(1999) 11 MP CK 0007

In the Madhya Pradesh High Court

Case No : M.A. No. 304 of 1995 & Miscellaneous Appeal No. 304 of 1995

National Insurance Co. Ltd. APPELLANT

Vs

Biniya Bai and Others RESPONDENT

Date of Decision : 17-11-1999

Acts Referred:
Motor Vehicles Act, 1988 — Section 149, 173, 92, 95

Citation : (2001) ACJ 1380 : (2000) 2 MPLJ 97

Hon'ble Judges : V.K. Agarwal, J

Bench : Single Bench

Advocate : Sanjay Agrawal, for the Appellant; M.H. Khan, for the Respondent

Final Decision : Allowed

Judgement

V.K. Agarwal, J.

This appeal u/s 173 of the Motor Vehicles Act, 1988, is directed against the award dated 9.1.1995 in Motor Accidents Claims Tribunal Case No. 29 of 1989, by IV Addl. Motor Accidents Claims Tribunal, Sagar.

It is no longer in dispute that truck No. CPJ 4382 is owned by Komal Chand, driven by present respondent No. 4, driver Bihari and insured by appellant National Insurance Co. Ltd. Deceased Ganesh was travelling in the said truck on 7.6.1987, after payment of fare to driver, respondent No. 4, when it turned turtle and met with an accident, resulting in serious injury to deceased Ganesh. Despite treatment the deceased Ganesh succumbed to the injuries sustained in the accident. He died on 8.6.1987. The legal representatives of the deceased Ganesh, the respondent Nos. 1 to 3 herein, filed a claim petition praying that the compensation be awarded against the owner, driver and the present appellant National Insurance Co. Ltd.

The petition of claim was resisted by the appellant insurance company, inter alia, on the ground that the deceased was travelling in the said truck in breach of condition of insurance policy issued by the appellant.

The learned Claims Tribunal after assessment of material and evidence on record held that the accident occurred as respondent No. 4 Bihari, the driver of the truck, was driving the truck rashly and negligently, resulting in fatal injuries to the deceased Ganesh. Though the learned Tribunal had recorded a finding that the deceased was travelling in the truck; but relying upon the decision of this court in Bhagwan Das and Another Vs. National Insurance Company Ltd. and Another, , the learned Tribunal held that since the appellant insurance company has not proved that breach of terms of insurance policy was committed by the owner of the truck, therefore, the insurance company cannot be exonerated from its liability to pay the amount of award. Therefore, it was held that the owner, driver as also the appellant insurance company are jointly and severally liable for the payment of compensation. Thus, the claim petition of the claimant-respondent Nos. 1 to 3 was allowed and an amount of Rs. 67,200 has been awarded as compensation. It was directed that the appellant as well as respondent Nos. 4 and 5 shall be jointly and severally liable for payment of the above amount of award.

The learned counsel for the appellant insurance company has urged that as the deceased was travelling in a goods vehicle in breach of policy condition, the appellant insurance company could not be made liable to pay the amount of award in view of Section 95(1)(b)(ii) of the Motor Vehicles Act, 1939. Reliance has been placed in this connection by the learned counsel for the appellant on Smt. Mallawwa Etc. Vs. The Oriental Insurance Co. Ltd. and Others, and United India Insurance Co. Ltd. Vs. Gian Chand and others, .

Learned counsel for the respondents, however, supporting the award against the appellant has submitted that since the deceased Ganesh had paid the fare and as the appellant insurance company has not proved by proper and cogent evidence that the breach of conditions of the policy was committed by the owner, the appellant insurance company could not escape its liability to pay the amount of award.

It is not in dispute in the instant case that the ill-fated truck was a goods vehicle, not meant for carrying of passengers. As noticed earlier also a categorical finding has been recorded by the learned Tribunal that the deceased was travelling in the truck after payment of fare to the driver. The finding is not under challenge and is fully supported by material and evidence on record.

