
(1997) 05 MP CK 0010
In the Madhya Pradesh High Court
Case No : M.A. No. 941 of 1994

National Insurance Co. Ltd., Jabalpur	APPELLANT
Vs	
Rainki Bai and Others	RESPONDENT

Date of Decision : 12-05-1997

Acts Referred:

Motor Vehicles Act, 1988 — Section 140

Citation : (1998) 1 MPJR 79 : (1997) 2 MPLJ 455

Hon'ble Judges : Dipak Mishra, J

Bench : Single Bench

Advocate : N.S. Ruprah, for the Appellant; Ashok Jain, for the Respondent

Judgement

Dipak Mishra, J.

Feeling aggrieved by the award passed by XIIth Additional Motor Accident Claims Tribunal, Jabalpur in Claim Case No. 488/94, awarding a sum of Rs. 77,200/- to the legal representatives of the deceased Niranjana Singh towards compensation under the provisions of Motor Vehicles Act, 1988, the insurer is in appeal.

The factual matrix as portrayed in the petition is that the Respondents Nos. 1 to 3 as claimants filed an application before the Tribunal forming the subject matter of claim case No. 488/94 pleading inter alia, that Niranjana Singh, the husband of Respondent/Claimant No. 1 and father of other two Respondents/claimants Nos. 2 and 3 was working in a tractor bearing registration No. MOK-9446 belonging to Respondent No. 4. On 7-1-1991, while he was moving in the tractor in course of his employment due to rash and negligent driving of Ashok Singh, the Respondent No. 5, he fell down and expired. It has been further put forth in the petition that he was getting Rs. 40/- per day as wages and he was aged about 30 years at the time of the accident. With these factual assertions a claim for compensation of Rs. 4,86,000/- was advanced before the Tribunal which included Rs. 20,000/- towards mental agony and Rs. 2,000/- for funeral rites.

The claim of the claimants was resisted by the owner as far as it related to

negligence and rashness on the part of the driver. It was averred by the owner that victim was earning Rs. 20/- per day. Further stand taken by him that the tractor in question was insured with National Insurance Co. and, therefore, the insurer was to indemnify him.

The insurance company in its written statement controverting the stand of the claimants contended that as the tractor in question was insured for agricultural purposes it cannot be given the status of a goods vehicle. That apart the deceased who was travelling as a passenger in the tractor in question was not entitled to any damages or compensation as the tractor is not a passenger carrying vehicle. Further stand of the insurer is that as the deceased was sitting in the tractor and not in the trolley attached to it, the liability cannot be fastened on the insurer even if it is otherwise liable to indemnify.

In order to establish the case before the Tribunal the claimants examined two witnesses. The Insurance Company examined its officer and brought the insurance policy on record.

The Tribunal after considering the relevant materials on record came to the conclusion that the deceased was an employee getting Rs. 20/- per day from the owner of the tractor. Accepting Rs. 20/- as daily wages the Tribunal concluded that the workman/employee would have been getting employment for 25 days in a month and, therefore, his monthly income would be Rs. 500/-. He deducted 1/3rd towards expenses and applied multiplier of 16 and fixed the compensation at Rs. 67,200/- and added Rs. 10,000/- towards consortium. The Tribunal also recorded a finding that the driver of the tractor was negligent and there was no fault on the part of the deceased. With the above considerations an award was passed against the owner of the tractor with the direction that the amount will be made good by the insurance company as the claim in question was covered under the Insurance Company.

Mr. Ruprah appearing for the Insurance Co./Appellant assailing the amount of award, has raised two contentions namely; the Insurance Company was not liable to indemnify the owner in the instant case as much as the deceased was sitting next to the Driver and not in the trolley and the tractor being an one seated vehicle the deceased was not supposed to sit there and as such there is violation of the condition of the policy entitling the insurance company to release itself from honouring the policy. It is also proposed by him that tractor in question having been insured for agriculture purposes cannot be treated as a goods vehicle and in that event an employee meant for the tractor would not be covered. His alternative submission is that if eventually the Insurance Company is found liable for payment of compensation the method of compensation adopted by the Tribunal is absolutely erroneous as the deceased would be covered because he is an employee and not a passenger and the amount of compensation has to be calculated by taking into consideration the parameters of provisions of Workmen's Compensation Act, 1923.

