
(1996) 01 MP CK 0133
In the Madhya Pradesh High Court
Case No : M.A. No. 153 of 1994

National Insurance Company	Vs	APPELLANT
Prem Narain Sahu		RESPONDENT

Date of Decision : 03-01-1996

Acts Referred:

Citation : (1996) 2 MPJR 453

Hon'ble Judges : T.S. Doabia, J

Bench : Single Bench

Advocate : B.N. Malhotra, for the Appellant; Messrs. R.K. Jadawani and R.P. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Doabia, J.

Jeep bearing no. CPC-3776 and Tempo bearing no. MKH-654 were involved in an accident on 13th June, 1988. This accident took place at about 11.30 P. M. Claimant respondent no. 1 Prem Narain was travelling in (he tempo. It is said that Jeep was being driven rashly and negligently. It is stated that it was this Jeep which dashed into the Tempo in question. This Jeep was insured with National Insurance Co. Injuries were caused on he person of respondent Prem Narain. He claimed compensation amounting to Rs. 6.44 lacs. The Motor-Accident claims Tribunal came to the conclusion that accident took place on account of rash and negligent driving of the jeep in question. It quantified the amount of compensation at Rs. 27,500/-. The findings which have been recorded by the Motor Accident claims tribunal are as under. -

- i) claimant was admitted in J. A. Hospital;
- ii) he was so admitted in the hospital for 28 days;
- iii) an artificial rod has been planted in the right feet;
- iv) injuries were also there on face and on right thigh; it has been held that nasal

bone has been permanently damaged;

v) that when the claimant was discharged he was under bandage;

vi) there was shortening of his feet and this has disabled the claimant from walking swiftly. A finding has also been recorded that he may not be able to drive a vehicle as his feet may not be able to generate the requisite pressure when brakes are to be applied;

The earning capacity of the claimant was found to be Rs. 800/-. A sum of Rs. 35,000/- was found to be sufficient compensation. Interest at the rate of 12% was also allowed.

The learned counsel appearing for the claimant pointed out that cross objections have been preferred. The valuation was fixed at Rs. 5 lacs. However, on 4th January, 1995 the counsel for the claimant made a statement that he is restricting his claim regarding the cross objections to Rs. 90,000/- only - Thus this appeal was taken up for hearing alongwith the cross objections.

The learned counsel appearing for the insurance company has argued that driver of the jeep was not having a valid licence. It has also been argued that the amount awarded is excessive.

The Insurance Company cannot escape liability merely on the ground that the vehicle was being driven without a valid licence. Reliance in this regard be placed on a decision given by Supreme Court in the case reported as *Skandia Insurance Co. Ltd. v. Kokilaben Chandra Vadan* AIR 1987 S. C. 1184. In this case the vehicle was under the control of the cleaner when the accident took place. He had no driving licence. It was held that an exclusion clause in policy prohibiting driving by a person other than one holding the driving licence would not absolve an insurance company when an accident takes place. The insurance company was accordingly held liable. In *Suresh Mohan Chopra Vs. Lakhi Prabhu Dayal and others*, the Insurance company failed to bring on record, (record from the transport authority) which could indicate that the driver had no valid licence. In this case the driver claimed that he had a licence; this was however not produced. The insurance company was held liable.

In *Champa Devi and Others Vs. Ram Sarup and Others*, a claimant was held entitled to compensation and it was observed that he is not to be so deprived merely because the driver was found to be without a licence. Again in *National Insurance Ltd. Vs. Sucha Singh & ors.* (1994 AC) 374 a fake licence was got renewed. It was held that this would fasten liability on the insurance company. In *Oriental Insurance Co. Ltd. Vs. Tirath Kaur and Others*, , insurance company failed to prove by leading positive evidence that the driver had no valid licence. It was held that insurance company would be liable. It is for the insurance company to prove that the driver had no valid licence. Such is a view expressed in *Lalchand Vs. Kanta and Others*, . Again in *New India Assurance Co. Ltd. Vs. Heera Singh and Others*, , the argument raised was that the driver of a vehicle

was a minorand therefore,, he could not be deemed to be holding a valid licence. Interim award was passed against such driver. In The New India Assurance Co. Ltd. Vs. Shri Kailash Nath Bhatnagar and Others, the driver of the vehicle did not take the ignition key with him. He left the vehicle in control of the cleaner. The insurance company was held liable when accident took place when vehicle was put in motion. In The Oriental Insurance Co. Ltd. Vs. Abdul Sahid Khan and Others, . The insurance company wanted to avoid its liability by taking a plea that the driver had no licence at the time of accident. The first information reported indicated that the helper without the permission of driver had moved the vehicle. This caused the accident. The insurance company was held liable. In view of the aforementioned decisions the conclusion to be drawn is that merely because a driver is without a valid licence the insurance company cannot escape liability. In the present case the driver had a licence but all that has been stated is that this was not meant for a commercial vehicle. In para No. 16, of the award given by the Tribunal it has been categorically stated that there was authorisation to dirve a vehicle and merely because there was some insertion or deletion prohibiting the driver from driving a transport vehicle would not absolve (he insurance company. In any case, a jeep is not to be considered a transport vehicle in the sense in which the insurance company wants it to be read. The conclusion arrieved at by the Tribunal that insurance company is liable cannot he faulted.

Coming to the merits of the controversy, it be seen that P. W. 2, in para No. 5, of his statement had stated that there is shortening of the limbs and there is permanent disability. The finding recorded by Motor Accident Claims Tribunal in para 22, have already been noticed above. There is shortening of foot by an inch. A steel rod had been embedded. The claimant was an engineer. He was unable to attend to his duties for a period of eleven months. The compensation which has been awarded to the claimant is Rs. 35,000/-. I am of the view that this is on the lower side. See Union of India (UOI) Vs. Sudhir Khanna and Others, and New India Assurance Co. Ltd. Vs. C.S. Ouseph and Others, . In Bhajanlal Padia Vs. Bajinath " Bajnath Majhi and Others, for a fracture intibia compensation was fixed at Rs. 70,000/-. The injured had remained in the hospital for 25 days. In Mangialal vs. Pramod, 1988, ACJ 307, for commuted fracture of left tibia and lacerated wounds, the quantum of compensation was fixed at Rs. 50,000/- In Ebrahim Fakir Ansari Vs. Sitaram Kamalaksha Kamat and Another, , for fracture in leg compensation amount was fixed at Rs. 60,000. The fact that the petitioner - claimant had suffered permanent injury and would not be unable to drive his own vehicle cannot be ignored. It will be just and proper to enhance the compenstion to Rs. 70,000/-

In view of the above discussion the appeal is dismissed the corss objections are allowed. The claimant respondent would be entitled to interest at the rate of 12% on the enhanced amount.

Sharona

When this miscellaneous appeal was posted for orders, the learned counsel appearing for the Insurance Company has pointed out that the liability of the company is limited. According to him, compensation cannot be more than Rs. 50,000/- He is placing reliance on division bench decision of this Court reported as *Vimala Gangotia v. National Insurance Co.*, 1995 JLJ 103. The learned counsel appearing for the claimant was also heard on this point. He has not controverted the legal position. As such in the proposed order instead of the amount of Rs. 70,000/- the amount has been substituted as Rs. 50,000/-