
(2000) 01 MP CK 0072
In the Madhya Pradesh High Court

New India Assurance Co. Limited

APPELLANT

Vs

Yatendra Singh

RESPONDENT

Date of Decision : 04-01-2000

Acts Referred:

Citation : (2000) 2 ACC 187

Hon'ble Judges : Shambhoo Singh, J; Bashir Ahmed Khan, J

Bench : Division Bench

Judgement

1. This appeal is directed by the defendant against the judgment and decree dated 2.1.1990 passed by the District Judge, Jhabua, in Civil Suit No. 3-B/1986.

2. It is not in dispute that truck No. M.B.I. 9486 owned by the respondent stood insured with the appellant on the date of accident, i.e. 13.5.1984. It was carrying 144 bags of Temru leaves. It burnt alongwith the load near village Lakhankot (Alirajpur). Respondent's case, in brief, was that the truck caught fire near village Lakhankot. The driver Noshad Ali and the cleaner Thavariya for extinguishing the fire took the truck to a "Nulla" but there was no water and ultimately the truck alongwith 144 bags of Temru leaves burnt. Report was lodged at P.S. Alirajpur and information was given to the appellant. The respondent made claim for payment of Rs. 1,51,400/- as damages. The appellant's Surveyor Prakashchand Kimti (D.W. 2) and M.P. Bhargava inspected the spot and found respondent's claim genuine. Respondents claim Inspector Swami came on the spot and settled the claim for Rs. 1,22,000/- including Rs. 2,000/- for salvage. But the appellant refused to pay compensation. On 11.6.1986 the respondent filed civil suit for recovery of Rs. 1,51,000/- with interest at the rate of 12% per annum. The appellant resisted the claim and inter alia pleaded that the Motor Vehicles Rules permitted carrying of load of maximum height of 13 feet. The plaintiff in violation of the Rules and terms and conditions of the permit carried load of 144 bags of Temru leaves, the height of which was 17-18 feet and if struck against the high tension electricity line where it was crossing the road and caused short-circuit, as a result of which fire broke.

Therefore, it was not liable to pay compensation. Learned District Judge framed as many as 8 issues. He answered issue Nos. 1 and 2 in favour of the respondent and held that the value of the truck in question was Rs. 1,25,000/- and it was burnt on 13.5.1984 as a result of accident. He also decided issue Nos. 3 and 4 in favour of the respondent and held that Shri Kimti and Sh. Bhargava, the Surveyors of appellant assessed damages at Rs. 1,22,000/-, and Shri Swami, the representative of the appellant made agreement with respondent for paying this amount. He answered issue No. 3 in negative holding that it was not proved that the respondent committed breach of M.V. Rules and terms and conditions of the permit by loading the truck at more height than was permitted and it caused short-circuit which resulted in burning of the same. The learned Judge answered issue No. 7 in negative and held that the Court had jurisdiction in the matter and decreed the suit with cost directing the appellant to pay Rs. 1,20,000/- with interest @ 9% p.a. for the period from 20.6.1986 to the date of decree and thereafter @ 6% p.a. Hence, this appeal by defendant. The respondent also filed cross-objection for grant of future interest @ 12% per annum.

3. Mr. H.G. Shukla, LC for the appellant, submitted that the learned District Judge committed error in holding that the appellant failed to prove that height of the load of the truck was not more than 13 feet and it did not strike against the wire of high tension line. He submitted that from the report of the police Jhabua it had been proved that the height of bags was 17-18 feet and it struck against the electricity line as a result of which there was a short-circuit and fire broke. The respondent committed breach of the Motor Vehicles Rules and the terms and conditions of the permit and the insurance policy, therefore, the appellant was not liable to pay damages. On the other hand, Mr. Kochatta, LC for the respondent, supported the impugned judgment and decree. He submitted that the appellant failed to produce the permit and survey reports of S/Shri Kimti, Bhargava and Swami, therefore, the learned District Judge rightly drew adverse inference against the appellant.

4. We considered the arguments advanced by Counsel for both sides and perused the record. The question is whether the truck caught fire, as a result of striking of the bags against the wire of the high tension line, crossing the road or due to the process of friction of Temru leaves as pleaded by the appellant and respondent respectively. According to the appellant the load of the truck was 17-18 feet high. It struck the wires of high tension line crossing the road near village Lakhankot and there was sparking and due to short-circuit, the truck caught fire. Prakashchand Kimti (D.W. 2) deposed that 1000 bundles, each bundle containing 50 leaves were filled in 50" x 40" size gunny bag its height comes to 12" x 15" and on tying it with rope, the height was reduced by 3". He deposed that the height of the platform of the truck is 4 1/2-5 feet from the surface of the ground, on loading 144 bags of Temru leaves in 17-18 feet long and 6 1/2-7 feet wide truck, the height of the load would be about 14-14 1/2 feet and on tying it with the rope, the height would be reduced by 4"-6". According to this witness the height would be about 13 1/2 feet-14 feet. But as

admitted by (D.W. 5) A. Faiyaz, Head Clerk of Forest Department, no standard size of bags for loading Temru leaves had been prescribed by the Forest Department and the size of Temru leaves also differed. As admitted by Prakash, the width of the truck can be extended to some extent according to the desire of the owner. Under such circumstances, it cannot be said that the height of the load of 144 bags would always be 17-18 feet from the surface of the land.

