
(2007) 11 MP CK 0040
In the Madhya Pradesh High Court

Meharban Singh	Vs	APPELLANT
Smt. Pushpabai and Others		RESPONDENT

Date of Decision : 27-11-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 149(2)

Citation : (2008) ILR (MP) 111 : (2008) 2 MPHT 452

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.K. Mody, J.—Being aggrieved by the award dated 23-12-06 passed by MACT, Dewas, the present appeal/revision has been filed by the appellant/petitioner who is owner.

2. Short facts of the case are that claim petitions were filed by the injured who are respondent No. 1 in all the matters alleging that on 23-8-05 respondent No. 1 were going in a bus bearing registration No. MP 04 H-7291, it was alleged that because of rash and negligent driving of respondent No. 3 the offending bus tumbled down, with the result respondent No. 1 sustained injuries. It was alleged that the offending bus was owned by appellant and insured with respondent No. 2. On the basis of aforesaid facts it was prayed that the claims petition be allowed and respondent Nos. 2 and 3 and appellant be held liable for payment of compensation. The claim petition was contested by the appellant as well by respondent No. 2. The defense taken by respondent No. 2 was that the respondent No. 3 was not possessing valid driving license and the offending vehicle was not possessing the valid permit. It was alleged that in the facts and circumstances of the case respondent No. 2 is entitled for exoneration.

3. After framing of issue and recording of evidence learned Tribunal found that because of rash and negligent driving of respondent No. 3, the accident took place in which respondent No. 1 in all the cases sustained injuries. It was also

found proved that offending bus was not possessing the valid permit. However, it was found proved that respondent No. 3 was possessing the valid driving license. Therefore, the claim petitions filed by the appellant were allowed. In each of the case the amount of compensation awarded by the learned Tribunal is as under:

4. It was also held by the learned Tribunal that since there is a violation of terms and conditions of policy, therefore, respondent No. 2 shall have a right of recovery from the appellant. It is this part of the award which is under challenged in all the cases.

6. Further reliance was placed on a decision of Rajasthan High Court in the matter of R.K. College v. Ramesh Chand reported in AIR 2007 (NOC) 1924,

wherein the Rajasthan High Court has observed that offending vehicle was found on nationalised route not covered under permit. It was observed that it might be a case of violation of conditions of permit but it cannot be said that by such fact alone there occurred a breach of insurance policy condition, moreso when it was not case of insurer that vehicle was not being used as contract carriage or was used for any other purpose, insurer cannot be therefore exonerated of its liability.

7. Learned Counsel further submits that in the facts and circumstances of the case learned Tribunal committed error in giving an option to respondent No. 2 to recover the amount from the appellant/petitioner.

8. Mr. S.V. Dandwate, learned Counsel for respondent No. 2, submits that none of the cases mentioned above is applicable in the present case. Learned Counsel submits that in a decision of Division Bench of this Court in the matter of Radheshyam (supra), the vehicle was not without permit but was a case of violation of terms of permit as there was over loading. Learned Counsel submits that in the similar condition Hon"ble Apex Court in the matter of National Insurance Co. Ltd. Vs. Challa Bharathamma and Others, , where insured had not obtained permit to ply the vehicle and the defense was in terms of the policy of insurance the insurer had no liability. Tribunal accepted the plea. High Court held that insurer was liable to indemnify the award. It was of the view that since there was no permit, the question of violation of any condition thereof does not arise. It was held by the Hon"ble Apex Court that the view is clearly fallacious. A person without permit to ply a vehicle cannot be placed at a better pedestal vis-a-vis one who has a permit, but has violated any condition thereof.

9. In the aforesaid case the Hon"ble Apex Court has further observed that:

The residual question is what would be the appropriate direction. Considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases the insurer has been given the option and liberty to recover the amount from the insured. For the purpose of recovering the amount paid from the owner, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Execution Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realisation by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, i.e., the insured. In the instant case, considering the quantum involved we leave it to the discretion of the insurer to decide whether it would

take steps for recovery of the amount from the insured.

10. Learned Counsel submits that keeping in view law laid down by the Hon''ble Apex Court learned Tribunal committed no error.

11. From perusal of the record it is evident that in the present case appellant was having no permit. Appellant himself appeared before learned Tribunal and contested the claim cases but could not prove that he was having valid permit. In memo of appeal also it is not the case of appellant that appellant was having valid permit. Since the offending vehicle was without permit, therefore, it is a case where the appellant/petitioner was having no permit. In view of this the law laid down by the Divisional Bench of this Court in the matter of Radheshyam (supra) has no application as in that case there was violation of terms of conditions of permit.

12. Keeping in view the law laid down by the Apex Court appeal/revision has no force and is hereby dismissed. No order as to costs.

13. A copy of this order be placed in the record of C.R. Nos. 296/07, 301/07, 302/07, 303/07, 304/07, 305/07, 306/07, 307/07, 308/07, 310/07, 311/07, 312/07, 313/07, 314/04, 315/07, 316/07, 317/07 and M.A. No. 3029/07.