, recorded the finding that the deceased Hukmi was not employed as a labourer by the owner or the driver of the truck at the time of the accident, he was travelling as a gratuitous passenger, therefore, held that the insurance company is not liable to indemnify the insured and the claimants are not entitled to claim compensation from the insurance company. The Tribunal held that the claimants are entitled for compensation of Rs. 81,000/-, but, out of which an amount of Rs. 21,000 was ordered to be deducted because of the contributory negligence of the deceased as he was travelling in the truck by sitting over the dala of the truck. The Tribunal also directed the claimants to refund the amount of Rs. 25,000/- paid by the insurance company in terms of the interim award passed u/s 140 of the Act. Aggrieved of the deduction of Rs. 21,000 and the direction of refund of Rs. 25,000 and for enhancement of the compensation, the claimants have filed this appeal. The owner of the vehicle has not challenged the award by filing the appeal, but has filed the cross-objections insofar as the award is concerned against the owner and the driver.

Mr. R.D. Goyal, counsel for the appellants, Mr. K.B. Chaturvedi and Mr. V.K. Sharma, counsel for respondent No. 1 and Mr. B.B. Shukla, counsel for respondent No. 3, are heard.

It was contended by the claimants as well as by the owner of the truck that the finding recorded by the Tribunal relating to the deceased not travelling as a labourer is perverse. On going through the record and the evidence adduced by the parties, we are of the view that the finding does not call for any interference. Meera, PW 1, the widow of the deceased, has categorically stated that the deceased was working on a tractor and not on any truck. Gorelal, PW 2, has stated that on the day of accident, the deceased was standing on the road, Ramua, a co-labourer, asked him whether he would work as a labourer to which the deceased agreed and, thus, sat on the truck to work as labourer on daily wage at the rate of Rs. 30/-. Except this, no other evidence is adduced by the claimants to prove that the deceased was working as a labourer and was travelling as such to load and unload the gittis. The owner of the truck, Vidya Devi Jain, did not appear in the witness-box as she died during the pendency of

the claim case. Her son, Pradip Kumar Mittal, in his deposition, has stated that he was not aware whether the deceased was engaged by the driver as a labourer. However, he has stated that his mother had authorised the driver to engage the labourers according to the exigencies and requirement of the work. The other witness, Ramua, who asked the deceased to work as a labourer was also not examined as he also died. The driver of the truck remained ex pane, who was even not examined by the owner of the truck. No record or documentary evidence was produced that the deceased was engaged as a labourer. The owner of the truck has also not proved that a register of labourers as required by the IMT 17 was maintained. On the other hand, the insurance company has examined one Raj Kumar Gupta, who has investigated the occurrence and found that the deceased was not travelling as a labourer, but as a gratuitous passenger. The other witness on behalf of the insurance company is N.D. Kaushal who has also stated in the same tune and has denied any liability of the insurance company.

Admittedly, while engaging the deceased, nothing was paid to him towards his wages, nor after the death of the deceased, the employer paid any amount to the claimants towards the wage of the deceased. It is also admitted that the employer did not maintain any account or record in terms of IMT No. 17. Besides, there is variance between the pleadings and proof. In Exh. D-1, it is stated that he was kept in the employment at the rate of Rs. 50/- while the claimants have pleaded that the deceased was kept on Rs. 30/- per day. On the other hand, the employer has stated that the deceased was employed on Rs. 25/- per day. In such circumstances, the story of the claimants as well as that of the employer cannot be accepted that the deceased was engaged as a labourer on the truck on the day of accident to load and unload gittis, by the driver who has not entered the witness-box.

A Division Bench of Gujarat High Court in case of New India Assurance Co. Ltd. v. Mohanbhai Ravjibhai 1994 ACJ 970 (Gujarat), considered the scope of Section 95 (old) (section 147 of the new Act) and rule 118 and also the effect of endorsement No. IMT 17 in a case where the claimants and the owner came with the story that the deceased was engaged on the truck on the same day has observed that in view of the proviso 3 to IMT 17, which is mandatory, the owner cannot be permitted to claim the benefit of the policy which would otherwise be available to him.

Therefore, on overall evidence and the fact that the owner of the vehicle has not produced any legal evidence and the record to demonstrate that the deceased was travelling at that point of time as an employee of the owner of the truck, the finding that the deceased at the time of accident was travelling in the truck as a gratuitous passenger cannot be upset.

