
(1997) 06 MP CK 0006

In the Madhya Pradesh High Court

Case No : M.A. No"s. 717 and 827 of 1995

New India Assurance Co. Ltd.

APPELLANT

Vs

Vidya Bai and Others

RESPONDENT

Date of Decision : 24-06-1997

Acts Referred:

Citation : (1998) ACJ 768

Hon'ble Judges : S.K. Dubey, J;Rajeev Gupta, J

Bench : Division Bench

Advocate : H.S. Ruprah and S.K. Rao, for the Appellant; B.D. Jain, for the Respondent

Judgement

S.K. Dubey, J.—The two appeals arise out of the award dated 6.5.1995 passed in M.A.C. No. 21 of 1992, decided by the Motor Accidents Claims Tribunal, Sagar.

2. The insurer has filed Misc. Appeal No. 717 of 1995 aggrieved of the award that no liability can be fastened on the ground that the driver of the offending truck No. MPS 6991 was not holding a valid licence. The legal representative, widow of deceased Manikchand Jain, dissatisfied with the award of compensation, has filed Misc. Appeal No. 827 of 1995 for enhancement of the compensation.

3. The manner and the circumstances in which the accident occurred resulting in the death of Manikchand Jain on 6.4.1992 are not in dispute. The finding of rash and negligent driving of the truck by the driver is also not under challenge. The insurer has challenged the award on the ground that the driver of the truck was holding a fake licence and to establish the plea, has examined Kamlesh Kumar, Administrative Officer of the insurance company who produced the application by the surveyor on which remark was made by the Licensing Authority, Alwar that Licence No. 32012/83 was not issued by his office. Surveyor"s report, Exh. D-2, was also produced to that effect. The Tribunal after appreciating the evidence, held that the insurance company has failed to establish the defence by examining the Regional Transport Officer or the Licensing Authority or any other officer to

prove that no such licence was issued to driver (Satya Prakash).

4. Mr. H.S. Ruprah appearing in Misc. Appeal No. 717 of 1995 and Mr. S.K. Rao appearing in M.A. No. 827 of 1995 for the insurer submitted that the Tribunal committed an error in not exonerating the insurer as it is evident that the driver was not holding a valid licence whose licence was fake. Therefore, the insurer deserves to be absolved from the liability in terms of the policy.

5. Having heard the learned Counsel and on going through the evidence, we are of the opinion that the contention has no merit. It is well settled that when insurer takes a defence that the insurer is not liable to pay compensation because of the breach of condition of the policy as the driver was not holding a valid licence, the insurer has to establish the plea by leading legal evidence. [See *Narcinva V. Kamat v. Alfredo Antonio Doe Martins* 1985 ACJ 397 (SC) and *Harnek Singh Vs. Harbax Singh and others*, (Sic. *Suresh Mohan Chopra Vs. Lakhi Prabhu Dayal and others*, . In the case in hand, the insurer has not established the plea by leading evidence or by examining the Regional Transport Officer or any authority that Satya Prakash was not issued any licence for driving heavy motor vehicle. Even the surveyor who obtained the remark on his application was not examined. Besides to examine the genuineness of the driving licence this Court afforded opportunity to the insurance company to obtain certificate from the Regional Transport Office, Alwar, in relation to the issue of the licence so as to remove the doubt in relation to the validity of the licence No. 32012/Alwar, which was valid up to 3.6.1992 and was renewed for a further period up to 12.6.1995. But even after opportunity, no such certificate was issued for considering the defence. In the circumstances, in the absence of record from the Transport Authority indicating that the driver had no licence at the relevant time, the insurer cannot escape from its liability to satisfy the award.

6. Coming to the question of compensation, the deceased was an agriculturist who was maintaining his wife and a daughter Neel Mani Jain aged 26 years. Vidyabai, AW 3, admitted in her statement that the agricultural operations were being performed on batai. In the circumstances, the yearly earning of the deceased after deducting expenses cannot be more than Rs. 20,000/-. In that a deduction of one-third is made for the personal expenses of the deceased, the amount would come to Rs. 13,000/-. Applying the multiplier of 8 and looking to the age of the deceased and the widow, the amount would come to Rs. 1,04,000/-. In that Rs. 10,000/towards consortium and Rs. 2,000/- for the funeral expenses are added, the total would come to Rs. 1,16,000/-, which the appellant would be entitled with interest thereon at the rate of 12 per cent per annum from the date of application till deposit. The respondent No. 4 shall deposit the said amount less the amount already deposited within two months from the date of supply of certified copy of the order. On deposit, the Tribunal shall disburse the amount keeping in mind the guidelines laid down in *General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others*, and *Lilaben Udesing Gohel, Shyamala*

Shashidharan Nayyar and Others, Pramilaaben Narendra Bhai Patel and Others, Ramabhai Shankarbhai Chavda, Lilaben and Others, Kantaben Anil Kumar Patel and Others, Motor Vahan Durghatna Sanghathan, Nadiad and Others and Shardaben Chandubhai Patel and Others Vs. Oriental Insurance Company Ltd. and Others, Hemraj Loduram Rajpur and Another, Nandubhai Ambalal Thakkar and Others, Ganibhai Ambabhai Vora and Another, Kaji Gulam Nabi Sheikh and Others, Gujarat State Road Transport Corpn. and Others, State of Gujarat and Others and Bachusha Dadusha and Others, .

7. In the result Misc. Appeal No. 717 of 1995 is dismissed. Misc. Appeal No. 827 of 1995 is allowed with costs. Award of the Tribunal shall stand modified as indicated hereinabove. Insurer shall pay the costs of the appeal. Counsel's fee Rs. 750/-, if pre-certified.