
(2007) 07 MP CK 0108
In the Madhya Pradesh High Court

National Insurance Co. Ltd.	Vs	APPELLANT
Gulab Singh and Others		RESPONDENT

Date of Decision : 16-07-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 2(21)

Citation : (2009) ACJ 1463

Hon'ble Judges : K.S. Chauhan, J;Arun Mishra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Arun Mishra, J.—These appeals have been preferred by the claimant and insurer aggrieved by an award dated 8.12.2004 passed by the Motor Accidents Claims Tribunal, Katni in M.V.C. No. 187 of 2004.

2. The claimant father of the deceased Jagat Singh filed a claim petition claiming compensation in a sum of Rs. 7,80,500. He was the only son of the claimant. He was sitting in the trolley of the tractor (No. MP 21-9862) which was going to Jhukehi for loading lime for the purpose of construction of drain in the agriculture field. The tractor-trolley was driven rashly and negligently by Rajesh. It was owned by Sunderlal and insured with National Insurance Co. Ltd. Jagat Singh sustained injuries and succumbed to them in Katni Hospital on 19.11.2002 two days after the accident. It was claimed that he used to earn a sum of Rs. 3,000 per month.

3. The owner and driver remained ex parte. The insurer in the written statement denied the liability. It was submitted that the tractor-trolley was not involved in the accident. The tractor-trolley was insured for the purpose of agriculture, deceased was travelling as a passenger. Driver was not holding a valid and effective driving licence, there was violation of terms and conditions of the insurance policy, hence, insurer was not liable to make payment of compensation.

4. Claims Tribunal has found that the accident was caused by Rajesh. He drove

the tractor rashly and negligently due to which it turned turtle resulting in injuries being caused to Jagat Singh. He succumbed to the injuries on 19.11.2002. Violation of the policy has not been found to be established as the tractor-trolley was used for the purpose of agriculture at the time of accident. The deceased was a labourer, sitting in the trolley at the time of accident. Compensation of Rs. 1,37,000 has been awarded by the Claims Tribunal taking the income of the deceased to be Rs. 18,000 per annum, applying a multiplier of 10, aforesaid compensation has been worked out. It has been ordered to be paid along with an interest at the rate of 9 per cent per annum from the date of claim petition till realization.

5. Dissatisfied with the quantum of compensation the claimant has come up in M.A. No. 814 of 2005 whereas the insurer has filed M.A. No. 442 of 2005 on the ground that it could not have been held liable to make indemnification as there was breach of policy.

6. Mr. Sharad Gupta, learned Counsel appearing on behalf of the claimants has submitted that inadequate compensation has been awarded on account of death of Jagat Singh. He used to earn Rs. 3,000 per month, choice of multiplier was also not proper. Hence, compensation be suitably enhanced. Insurer has been rightly held liable as there was no breach of policy.

7. Mr. Sanjay Agrawal, learned Counsel appearing on behalf of the insurer has submitted that risk of a labourer travelling in a trolley was not covered, thus, the insurer could not have been held liable by the Tribunal so as to make payment of compensation. Apart from that the deceased was travelling as a passenger, there was violation of the policy. He has also raised a submission that the driver was holding the licence to drive a light motor vehicle, whereas the tractor becomes a goods vehicle when trolley is attached to it, as such it was necessary to obtain an endorsement so as to drive a transport vehicle.

8. First we come to the question of quantum of compensation on account of death of Jagat Singh. Jagat Singh was the only son of claimant. Claim petition was preferred by the parents, mother aged 40 years has died during the pendency of the claim petition. Age of father was 45 years at the time of the accident. Age of the deceased was 18 years, though it was claimed he used to earn a sum of Rs. 3,000 per month as stated by Gulab Singh, CW 1 and Moolchand, CW 2. It would be appropriate to assess his income, considering the age to be 18 years, at Rs. 2,000 per month, annual income thus comes to Rs. 24,000, making conventional 1/3rd deduction for self expenditure of the deceased which amount he would have spent on himself had he been alive. Loss of annual dependency comes to Rs. 16,000. In our opinion, the Tribunal has assessed the earnings at lower figure of Rs. 18,000 per annum. We apply the multiplier of 16 considering the age of the father to be 45 years, the compensation comes to Rs. 2,56,000. Apart from that we award a sum of Rs. 30,000 under the heads of loss to estate, loss of expectancy of life, funeral expenses. Thus, total compensation comes to Rs. 2,86,000 (rupees two lakh

eighty-six thousand). The compensation shall carry interest at the rate of 6 per cent per annum from the date of filing of claim petition till realization.