In regard to a claim relating to a gratuitous passenger, the legal position is amply clear. The Supreme Court, in the case of Pushpabai Purshottam Udeshi v. Ranjit Ginning and Pressing Co. 1977 ACJ 343 (SC), after considering the scope of

Section 95 of the Motor Vehicles Act, 1939 and various sub-sections thereof has observed in para 22 that law does not require that a policy of insurance should cover the risk of passengers who are not carried for hire or reward and, therefore, the insurance company cannot be held liable under an award passed under the Motor Vehicles Act.

A Full Bench of this court, in the case of Kallu Maharaj v. Meenabai 1989 ACJ 770 (MP), has considered this aspect of the matter in relation to the goods carrier and has observed in para 6 thus:

(6) The vehicle referred to in the clause "a vehicle in which passengers are carried for hire or reward" occurring in Section 95 (1) of the Act necessarily means that vehicle which can be lawfully used for carrying passengers for hire or reward. Rule 111 of the M.P. Motor Vehicles Rules, 1974, lays down that no person shall be carried in a goods vehicle other than a bona fide employee of the owner or the hirer of the vehicle or the owner or the hirer and except in accordance with that rule. It is thus clear that a truck cannot be lawfully used for carrying a person who has not hired the truck but travels with a view to fetch his goods from some other place. Such a person, in our opinion, cannot be held to be travelling for hire or reward. Such a person would be deemed to be a gratuitous traveller and in these circumstances, the insurer, in the absence of any term to the contrary in the insurance policy, would not be liable for the tortious act of the owner as this would not be the requirement of the insurance policy as laid down by Section 95 (1) of the Act.

Regarding contributory negligence of the deceased, we are fully satisfied that the Tribunal committed an error in holding that the deceased has also contributed to the accident. Accident did not occur with any act of the deceased. Merely because the deceased was sitting on the dala of the truck will not make the deceased liable for contributory negligence. Moreover, neither there is a case pleaded by the owner of the vehicle or the insurance company, nor there is any evidence to that effect. On the other hand, there is ample evidence on record that the driver of the truck was driving the truck rashly and negligently with a high speed as a result of which the dala of the truck which was closed by the driver got opened resulting in fall of the deceased from the truck.

The last contention of the learned counsel is that the Tribunal has committed an error in directing the refund of the amount of Rs. 25,000/- to the insurance company by way of interim award passed u/s 140 of the Act when the insurance company was not held liable to indemnify the insured, the direction ought to have been for reimbursement from the owner of the vehicle or to recover the said amount from the owner of the vehicle instead of from the claimants. In our opinion, the counsel is right.

As regards the enhancement of compensation, we may state that the learned counsel for the appellants-claimants could not satisfy this court that the amount of Rs. 81,000/- of compensation, awarded for the death of the deceased, is

inadequately low and deserves enhancement.

Coming to the cross-objections filed by the owner of the vehicle, against whom the award has been passed who has not preferred the appeal, whether cross-objections of a party against whom the award is passed can be entertained by bypassing the mandatory provisions of Section 173 of the Act of filing an appeal within ninety days from the date of the award and without depositing twenty-five thousand rupees or fifty per cent of the amount so awarded, we keep this question open as we are of the opinion that there is no merit in cross-objections. However, we are of the view that the Tribunal committed an error in awarding interest at the rate of 15 per cent per annum from the date of the application on the amount of compensation so awarded which deserves to be reduced as the consistent view of this court is that it should be at the rate of 12 per cent from the date of the application till the amount under award is paid within the time specified.

In the result, the award is modified to the extent that the claimants shall be entitled to Rs. 81,000/- with interest at the rate of 12 per cent per annum from the date of the application till payment, of course, the amount paid under interim award shall be given due adjustment, the insurance company shall be entitled for reimbursement from the owner of the vehicle of the amount paid by it to the claimants under the interim award. The appeal relating to enhancement of the amount of compensation is dismissed. The owner of the truck shall deposit the amount under award within a period of four months failing which the claimants shall be entitled to interest at the rate of 15 per cent per annum from the date of the application till realisation. On deposit of the amount, the Tribunal shall disburse the amount to the claimants in accordance with the guidelines laid down by the Supreme Court in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, . No costs of this appeal.