

(2005) 01 MP CK 0041

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 1136 of 2001

Munawar Ulla

APPELLANT

Vs

New India Assurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 10-01-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2)

Citation : (2006) 2 ACC 524 : (2006) ACJ 938 : (2005) 3 MPLJ 142

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

Bench : Single Bench

Advocate : B.K. Rawat and Sudhir Rawat, for the Appellant; S.K. Rao, D.N. Shukla, Sanjay Agrawal and Rajesh Nema, for the Respondent

Final Decision : Allowed

Judgement

N.K. Mody, J.

This order will also dispose of M.A. Nos. 1137 to 1142 and 895 of 2001 as all the aforesaid appeals are arising out of claim cases relating to one accident and one award dated 28.4.2001.

Being aggrieved by the award dated 28.4.2001, passed by M.A.C.T., Astha, Distt. Sehore, in Claim Case Nos. 81, 82, 75, 72, 80 and 74 of 1999, 48 of 2000 and 84 of 1999, the present appeal has been filed.

Short facts of the case are that on 6.3.1999 at about 12 a.m. a minibus bearing registration No. MP 04-T 1254 while coming from Indore to Bhopal met with an accident with a truck bearing registration No. MPO 2902 in which eight persons died on the spot and ten persons were injured. In total 18 claim applications were filed. The minibus was insured with New India Assurance Co. Ltd., respondent No. 1 and truck was insured with National Insurance Co. Ltd., respondent No. 2.

The learned Tribunal found that the drivers of both the vehicles were negligent

and because of their rash and negligent driving the accident occurred. It was also found that since there was contributory negligence on the part of both the vehicles, therefore, in eight claim cases of which appeals are pending before this court, it was directed that 50 per cent of the awarded amount shall be paid by New India Assurance Co. Ltd., respondent No. 1, insurer of minibus and rest of 50 per cent of the awarded amount shall be paid by National Insurance Co. Ltd., respondent No. 2, insurer of the truck. In eight other claim cases of death, the learned Tribunal found that 50 per cent of the awarded amount shall be paid by insurance company of the truck, respondent No. 2 and rest of 50 per cent of the awarded amount shall be paid by the appellant, who happens to be the owner of the minibus. Respondent No. 1 who is the insurance company of the minibus was exonerated on the ground that minibus was carrying number of passengers more than permitted.

Learned counsel for appellant placed reliance on Gurmukh Singh Nagi Vs. Sheo Karan and Others, wherein Punjab and Haryana High Court has taken a view that if a taxi driver accommodates more passengers than the capacity of taxi, the claimants will not be disallowed from claiming compensation for the injuries suffered by them or the heirs of the deceased from claiming compensation for the death of the occupants sitting in the taxi. Reliance has been placed on Radhey Shyam Agarwal and Another Vs. Gayatri Devi and Others, wherein Division Bench of this court has taken a view that Tribunal was in error in holding that because of the violation of the condition of permit of carrying passengers in excess of seating capacity, the insurance company would not be liable to pay compensation is illegal as such a defence is not available in Sub-section (2) of Section 149 of the Act against the third party risks as the vehicle was not used for a purpose allowed by the permit of transport vehicle. Further reliance has been placed on Oriental Insurance Co. Ltd. Vs. Bhagirath Bhagat and Others, wherein High Court of Patna has held that violation of conditions of the permit to the extent of carrying of more passengers cannot be said to be using the vehicle against the permit for which it was allowed. For carrying of more passengers the vehicle owner and the driver may be held liable for penal action under the Motor Vehicles Act itself but for that alone the indemnifying liability of insurance company in respect of claim cases cannot be denied. Further reliance has been placed on State of Maharashtra and Others Vs. Nanded-Parbhani Z.L.B.M.V. Operator Sangh, , wherein the Hon'ble Apex Court has held that carrying passengers more than the number specified in permit will not be violation of the purpose for which the permit is granted.

Learned counsel for the insurance company, respondent No. 1, submits that since there was a violation on the part of the appellant and the driver of the minibus, therefore, insurance company, respondent No. 1, has been rightly exonerated.

The learned Counsel for New India Assurance Co. Ltd., respondent No. 1, placed reliance on National Insurance Co. Ltd. Vs. Challa Bharathamma and Others, , wherein the Hon'ble Supreme Court has held that the High Court was of the view

that since there was no permit, the question of violation of any condition thereof does not arise. 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.

In the case of B.V. Nagaraju Vs. M/s. Oriental Insurance Co. Ltd., Divisional Officer, Hassan, , the Hon''ble Apex Court after placing reliance on the decision of Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan 1987 ACJ 411 (SC), wherein the Apex Court has considered whether the terms of the policy of insurance need to be construed strictly or be read down to advance the main purpose of the contract, has held that merely by lifting more passengers by cleaner or driver of the vehicle without the knowledge of owner, cannot be said to be such a fundamental breach that the owner should in all events be denied indemnification. The misuse of the vehicle was somewhat irregular though not so fundamental in the nature so as to put an end to the contract, unless some factors existed which, by themselves, had shown to contribute to the causing of the accident.

In the present case, carrying of extra passengers was not the cause of accident. Total passengers who died in the said accident and also sustained injuries were 18. Out of which under the award of court below, 8 claimants in whose case the passengers died have got the compensation from respondent No. 1 as the permit was for 8+1 and for the rest of the claimants it has been directed that 50 per cent of the amount of award is payable by appellant. It is difficult to discriminate between the sufferers on the ground that the vehicle was having a permit of limited passengers. Some time injured person suffers more. In a case of death in the accident, the person who has expired is not to suffer any more but in the case of injury, he has to suffer for the rest of the life. Therefore, no discrimination could have been made on this ground alone as done by learned Tribunal.

In the present case, appellant who happens to be owner of the offending vehicle was also travelling in the said vehicle at the time of accident. Therefore, it can easily be presumed that the more number of passengers were travelling in the offending vehicle within the knowledge and with the consent of the owner of the vehicle. Since the carrying of the passengers was not the cause of accident, therefore, this fact is of no relevance.

In National Insurance Co. Ltd. Vs. Swaran Singh and Others, , the Hon''ble Supreme Court has held as under:

[102 (vi)] Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches of the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the

policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer u/s 149(2) of the Act.

In view of this, the appeal stands allowed. The award passed by the learned Tribunal is modified to the extent that the awarded amount is payable by the insurance company, respondent No. 1 also. No order as to costs.