
(2005) 01 MP CK 0003
In the Madhya Pradesh High Court
Case No : M.A. No. 32 of 1995

National Insurance Co. Ltd.	Vs	APPELLANT
Sunita Yadav and Others		RESPONDENT

Date of Decision : 06-01-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 166
Workmens Compensation Act, 1923 — Section 3

Citation : (2005) 2 ACC 579 : (2006) ACJ 2617

Hon'ble Judges : S.S. Jha, J;A.K. Gohil, J

Bench : Division Bench

Advocate : B.N. Malhotra, for the Appellant; Purnima Nigam, for the Respondent

Final Decision : Allowed

Judgement

S.S. Jha and A.K. Gohil, JJ.—This appeal is filed by the appellant insurance company challenging the award passed by the Second Motor Accidents Claims Tribunal, Guna.

2. Facts of the case are that on 5.6.1989 deceased Radheyshyam, husband of respondent No. 1, son of respondent No. 2 and father of respondent No. 3 was driving truck from Gwalior to Bhopal. On way to Bhopal, near village Bhimkhedi, Police Station Raghogarh, District Guna, MP, the truck overturned on Agra-Bombay Road on account of rains which resulted into the death of Radheyshyam.

3. Counsel for the appellant insurance company submitted that the claim petition is not maintainable as Radheyshyam died on account of his own negligence. Application as filed by the heirs of Radheyshyam is not maintainable. Counsel for appellant has referred to the judgment of Apex Court in case of Tamil Nadu State Transport Corporation, Tanjore, rep. by its MD Vs. Natarajan and Others, and submitted that claimants are not entitled to compensation on account of negligence on the part of driver. He then referred to Division Bench judgments of this Court in the cases of Krishna Mourya and Others Vs. J.P. Sharma and Others,

and Kanhaiyalal and Another Vs. Sitabai and Others, , for the same proposition. In all these cases, it is held that on account of negligence on the part of driver, no compensation can be paid to heirs of driver.

4. Counsel for the appellant submitted that as per terms of the policy, insurance company is liable to indemnify the driver under the provisions of Workmen's Compensation Act. The insurance company has deposited the amount payable to claimants under Workmen's Compensation Act with interest. He submitted that claim petition as filed is not maintainable. Though it is true that claimant can choose forum?either to prefer a claim petition before the Commissioner under the Workmen's Compensation Act or a claim petition under the Motor Vehicles Act, but in the present case the claim is preferred under the Motor Vehicles Act, therefore, claimants are not entitled to compensation on account of negligence on the part of driver of the vehicle.

5. Counsel for the respondents submitted that it is the choice of the claimants to choose the forum and application is maintainable under the Motor Vehicles Act. Counsel for the respondents submitted that the accident had arisen out of use of motor vehicle, therefore, the Claims Tribunal has jurisdiction to entertain the claim petition.

6. The claimants themselves have come forward with a case that the vehicle was driven by the deceased Radheyshyam and when he tried to give side to another vehicle, his vehicle overturned. Overturning of vehicle was on account of negligence on the part of driver. In the application, it is mentioned that there were rains and on account of skidding of the truck, the truck overturned. Thus, deceased had no control over the vehicle which resulted into overturning of the vehicle.

7. In the case of Tamil Nadu State Transport Corporation, Tanjore, rep. by its MD Vs. Natarajan and Others, , it is held as under:

(9)...The Division Bench of the High Court completely overlooked that the claimant himself was driver of the Corporation bus and was found negligent to the extent of 50 per cent for causing accident. In view of the above finding of contributory negligence on the part of the claimant as driver of the Corporation bus, the Corporation as an employer cannot be held to be vicariously liable for the negligence of claimant himself. The claim petition did not make the Corporation as a party to the claim obviously because claimant exercised the option of approaching Claims Tribunal under the Motor Vehicles Act against the owner and insurer of the private bus. He did not file any claim under the Workmen's Compensation Act against the employer. Since the Corporation was not at fault and the accident was caused because of the contributory negligence of the drivers of both the buses, the Corporation could not be held liable under the provisions of Motor Vehicles Act. It was not a claim based on "no fault liability". It was a claim petition filed by the claimant against the owner and insurer of the private bus....

Apex Court set aside the award and held that there was contributory negligence on the part of driver of the vehicle.

8. Division Bench of this Court in the case of Krishna Mourya and Others Vs. J.P. Sharma and Others, has held that in the application for compensation, negligence on the part of owner has not been pleaded nor has been proved before the Claims Tribunal that the vehicle was not in roadworthy condition which resulted in the accident. On the other hand, circumstances speak that it was the deceased himself who was driving the scooter and struck with the pole, as a result of which he and the pillion rider fell down and the deceased died. Therefore, in the absence of proof of negligence on the part of the owner of the vehicle, the claimants cannot seek compensation on the basis of the provisions of the Act. But where the accident occurs arising out of and during the course of employment, the employer's liability is to pay compensation u/s 3, to be calculated in accordance with the provisions contained in Chapter II of the Workmen's Compensation Act.

9. In the case of Kanhaiyalal and Another Vs. Sitabai and Others, , question was whether the claimants are entitled for compensation u/s 166 of the Motor Vehicles Act when the driver of the vehicle died on account of his negligence. Division Bench held that claimants are not entitled to get any compensation under the provisions of Motor Vehicles Act.

10. In the present case, the claimants have not gone before the Commissioner, Workmen's Compensation. Therefore, the application as filed before the Claims Tribunal was not maintainable and was liable to be dismissed. We, therefore, set aside the award passed by the Claims Tribunal. However, considering the fact and circumstances of the case, this Court by the order dated 13.1.1995 directed appellant insurance company to deposit the entire amount payable to the heirs of the workman, i.e., deceased Radheyshyam under Workmen's Compensation Act. The insurance company has deposited the entire amount payable under the Workmen's Compensation Act. The counsel for the respondents-claimants admits that the claimants have received the amount so deposited with the Claims Tribunal. Since the amount payable under the Workmen's Compensation Act has been paid, nothing remains to be decided.

11. In the result, appeal succeeds and is allowed. Award passed by Claims Tribunal is set aside. However, in the circumstances of the case, the amount so deposited by the insurance company shall be retained by the respondents-claimants and will not be refunded to the insurance company.