(2003) 08 MP CK 0024

In the Madhya Pradesh High Court

Case No : Civil Revision No. 901 of 2002 with C.R. No. 902 of 2002

Mohd. Ishaque APPELLANT

Vs

Shiv Kumar Choubey and Others RESPONDENT

Date of Decision : 13-08-2003

Acts Referred:
Motor Vehicles Act, 1988 — Section 149(2)

Citation : (2003) 4 MPHT 503

Hon'ble Judges : S.K. Pande, J

Bench : Single Bench

Advocate : Wakeel Khan, for the Appellant; Nitin Pendharkar, for the Non-applicant No. 1 and Naveen Debey, for the Non-applicant No. 3, for the Respondent

Final Decision : Allowed

Judgement

S.K. Pande, J.—These revisions are directed against the order dated 28-7-2001, passed by Ist Addl. MACT, Sagar in Claim Case No. 12/2000 and 71/99.

2. Shiv Kumar Choubey and Navncct Saraf, non-applicants are the respective claimants of the aforesaid Claim Case Nos. 12/2000 and 71/99. Vide impugned award dated 18-7-2001, the applicant owner of the vehicle has been ordered to pay Rs. 7,653/- and Rs. 10,000/- respectively to non-applicants Shiv Kumar Choubey and Navncet Saraf. Applicant/owner of the vehicle has submitted that the vehicle was driven by a duly licensed and qualified driver and vide impugned order dated 18-7-2001, passed by the Tribunal, the Insurance Company non-applicant No. 3 ought not to have been relieved of its liability from liquidating the claim, as against the applicant/owner of the vehicle, non-applicant No. 3, the Insurance Company has submitted that the driver of the vehicle was not having a valid licence. The licence possessed by him was fake as such, as per terms of insurance policy, the company is not liable to make payment towards the claim of the injured.

3. In the impugned order, the Tribunal has discussed the evidence adduced by the Insurance Company. In Paras 22, 23 and 25 of the impugned order. The Tribunal had held that the driver had a valid licence and on enquiry it was revealed that the aforesaid licence possessed by the driver was fake as not issued by the RTO, Jhansi. It is nowhere stated that the fact of having a fake licence by the driver was known or within the knowledge of the owner of the vehicle applicant Mohd. Ishaque.

4. The judgment reported in United India Insurance Company Ltd. Vs. Lehru and Others, , is to the effect that where prior to hiring the driver, the owner satisfied himself that the driver had a licence and was driving competently, there would be no breach of Section 149(2)(a)(ii) of the M.V. Act, 1988. If ultimately, the licence is found to be fake, the insurer would continue to be liable unless he proves that the owner/insured was aware of the fact and had still permitted that person to drive. Even in such a case, the insurer would remain liable to the innocent third party but may be able to recover the amount from the insured. There is no evidence to the effect that prior to hire the driver Hardayal Mali, the owner/ applicant Mohd. Ishaque was aware or had reason to believe that the licence possessed by the driver is fake. In fact, applicant Mohd. Ishaque, owner hired the driver after satisfying himself that the driver had a licence and is driving competently.

5. In the circumstances, the Tribunal was not justified to exonerate the Insurance Company from the liability of making payment as per the insurance policy. The non-applicant No. 3 Insurance Company is bound in terms of insurance policy to make the amount of award to the respective claimant Shiv Kumar Choubey and Navneet Saraf. Accordingly, revision succeeds and are allowed. The amount of award in Claim Case Nos. 12/2000 and 71/99 shall be payable by the Insurance Company to the respective claimants under the terms of insurance policy issued in favour of applicant Mohd. Ishaque.

6. Parties to bear their costs. Counsel fees as per rule or certificate (whichever is less).

