
(1995) 01 MP CK 0076
In the Madhya Pradesh High Court

New India Assurance Co.

APPELLANT

Vs

Indarabai and Others

RESPONDENT

Date of Decision : 24-01-1995

Acts Referred:

Motor Vehicles Act, 1988 — Section 95(2)(b)(ii)

Citation : (1995) 2 ACC 173

Hon'ble Judges : Fakhruddin, J

Bench : Single Bench

Judgement

Fakhruddin, J.

This is an appeal by the Insurance Company, against the Award dated 19.9.90, passed by the Member, Motor Accident Claims Tribunal, Gwalior, in Claim Case No. 169/88.

1. The accident occurred on 2nd October, 1986. The deceased Pappu alias Ramcharan met with an accident while he was travelling in a Tempo No. MBG 0003, insured with the appellant, driven by respondent No. 5, Pappu s/o Radheshyam and owned by respondent No. 6, Rameshwar Dayal. Respondent Nos. 1 to 4 are the claimants being LRs of Pappu @ Ramcharan. They filed a claim petition before the Tribunal. The Claims Tribunal, after considering the facts and circumstances of the case, came to the conclusion that the accident occurred due to rash and negligent driving of the vehicle by the driver, respondent No. 5, hence, awarded a sum of Rs. 69,000/- with interest @ 12% p.a. and fixed the entire liability on the appellant-Insurance Company.

2. Mr. B.N. Malhotra, learned Counsel appearing on behalf of the appellant, fairly conceded that so far as the finding of the learned Tribunal, regarding rash and negligent driving of the vehicle is concerned, the same is well merited and even otherwise being Insurance Company, the said finding cannot be challenged. The main contention of the learned Counsel is regarding limits of the responsibility of the Insurance Company u/s 95(2)(b)(ii) of the Motor Vehicles Act, which reads as

under:

95(2) Subject to the proviso to Sub-section (1)--a policy of insurance shall cover any liability incurred in respect of any one accident upto the following limits, namely--

(a) ... (b) where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, --

(i) ... (ii) in respect of passenger, a limit of fifteen thousand rupees for each individual passenger.

(iii) to cover any contractual liability.

3. It was contended that the liability on the Insurance Company could be fixed in respect of individual passenger upto Rs. 15,000/-. He relied on a decision of Supreme Court, as reported in 1988 ACJ 270 (Para 6) and contended that merely because a policy is comprehensive, it does not entitle the owner to claim reimbursement of the entire amount of loss or damage suffered upto the estimated value of the vehicle calculated according to the Rules & Regulations framed in this behalf. Comprehensive Insurance of the vehicle and payment of higher premium on this score, however, do not mean that the limit of liability with regard to the third party risk becomes unlimited or higher than the statutory liability fixed u/s 95(2) of the Act. In the case before the Court there is policy on record and there is contractual liability hence this case is not applied.

4. Learned Counsel further relied on M/s/ Economic Roadways Corporation and another Vs. K.S. Murali and others, Economic Roadways Corporation and Anr. v. R.S. Kuril and Ors.; 1987 ACJ 872 M.K. Kunhimohammed v. P.A. Ahmedkutty and Ors. and 1989 ACJ 1163 Oriental Fire and General Insurance Co. v. Veenna Pruthi and Ors. All these cases were considered by the Division Bench of this Court in M.A. No. 65/91, decided on 19.4.94, wherein the D.B. has held that these decisions, which turned on the interpretation of the terms of Insurance Policies involved in those cases. They are not authority for the interpretation of the terms of the insurance policy, which was taken out in that case i.e., M.A. No. 65/91.

5. In the present case also we have a policy (Ex. D-1) on record. It is regarding commercial Vehicle. This policy involved Company's contractual liability u/s 11-1(ii) In respect of any claim or series of arising out of one event : Rs. 50,000/-. When the contractual liability is fixed between the parties as Rs. 50,000/-, then the statutory liability would become unlimited or higher than the statutory liability fixed if an extra premium is paid. ,

6. Apart from this, Section 95(2)(ii), which is proviso, to cover the contractual liability would be invoked. In the instant case, where there is Ex. D-1 exhibited apart from the contractual liability up to Rs. 50,000/- an extra premium per passenger has also been obtained @ Rs. 12 per passenger, which is apparent from policy (Ex. D-1). In view of the matter, when there is contractual liability up to a sum of Rs. 50,000/-, the question of statutory liability stands superseded,

because in the face of contractual liability, it is the statutory liability which has to prevail. The cases cited by the learned Counsel Mr. Malhotra, regarding statutory liability are not relevant for the purpose of determination of the liability of the Insurance Company.

7. Mr. Sudesh Haswani, learned Counsel for the claimant-respondents placed reliance on a D.B. decision of this Court in M.A. 65/91 (supra) and further placed reliance on another decision as reported in 1991 MPLJ 526 (Paras 26, 28 & 29) to show that where an extra premium is paid per passenger the liability becomes unlimited. He also placed reliance on a decision as reported in I (1991) ACC 267 (MP) 1989 (1) ACJ 169 (MP) 1988 (2) ACJ 159 (Full Bench of Rajasthan High Court) and submitted that passenger in a bus or in any other passenger vehicle, such passenger become third party. For that he placed reliance on 1988 ACJ 222 :1988 MPWN 664. Mr. Malhotra, further, placed reliance on a decision as reported in AIR 1977 SC 343. It is a case of private car and in that situation it was held that he is not a third party, but in the instant case it is a commercial vehicle and the person who met with an accident was a passenger, therefore the decision of the Apex Court as reported in AIR 1977 SC 343 (supra) has no application.

8. In the instant case contractual liability is Rs. 50,000/-. In view of the Claims Tribunal should have awarded a sum of Rs. 50,000/- alone against the appellant-Insurance Company. Thus, the appeal is partly allowed. The Insurance Co. is held liable only to pay a sum of Rs. 50,000/- with interest @ 12% p.a. The rest amount i.e. Rs. 19,000/- with interest @ 12% p.a. is to be paid by respondents Nos. 5 & 6. The interest shall be payable from the date of application till realisation. The amount of compensation already deposited, if any, by the Insurance Company or any other part, will be adjusted. The Tribunal will also take care in disbursement of the amount by relying on a decision of the Supreme Court as reported in 1994 MPLJ 520 Kerala State Road Transport Co. v. Sussamma Thomas and the guidelines enshrined therein shall be followed. No Order as to cost of this appeal.