(2005) 12 MP CK 0055

In the Madhya Pradesh High Court

Case No : M.A. No. 257 of 2000

National Insurance Co. Ltd. — APPELLANT

Vs

Lachhibai and Others — RESPONDENT

Date of Decision : 05-12-2005

Acts Referred:

Citation : (2006) ACJ 1174 : (1996) ILR (MP) 201

Hon'ble Judges : A.P. Shrivastava, J;A.K. Mishra, J

Bench : Division Bench

Advocate : Sanjay Agarwal, for the Appellant; A. Lalwani, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.—This appeal has been preferred by the insurer aggrieved by an award dated 27.11.1999 passed by 3rd Addl. Motor Accidents Claims Tribunal, Chhindwara in Claim Case No. 90 of 1998.

2. On 27.5.1998 deceased Lakkhu was travelling in an autorickshaw No. MP 28-T 0307, when it reached near Piparia Naka, owing to rash and negligent driving of Ravi, same turned turtle, deceased Lakkhu sustained serious injuries and died on the spot, report was lodged at the concerned Police Station, Chand, criminal case was registered. Age of deceased was 50 years, he was earning a sum of Rs. 4,000 per month as per the claimants, compensation of Rs. 7,25,000 was claimed.

3. The owner and driver in their written statement admitted the factum of accident, however, negligence on part of the driver was denied, it was contended that all of a sudden, autorickshaw turned turtle, the deceased himself was negligent.

4. The insurer in the written statement contended that more passengers than the number which was permitted were taken in autorickshaw, driver was not holding the valid and effective driving licence and as such insurer be exonerated.

5. Learned Claims Tribunal has found that accident was caused owing to rash and negligent driving by Ravi and has saddled the liability on driver, owner Ramprasad and insurer National Insurance Co. Ltd. Compensation of Rs. 1,66,000 along with interest has been ordered to be paid. Consequently, this appeal has been preferred by the insurer.

6. It is contended by the appellant that insurer could not be saddled with the responsibility to make payment of compensation, autorickshaw driver did not possess valid and effective driving licence, an adverse inference ought to have been drawn for not filing the driving licence. Driver was drunk at the time of accident which was the reason of accident.

7. Mr. A. Lalwani, the learned Counsel appearing for the respondents-claimants has submitted that case for interference is not made out as the only witness examined on behalf of insurer was unable to state whether licence was held by the driver or not. As such insurer cannot escape the liability as burden was upon insurer to prove the fact that driver was not holding the driving licence.

8. We have gone through the evidence and documents on record. We find that plea was taken by the driver and owner in their written statement that the driver was holding valid and effective driving licence, insurer did not call upon the driver to produce the driving licence which as per written statement he was holding. Apart from that, we find that only witness examined on behalf of insurer, namely, Kailash Prasad, NAW 1, on being cross-examined, was unable to affirmatively state that driver was not holding valid driving licence, he expressed his ignorance about the fact. In view of the aforesaid state of evidence adduced on behalf of insurer, we find that liability has been rightly saddled upon the owner, driver and insurer of the vehicle. We find no ground to interfere in this appeal as the driver was negligent is clear.

9. Resultantly, appeal being devoid of merit is hereby dismissed. No costs.