In view of above, the question that arises for consideration is as to whether the appellant insurance company is liable to pay the amount of compensation?

In Smt. Mallawwa Etc. Vs. The Oriental Insurance Co. Ltd. and Others, , the Supreme Court after referring to various decisions and also quoting extensively with approval Full Bench judgment of Orissa High Court in New India Assurance Company Ltd. Vs. Kanchan Bewa and Others, , has laid down that the insurance company is not liable in case of death of owner of goods carried in a goods vehicle and that for the purpose of Section 95 of the Motor Vehicles Act, 1939, ordinarily a vehicle could have been regarded as a vehicle in which passengers were carried, if the vehicle was of that class.

In United India Insurance Co. Ltd. Vs. Gian Chand and others, , also it was held that insurance company would be entitled to be exonerated to meet the claim of the dependants of the third party victim of the accident, if there is breach of specified condition of the policy.

Since in the instant case, the deceased Ganesh was travelling in a goods vehicle though after paying fare to the driver, it would amount to a breach of the specified term of policy. Therefore, in view of the decisions as above, the appellant insurance company could not have been made liable for the payment of the awarded amount. Accordingly, this appeal deserves to be allowed.

Learned counsel for the appellant has further urged that since the appellant has deposited the amount of interim award, but as it has been exonerated from its liability, therefore, it is entitled to the refund of the same. The learned counsel for the appellant relied upon Jaganoo and Others Vs. Chhote and Others, , wherein it has been observed that when the Tribunal has found that the insurance company is not liable to compensate the insured, the amount deposited by the company towards no fault liability has to be refunded by virtue of the provisions u/s 149(4) of the Motor Vehicles Act, 1988. In that case since no order was passed for the refund of the amount by the Tribunal, the cross-objection filed by the insurance company was allowed and the insurance company was held entitled to recover the amount of compensation paid by it, towards no fault liability from the appellants/owners.

Similarly in National Insurance Co. Ltd. v. Mohd. Safi 1996 (1) MPWN 211, liberty was granted to the appellant insurance company to apply to the Claims Tribunal for withdrawal of the amount of interim award deposited by it with Claims Tribunal as it was absolved from its liability in the final award. Similar view has been taken in New India Assurance Co. Ltd. Vs. Prabha Jain and Others, . It has been held that in case the insurance company is absolved of its liability for the payment of compensation, the liability cannot be fastened on it on the principle of no fault liability and it would be entitled to recover the amount deposited by it in pursuance of the order u/s 92-A of the Motor Vehicles Act, 1939. Reference in that case was made to National Insurance Co. Ltd. Vs. Savitri Bai alias Vaishakhia Bai and Others, and National Insurance Company, Jabalpur Vs. Thaglu Singh and Others, , wherein it has been laid down that if it is found that the insurer has no liability to pay the amount of compensation, the Tribunal may issue appropriate direction for reimbursement of the amount from the owner of the vehicle. In Mohammad Ilias Vs. Bodhani Bai and Others, , also it has been laid down that the insurance company shall be entitled to direction for reimbursement of liability discharged by it u/s 92-A of the Motor Vehicles Act, 1939.

In the instant case, since the appeal of the appellant insurance company is to be allowed and since it is being exonerated from liability, it appears just and proper to direct that it shall be entitled to reimbursement of the amount of award paid or deposited by it, from the owner, the respondent No. 5.

Accordingly, this appeal of the appellant insurance company is allowed. It is exonerated from its liability to make the payment of the amount of award. However, it is clarified that the liability of the respondent Nos. 4 and 5 to make the payment of amount of award shall be as awarded by the learned Tribunal and it is further directed that the amount of interim award paid or deposited by the appellant insurance company would be liable to be reimbursed to it by respondent No. 5, the owner. The impugned award stands modified accordingly. The parties in the above circumstances are directed to bear their own costs of this appeal.