5. It has come in the evidence of P.W. 2 Noshad Ali, the truck driver, that 144 Temru bags were loaded in this truck. The load was up to the level of its body and he was driving it from Alirajpur and was going to Rajgarh. When he came 3 kms. away from Alirajpur, the cleaner Thawariya told him that smoke was coming from the truck, on this he stopped the truck and threw 12-15 bags out of the truck but the fire flared up due to the wind, he, therefore, took the truck to a Nalla for extinguishing the fire but there was no water. The villagers came there and poured water but the fire could not be extinguished and the truck alongwith all the bags of Temru were burnt. He stated that height of the load was 6-7 feet from surface of the truck. He stated that the load of the truck did not strike against the electricity wire. Thawariya (P.W. 4), the cleaner of this truck also supported the evidence of Noshad Ali. He stated that the bags of the leaves were loaded up to the iron-pattis of the truck. All of a sudden, it caught fire. The appellant Insurance Co. did not examine any labourer who loaded it or any witness who saw this truck before it got burnt. None of the witnesses stated that the height of the load of this truck was 17-18 feet from the ground surface. It is true that the Sub-Inspector of Police Bharat Singh Kadam (D.W. 7) deposed that the report of fire accident of the truck was lodged at P.S. Alirajpur. He made investigation and found that height of the load of the truck was 17-18 feet and the wire of electricity line of M.P.E.B. had come down, therefore, the load hit the wire and there was short-circuit, the truck caught fire vide fire register entry Ex. D-6. The case-diary of this case was lost. This witness gave this statement from his memory. He had no Panchnama or any documents before him on the basis of which he made Ex. D-6 entry in the fire register. This accident took place on 13.5.1984 and this witness was examined in Court on 30.11.1989. It appears doubtful that he will remember the height of the load after lapse of 5 1/2 years. Even otherwise, his evidence is hearsay. He did not see the truck before accident. He also did not file the statements of the witnesses on the basis of which he came to the conclusion that height of the truck was 17-18 feet from the ground. The learned District Judge discussed the evidence of both parties in detail in paras 18 and 19 and rightly held that it was not proved that the height of the load of the truck was more than 11 feet.

6. For argument's sake, if it was held that the height of the load was more than 11 feet, even then it was not proved that the load of the truck struck against the wire of the electricity line and it caused short-circuit and spark. The evidence of Shri Kadam is that the load struck against the wire stands contradicted by the statement of Vijay Prasad Shukla (D.W. 3) who was posted as Sub-Engineer, M.P.E.B. in Alirajpur at the relevant time. He stated that the height of the high

tension electricity line, which crossed the main road near village Lakhankot, was 19 feet. He admitted in cross-examination that if some object struck against the electricity line, it would cause short-circuit and sparking and it would result in breakdown. He stated that on the date of the accident, no report of short-circuit and breakdown was made. He stated that the report of short-circuit and breakdown was always made to the office of the M.P.E.B. There is no reason to disbelieve the evidence of Shri Shukla who was an independent witness and was examined by the appellant itself. His evidence clearly proves that the height of the high tension line was 19 feet and the load of the truck did not hit the wires.

7. The respondent claimed compensation of Rs. 1,22,000.00 for the loss caused by the accident. Respondent Yatendra Singh (P.W. 1) stated that on his information, the appellant Insurance Company sent its agents Prakash Kimti (D.W. 1) and M.P. Bhargava who made enquiry and after their report, the appellant sent Narayan. He also inspected the spot and told him that his claim will be settled for Rs. 1,20,000/-, after deducting Rs. 2,000/- for salvage. He also took his signatures on some documents. His statement stands corroborated by K.C. Nahar (D.W. 1), the Branch Manager of the appellant, who admitted that M.P. Bhargava and Narayan Swami were deputed for submitting final survey report. He further admitted that these Surveyors submitted their report which was in the record of his office. This report was not produced before the Court and, therefore, the learned District Judge drew adverse inference and believing the evidence of respondent, assessed the loss at Rs. 1,20,000/- and passed decree for the same with interest at the rate of 9% per annum for the period from 20.6.1986 to the date of decree and thereafter 6% per annum. We find no reason to disagree with the finding of the learned District Judge.

8. We would like to mention here that Mr. Shukla, LC for the appellant, also argued that the height of the load was more than 13 feet, therefore, there was violation of Rules 163 and 247, Motor Vehicles Rules, 1974 and the terms and conditions of the insurance policy and permit, therefore, the appellant was not liable to pay compensation. This argument is not acceptable. As stated earlier, it has not been proved that the overall height of this truck from the road was more than 350 cms. (11 1/2 feet) as provided in these rules and the respondent also failed to produce the permit under which this truck was being operated and, therefore, the terms and conditions of the permit could not be proved. In our opinion, the learned District Judge rightly held that the appellant failed to prove violation of the terms and conditions of the permit and insurance policy. Even if it was held that the height of the load was more than 13 feet and it was carried in violation of the Rule 163 or 247 or both, the appellant cannot be absolved from paying compensation as the accident did not occur due to the height of the load. The fire broke as a result of friction process of the Temru leaves. Hence the appeal deserves dismissal.

9. In the result, we affirm the judgment and decree passed by the Trial Court and dismiss the appeal with costs. Counsel's fee of Rs. 2,500/- if certified. Cross-

objection filed by the respondent for enhancement of rate of future interest is also dismissed.