9. Coming to the question of breach of policy as submitted by the insurer, there is evidence on record that the deceased was travelling in the trolley as a labourer. It was used in connection with the purpose of agriculture for construction of drain in the agriculture field. Thus, the deceased was not travelling as a gratuitous passenger. Vehicle was used for the purpose for which it was insured.

10. Coming to the question whether the risk of a labourer was not covered under the policy: In the written statement it was admitted in special plea para 2 that the tractor and trolley both were insured. Policy of the trolley was not produced by the insurer, only a policy of the tractor was produced. In view of the admission made, not only in the written statement but also by Vishwanath Das, Senior Assistant of National Insurance Co. Ltd., we find that obviously a premium was realized to cover risk of labourer, consequently; the policy with respect to trolley was not placed on record. Policy, Exh. D2, which was placed on record was with respect to tractor in which also it was not mentioned that how much premium was realized and for what purpose. Consequently, we have to draw an adverse inference against the insurer. Thus, in our opinion, the insurer has failed to prove the aforesaid aspect. Consequently, we find no merit in the submission raised by the insurer in the appeal-M.A. No. 442 of 2005.

11. Coming to the submission raised by Mr. Sanjay Agrawal, the learned Counsel appearing on behalf of the insurer that the driver was holding a licence to drive light motor vehicle, there was necessity to obtain an endorsement to drive transport vehicle. As per the unladen weight of the tractor-trolley it was a light motor vehicle as its weight was admittedly below 7500 kg. A "light motor vehicle" has been defined in Section 2 (21) of Motor Vehicles Act, 1988, to mean a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7500 kg. There is reference of "transport vehicle" in Section 2 (21). A "transport vehicle" has been defined in Section 2 (47) to mean a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle. In our opinion, as the driver was holding requisite licence to drive "light motor vehicle" considering the aforesaid definition he was competent to drive the vehicle in question, even otherwise there was no substantial breach of the terms and conditions of the policy in the light of the decision of the Apex Court in National Insurance Co. Ltd. Vs. Swaran Singh and Others, , wherein the Supreme Court has held that in each case the decision has to be taken whether the factum of the driver possessing licence for one type of vehicle, but, found driving another type of vehicle was the main or contributory cause of the accident. The Apex Court has considered that cases may also arise where a holder of driving licence for "light motor vehicle" is found to be driving a "maxicab", "motorcab" or "omnibus" for which he has no licence, in such cases it has to be decided on

the evidence what was the main or contributory cause of accident, thus:

(82) Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle which he intends to drive. Section 10 of the Act enables Central Government to prescribe the forms of driving licences for various categories of vehicles mentioned in Sub-section (2) of said section. The various types of vehicles described for which a driver may obtain a licence for one or more of them are (a) motor cycle without gear; (b) motor cycle with gear; (c) invalid carriage; (d) light motor vehicle; (e) transport vehicle; (f) road-roller; and (g) motor vehicle of other specified description. The definition clause in Section 2 of the Act defines various categories of vehicles which are covered in broad types mentioned in Sub-section (2) of Section 10. They are "goods carriage", "heavy goods vehicle", "heavy passenger motor vehicle", "invalid carriage", "light motor vehicle", "maxicab", "medium goods vehicle", "medium passenger motor vehicle", "motorcab", "motor cycle", "omnibus", "private service vehicle", "semi-trailer", "tourist vehicle", "tractor", "trailer" and "transport vehicle". In claims for compensation for accidents, various kinds of breaches with regard to the conditions of driving licences arise for consideration before the Tribunal. A person possessing a driving licence for "motor cycle without gear" (sic may be driving a vehicle), for which he has no licence. Cases may also arise where holder of driving licence for "light motor vehicle" is found to be driving a "maxicab", "motorcab" or "omnibus" for which he has no licence. In each case, on evidence led before the Claims Tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence.

In view of the aforesaid discussion, we find no merit in the submission raised.

12. Resultantly, we allow the appeal M.A. No. 814 of 2005 in part to the aforesaid extent and award compensation of Rs. 2,86,000 (rupees two lakh eighty-six thousand). The enhanced compensation shall carry interest at the rate of 6 per cent per annum from the date of filing of claim petition till realization. The appeal M.A. No. 442 of 2005 filed by the insurer is hereby dismissed. However, we leave the parties to bear their own costs as incurred in these appeals.