
(1999) 01 MP CK 0005
In the Madhya Pradesh High Court
Case No : M.A. No. 670 of 1994

National Insurance Co. Ltd.	Vs	APPELLANT
Prakash Jain and Others		RESPONDENT

Date of Decision : 07-01-1999

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2000) ACJ 608 : (1999) 1 MPLJ 25

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

Bench : Single Bench

Advocate : Sonia Agarwal, for the Appellant; S.L. Kochar and Ashok Chakravarti, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Agarwal, J.

The appellant insurer has preferred this miscellaneous appeal against the award dated 28.1.1994 in Motor Accident Claim Case No. 30 of 1990 by Additional Motor Accidents Claims Tribunal, Khairagarh-link-at-Kawardha, whereby compensation of Rs. 8,400 with interest at the rate of 12 per cent per annum has been awarded to claimant-respondent No. 1, Prakash Jain.

Undisputed facts are that the claimant Prakash Jain was posted as Police Constable at Police Station, Chilphi. On 31.7.90 at about 7.30 a.m., he intended going to Kawardha. Truck No. MKK 5224, which was going from Jabalpur to Raipur came there. The claimant boarded the truck. The said truck dashed against a tanker and met with an accident. Claimant Prakash Jain was injured in the said accident. The said truck was owned by the respondent No. 2 Kochar Saw Mills and was driven by respondent No. 3 Devajee at the time of the accident.

The claimant/injured Prakash Jain filed a claim petition u/s 166 of the Motor Vehicles Act, 1988 before the Additional Motor Accidents Claims Tribunal, Khairagarh-link-at-Kawardha. It was averred in the said petition that while the

claimant was looking for a vehicle to go to Kawardha, truck No. MKK 5224 came from the side of Jabalpur. Its driver, Devajee, respondent No. 3, on seeing claimant Prakash Jain, enquired from him as to where he was going, and then offered to take him in his truck, whereafter the claimant Prakash Jain boarded the truck. The claimant sustained grievous injuries in the accident. He claimed compensation of Rs. 2,19,000 on various counts, due to the injuries suffered in the accident.

The respondent Nos. 2 and 3, the owner and driver, did not appear to oppose the claim petition before the Tribunal.

The appellant National Insurance Co. Ltd. filed written statement. It was alleged in reply that the driver, respondent No. 3 Devajee of truck No. MKK 5224, was not responsible for the accident. The accident occurred on account of the negligence of the driver of the tanker, which dashed with truck No. MKK 5224. It was also averred that the said truck was not insured for carrying passengers. Since the claimant Prakash Jain was travelling in the said truck as passenger, the risk of Prakash Jain is not covered under the terms of the insurance policy. Hence, appellant was not liable to pay compensation.

The learned Tribunal held that the claimant Prakash Jain met with an accident and sustained injuries on account of rash and negligent driving of the truck by driver, respondent No. 3, Devajee. It was also held that the appellant National Insurance Co. Ltd. was liable to pay the compensation to the claimant Prakash Jain. Award was accordingly passed as mentioned above.

It has been urged on behalf of the appellant that the terms of insurance policy did not cover the risk of the passenger. The claimant was travelling in the truck as passenger in breach of terms of insurance policy. Therefore, liability could not be fastened on the appellant insurance company for payment of compensation to the claimant-respondent No. 1.

It has, however, been urged on behalf of the respondent Nos. 1 and 2 that there is no material to infer that the owner, respondent No. 2, committed breach of any of the terms of the policy. Therefore, the appellant insurance company is liable for payment of compensation.

The appellant insurance company did not file policy document before the Tribunal. However, an application under Order 41, Rule 27 of the CPC (LA. No. 6366 of 1998) has been filed during the pendency of this appeal, with which the policy document has also been filed. It has been prayed that the terms and conditions laid down in the policy document should be taken into consideration. It is urged that terms and conditions of policy would show that there was infringement thereof on the part of the respondents, inasmuch as, the claimant-respondent No. 1 Prakash Jain was travelling in the truck, which is a goods vehicle and was not meant to carry passengers.

The learned counsel for the appellant, in support of his contention, has relied

upon United India Insurance Co. Ltd. Vs. Gian Chand and others, and New India Assurance Co. Ltd. Vs. Ashok Singh and Others, . It has also been urged that in view of the decision in United India Fire & Genl. Ins. Co. Ltd. v. Natvarlal 1988 ACJ 956 (MP), the policy document ought to have been called for by the Tribunal and terms thereof considered for determination whether the respondent owner is entitled to be reimbursed by the appellant insurance company. He has submitted that in view of above, the policy document produced by him in this appeal, should be taken into consideration.

Indisputably, the truck No. MKK 5224, at the time of the accident, was owned by the respondent No. 2 and was driven by the respondent No. 3 and was insured by appellant National Insurance Co. Ltd. Respondent No. 1 Prakash Jain was travelling in it. The truck met with an accident and claimant-respondent No. 1 Prakash Jain sustained injuries. It has been held by the learned Tribunal, after due scrutiny and appreciation of evidence that the accident took place on account of sole negligence of respondent No. 3, the driver of the truck. The learned Tribunal has also duly assessed the evidence to calculate the amount of compensation. Not only the appellant insurer is not competent to challenge the said findings, but the same appear to be based on proper appreciation of evidence and are just and proper. The same do not call for any interference.

The question that arises for consideration, therefore, is "as to whether there was any breach of terms of policy by owner respondent No. 2 and whether the appellant could be held liable for payment of compensation to claimant-respondent No. 1?"

The claimant-respondent No. 1, Prakash Jain as AW 1, has stated that while he was waiting at Chilphi Bus Stand for some vehicle to go to Kawardha, truck No. MKK 5224 came there and the driver, respondent No. 3, Devajee enquired from him as to where he was to go and then on the latter's asking him, the claimant boarded the truck. The truck proceeded for some distance and then dashed against a tanker, which was standing on the side of the road. The statement of claimant Prakash Jain, AW 1 has been supported by the statement of Prakash Das, AW 2. There is no evidence in rebuttal led by the appellant.

It would thus appear that claimant/ respondent No. 1 at the time of accident was travelling in truck No. MKK 5224 with the permission or rather invitation of its driver. In the facts and circumstances of the case, it does not appear that the owner of the truck, respondent No. 2 had either authorised or was himself responsible for the claimant Prakash Jain travelling in the truck. In fact, from the above evidence on record, it would appear that the owner was not even aware of the claimant travelling in the truck. In the circumstances, it cannot be said that the owner of the truck, i.e., respondent No. 2 committed any breach of the terms of the policy. Therefore, the appellant insurance company cannot avoid its liability to reimburse the amount of award to the owner.

Reference in the above connection may be made to Skandia Insurance Co. Ltd. v.

Kokilaben Chandravadan 1987 ACJ 411 (SC), in which the Apex Court has laid down that the insurance company can avoid its liability if breach of the terms of the policy is committed by the owner of the insured vehicle. Similar proposition has been laid down in Bhagwan Das and Another Vs. National Insurance Company Ltd. and Another, .

In the circumstances, the insurance company cannot avoid its liability simply because the claimant-respondent No. 1 was travelling in a goods vehicle, as it was not with the permission of its owner. Therefore, the owner not having committed any breach of the terms of policy, the appellant insurance company is liable for payment of compensation, as has been held by the Tribunal.

Therefore, this appeal has no merit and is dismissed.