Mr. Jain, learned Counsel appearing for the claimant/Respondent, per contra, has submitted that in view of the categorical finding recorded by the Tribunal that the deceased was an employee even if he was sitting next to the driver that would not disentitle his legal representative to claim compensation. It is further submitted that there is no reason to compute the compensation on the basis of the schedule as provided under Workmen's Compensation Act as the deceased was a third party and the liability of the Insurance Company has to be construed as unlimited.

On a perusal of the impugned award and materials on record there is no doubt that the deceased was an employee under the owner of the tractor. This aspect was not seriously disputed by Mr. Ruprah. The tractor with a trolley is a goods vehicle and it would cover an employee. In this regard my attention has been drawn to the decision reported in Oriental Insurance Co. Ltd. Vs. Hanumantappa and others, wherein, a Division Bench of Karnataka High Court held that a tractor-trailer is a goods vehicle and it is constructed for the purpose of carriage of goods and when it is pulled by a tractor, both together constitute a vehicle. It is also apparent from the evidence that the deceased was sitting next to the driver of the tractor. Once it is held and accepted that he was an employee, mere sitting near the driver would not exonerate the Insurance Company from indemnifying the owner. Apex Court in the case of B.V. Nagaraju Vs. M/s. Oriental Insurance Co. Ltd., Divisional Officer, Hassan, has held that every breach is not a fundamental breach so far as to enable the insurer to escape from the liability unless that is a factor for causing the accident. The Tribunal has recorded a finding that the accident occurred due to negligence of the driver and not for any fault of the deceased. I am of the considered view that sitting next to the driver would not exonerate the insurance company from payment of compensation.

The next submission of Mr. Ruprah relates to the method and manner of computation. Needless to emphasise that the Insurance Company is not entitled in law to challenge the quantum unless it is absolutely perverse. Mr. Ruprah's contention is that the Tribunal has proceeded to compute the compensation as if the deceased has covered up a passenger and the liability of the insurer is unlimited. In this regard I may refer to a decision rendered in the case of The New India Assurance Co. Ltd. v. Smt. Meenaxi, AIR 1981 Kar 68 wherein it has been held that as per Section 95(2) of the M. v. Act the liability of the Insurance Company for the death of an employee is limited to what is contained in the Workmen's Compensation Act. Similar view has been taken by the Orissa High Court in New India Assurance Co. Vs. Budhei Bewa and Others, wherein it has been held:

A plain reading of the said Sub-section indicates that a policy of insurance which has been granted to comply with the requirements of Section 95(i) shall not be required to cover liability in respect of the death arising out of and in course of the employment, of an employee or a person insured by the policy or in respect of bodily injury sustained by such employee arising out of and in course of his

employment other than a liability arising under the Workmen's Compensation Act, 1923 in respect of the death or bodily injury to any such employee. It means that the Act Policy" must cover the liability which would arise under the Workmen's Compensation Act. Thus, Section 95 of the Motor Vehicles Act creates a statutory duty upon the Insurance Company to indemnify the insured any liability to pay the compensation to its employee which he would have been required to pay under the Workmen's Compensation Act. This position of law has been elaborately dealt with and discussed in the decision reported in Orissa Co-operative Insurance Society Ltd. v. Sarat Chandra, 1975 ACJ 196 : 1976 Lab.I.C. 371, wherein reference has also been made to earlier cases on the subject.

In the instant case compensation has been granted because the deceased was an employee of the owner of the tractor and policy in question is an Act only Policy and, therefore, the compensation has to be fixed as per the provision of Workmen's Compensation Act.

Mr. Ruprah learned Counsel for the Appellant after calculation has stated that the Appellant would be entitled to Rs. 41,596/- (Rupees forty one thousand and five hundred ninety six) only. The said arithmetical calculation is not disputed by Mr. Jain. The grant of interest by the Tribunal is maintained.

In the result, the appeal succeeds in part. The Insurance Company is directed to deposit the balance amount less the amount which has already been deposited under the order passed u/s 140 of the Motor Vehicles Act, 1988 within a period of two months from today, failing which it will be liable to pay interest at the rate of 18% per annum from the date of application. In the peculiar facts and circumstances of the case there shall be no orders as to costs.