
(1996) 05 MP CK 0007
In the Madhya Pradesh High Court
Case No : M.A. No. 955 of 1994

New India Assurance Co. Ltd.

APPELLANT

Vs

Ram Krishna and Others

RESPONDENT

Date of Decision : 15-05-1996

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (1997) ACJ 1134

Hon'ble Judges : A.K. Mathur, C.J;Shahi Kant Kulshreshtha, J

Bench : Division Bench

Advocate : S.K. Rao, for the Appellant; Deepak Okhade, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Kulshrestha, J.—This appeal has been filed by the insurance company against the award dated 24.8.1994 of the Motor Accidents Claims Tribunal, Sagar, passed in M.A.C. Case No. 55 of 1992.

2. The respondent No. 1, Ram Krishna, son of Durga Prasad Yadav filed an application u/s 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs. 13,00,000/- on account of the death of his son Vinod Kumar in an accident caused by truck No. CPV 424 driven by the respondent No. 3 and of the ownership of the respondent No. 2, Shyam Lal. The appellant insurance company was impleaded as non-applicant No. 3 on the ground that the said truck had been insured by the company, under the policy of insurance.

3. The case of the claimant was that while his son Vinod Kumar was going on a scooter, on seeing that a truck No. CPV 424 was approaching from the opposite direction at an excessive speed, he stopped his scooter on the side of the road but even then, on account of rash and negligent driving of the truck driver, the truck collided with the scooter resulting in the death of Vinod Kumar. Vinod Kumar was earning, from the repairs of various electrical and electronics items, a sum of Rs. 2,000/- per month.

4. The driver of the truck and the owner filed a joint written statement contending that at the time of the accident, Vinod Kumar was driving the scooter at an excessive speed and negligently with the result, he collided with the truck. It was also contended that since the truck was insured with non-applicant No. 3, the owner of the truck was not liable to pay any compensation to the claimant. The appellant insurance company also filed written statement and pointed out that the case suffers from non-joinder of parties as the insurance company which had insured the scooter of the deceased had not been joined. The insurance company also raised the defence of violation of the conditions of the insurance on the ground that the driver at the time of the accident did not hold a licence to drive the vehicle and, therefore, the company be relieved of its obligation under the policy of insurance.

5. The learned Tribunal, in the light of the pleadings of the parties, framed six issues including issue No. 4 to the effect that whether the said truck was being driven, on the date of the accident, in violation of the conditions of the policy of insurance.

6. In dealing with the issue No. 4, the learned Tribunal in para 22 of its award has duly observed that the insurance company had neither produced the policy to indicate as to which condition of the insurance was violated nor did it adduce any evidence to indicate any such violation and answered the said issue in the negative.

7. At the time of hearing of this case, the learned Counsel for the appellant contended that on the failure to implead the insurance company, which had insured the scooter of the deceased, it was not open to the Tribunal to proceed with the case and the Tribunal ought to have dismissed the claim application. The learned Tribunal has, in para 14 of its award on appreciation of the evidence, found that it was not proved that the deceased had contributed to the negligence in the accident in question and, therefore, it could not be said that the deceased was himself at fault. In view of this finding, which the learned Counsel for the appellant has not been able to demolish, the contention about the nonjoinder of the insurance company which had insured the scooter of the deceased, has no subsistence. This apart, nothing has been brought on record to indicate that the said scooter had been insured with any particular insurance company and the plea of the insurance company, the appellant herein, was even otherwise vague. In view of the fact that the appellant did not lead any evidence nor produce the policy despite having admitted the same, the finding reached by the Tribunal does not warrant any interference.

8. Consequently, this appeal is dismissed but we leave the parties to bear their own respective costs of this appeal.