
(1990) 11 MP CK 0014
In the Madhya Pradesh High Court

New India Assurance Co. Ltd.

APPELLANT

Vs

Vimla and Others

RESPONDENT

Date of Decision : 30-11-1990

Acts Referred:

Motor Vehicles Act, 1939 — Section 103, 31

Citation : (1992) 1 ACC 189

Hon'ble Judges : T.N. Singh, J

Bench : Single Bench

Judgement

T.N. Singh, J.—On behalf of appellant's Counsel, Mr Maheshwari prayed for adjournment. True, as per order dated 29.10.1990⁷this appeal, which is nine years old, could not be disposed of as respondent No. 5 has remained unserved. Steps had to be taken by appellant in that regard and that default apparently continues.

2. In the circumstances aforesaid, this appeal is disposed of on merits. This is insurer's appeal who challenges its joint liability under the award which is passed for a petty sum of Rs. 15.000/-. The contention is that respondent No.5 was the insured person and he had effected transfer of the vehicle to respondent No.3, but no transfer was effected in respect of the policy of insurance which had been issued to him. True, the award is passed jointly against him and two others including respondent No. 3.

3. From records, I find that the insurer appellant had amended the written statement on 6.12.1979 claiming exoneration of liability under "general exceptions". That is stated in amended para 12. No doubt, therefore, that it was the burden entirely of the insurer to establish the plea to claim exoneration of liability under an "exception. In my opinion, he failed to do so for the short reason, to be stated hereinafter.

4. No satisfactory evidence the insurer adduced to support the plea except relying on admission in his evidence of defendant No. 3 that he had purchased

the offending vehicle on 17.4.1976. True, the policy, Exh. D/1, shows insured's name as Mahendra Singh, covering risk for the period between 5.4.1978 and 4.4.1979. The accident had taken place, admittedly, on 10.5.1978.

5. The short question is whether by admission title can be create in contravention of statutory requirement. Law is well settled that a "registered owner" or motor vehicle is to be regarded as owner of the vehicle because provision for transfer of ownership to be recorded is made and that is Section 31 of the Motor Vehicles Act, 1939. It was insurer's burden either to prove the registration certification in original to prove due registration being effected in accordance with law or even to prove that steps in that regard had been duly taken in accordance with Section 31. That apart, respondent No. 3 did not also prove passing of consideration for the alleged sale. Not a single word did he say that he had paid any money, or what money, for purchasing the vehicle.

6. Thus I hold that there being no evidence before the Claims Tribunal, reliance by the Tribunal on Section 103, Motor Vehicles Act, though challenged, would not taint the award in so far as the insurer appellant is concerned. An insurer is jointly and severally liable with the registered owner and even if the registered owner is exonerated for not being served, insurer's liability is not wiped out. In this context, it must be noted that before the Claims Tribunal and also in this Court, defendant No. 5 has been duly impleaded to answer the claim. Unfortunately, he could not be served in this Court, though he contested the claim in the trial court. In his written statement, he supported the insurer in regard to its plea of transfer; but that admission cannot be regarded as a discharge of onus by the insurer of its burden to establish its case of exception in accordance with law.

7. For all the aforesaid reasons, I find no merit in this appeal and it is dismissed. No. costs. Appeal dismissed.