(1985) 02 MP CK 0032

In the Madhya Pradesh High Court

Case No : Miscellaneous First Appeal No. 318 of 1982

Narayan Singh Nirala APPELLANT

Vs

Mahendra Singh and Others RESPONDENT

Date of Decision : 04-02-1985

Acts Referred:
Motor Vehicles Act, 1988 — Section 95, 95(1), 95(2)

Citation : (1985) 02 MP CK 0032

Hon'ble Judges : Sachchidanand Awasthy, J;C.P. Sen, J

Bench : Division Bench

Advocate : K.L. Issrani, for the Appellant; V.K. Rao, for the Respondent

Final Decision : Dismissed

Judgement

S. Awasthy, J.—The Appellant-claimant has preferred this appeal against the award dated 19.7.1982 passed by the Motor Accidents Claims Tribunal, Sehora in Motor Accident Claim Case No. 3/79 dismissing the claim petition with costs.

2. The Appellant had claimed a compensation of Rs. 2,54,700/- alleging that the claimant had booked his vegetables for transporting from Indore to Bhopal on 10.1.1977 with M/s. Sharma Motor Transport Company, Respondent No. 2 which hired the truck No. MPC 6069 belonging to Mahendra Singh, Respondent No. 1. The Respondent No. 3 is the insurance company which had insured the said truck. The claimant travelled on the said truck with the vegetables with the permission of the Respondent No. 2. Due to the negligence of the driver of the said truck, it collided against a tree on the way resulting in the death of the driver and severe injuries to the claimant.

3. The Presiding Judge of the Tribunal held that the truck was being driven rashly and negligently by the driver at the relevant time which resulted in the said accident. But the claimant was an unauthorised passenger in the transport vehicle hence not entitled to any compensation from the non-Applicants Respondents. The Tribunal also held that the claimant failed to prove the injuries

sustained by him and the amount of compensation payable to him.

4. The question for our consideration is that even if the claimant is permitted by us to examine the doctor who treated the claimant for proving the injuries, whether the non-Applicants Respondents would be liable to pay any compensation?

5. The claimant has examined himself as AW 1. In para 14 of the deposition, he has stated that he does not know the owner of the vehicle nor he had seen him or obtained his permission for boarding the truck. He specifically stated that it was the proprietor of the Respondent No. 2 who permitted him to board the truck. The learned Presiding Judge of the Claims Tribunal has elaborately discussed for holding that the claimant had not sought the permission of the driver or the conductor of the truck before boarding and there was no permission granted by the owner to his driver to permit any passenger on the truck. The liability on the insurance company could be fastened only if it was necessary under the policy of insurance to insure such a passenger u/s 95(1)(b) read with Section 95(2) of the Motor Vehicles Act. Clause (b) of Section 95(1) after imposing an obligation for insurance against any liability which the insurer may. incur in respect of the death of, or bodily injury to any person. The proviso excepts certain liabilities which because of the use of the words ''death or bodily injury to any person'' would otherwise have to be insured against generally speaking provisions relating to third party insurance do not extend to persons carried in the vehicle. The proviso first brings out that feature and then engrafts exceptions there. Proviso (i) exempts from the requirement of insurance cover for liability in respect of death arising out of and in the course of his employment, of the employee of the person insured by the policy, or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment. Proviso (ii) exempts from requirement? of insurance to cover liability in respect of the death or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which the claim arises. And proviso (iii) exempts from the requirement of insurance to cover any contractual liability. The proviso without the exceptions or savings from their operation, states that compulsory insurance need not be effected against liability to voluntary passengers and against liability to persons who would claim against the insured as their employer.

6. With the provisos and exceptions therefrom Clause (b) of Section 95 specifies what are the liabilities that may be incurred in respect of the death or bodily injury to a person arising out of the use of the vehicle which must be covered by insurance for due compliance with the requirements of Chapter VIII.

7. The liability arising out of death or bodily injury suffered by any person travelling on board the truck must be covered by the policy of insurance up to the limit mentioned in Sub-section (2) of Section 95. The proviso extends the scope of insurance risk to another category of persons, namely, to those who are employees of the insured and in respect of whom the insured is under a liability

to pay compensation under the Workmen''s Compensation Act. Thus, an unauthorised passenger like the claimant cannot make the insurance company liable to pay the compensation for the injury caused to him by the use of the insured vehicle. The learned Tribunal, therefore, was right in holding the insurance company not liable to pay any compensation to the claimant.

8. The act of the driver was an unauthorised act without the sanction of his master. There cannot be any vicarious liability of the Respondent No. 1 under the given circumstances of the case. It has not been proved by the claimant that the driver was authorised to take the passengers gratuitous or otherwise on board the truck. It is common knowledge that the driver of goods vehicles take unauthorisedly passengers on board for their own benefit. Liability under such circumstances cannot be fastened on the owners of the vehicles. We, therefore, hold that the owner Mahendra Singh Respondent No. 1 was rightly held to be not liable to pay any compensation.

9. So far as the Respondent No. 2 is concerned he is neither the owner of the truck nor the insurer. He was merely a representative of the claimant. His liability, if any, would be covered under tort for which claim against him could have been preferred by a regular suit and not under the Motor Vehicles Act. He is neither a necessary nor a proper party in these proceedings. Even if he be liable under tort to pay the compensation to the claimant, the Motor Accidents Claims Tribunal is not a proper forum. Thus, the Tribunal was right in holding that no order to pay compensation could be passed against him in this case.

10. For the reasons aforesaid, we dismiss the appeal but under the circumstances of the case, we direct the parties to bear their own costs throughout.