(1985) 12 MP CK 0061

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 92 of 1982

New India Assurance Co. Ltd., Gwalior — APPELLANT

Vs

State of M.P. and Others — RESPONDENT

Date of Decision : 07-12-1985

Acts Referred:
Motor Vehicles Act, 1939 — Section 95(2)(d)

Citation : (1986) JLJ 364

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

Bench : Single Bench

Advocate : S.K. Dubey, for the Appellant; R.D. Jain for Respondent Nos. 2, 3 and N.P. Mittal, for the Respondent

Judgement

Dr. T.N. Singh, J.—This is Insurer''s appeal. The first respondent in this case is the owner of the affected motor vehicle, who was also the claimant in respect of the damage caused to the vehicle. Indeed, respondent No. 2 was also a claimant in respect of compensation for injuries caused to his person in the course of the accident. He was the driver of the vehicle which was damaged in the accident. The third respondent is the owner of the offending vehicle, against whom the award is passed.

2. Appellant''s counsel Shri Dubey has made a short submission, relying solely on the provisions of section 95 (2) (d) of the Motor Vehicles Act, 1939, as it stood at the relevant date in 1977 when the accident took place. Counsel submits that the liability of the insurer in virtue of the said provision is statutorily limited to a sum of Rs. 2,000/- and as such, the Tribunal erred in law in holding the insurer jointly liable with the owner of the offending vehicle for discharging the entire liability under the award, which was made for a sum of Rs. 21,000/-. I have no hesitation to uphold the contention as the mandate of clause (d) of section 95 (2) is clear, obvious and peremptory, admitting no exception. Shri Jain has drawn my attention to sub-section (5), which, in my opinion, has no relevance to the issue agitated in this appeal. My attention is drawn by Shri Dubey to the

insurance Policy, which is on record of the trial Court, to which a reference also is made in the award, to submit that even thereunder, according to the terms of the Policy, the liability of the insurer was limited by the Act, That is so, I have perused the Policy, which expressly limits insurer''s liability to "such amount as is necessary to meet the requirements of Motor Vehicles Act, 1939". That being the position, the objection of Shri Jain, founded on sub section (5) vanishes in thin air.

3. It is also pointed out that a sum of Rs. 1,000/- is awarded to respondent No. 2 against his claim for injuries to his person. However, this claim is not contested by Shri Dubey and I see no reason why the liability of the insurer as respects this amount could, in any way, be modified.

4. In the result, this appeal succeeds and is allowed with the direction that the award stands modified as respects insurer''s liability, who is required to satisfy the liability in respect of the award to respondent No. 2 in full and in part only to the extent of Rs. 2,000/- as against respondent No. 1. There shall be, no order as to costs in this appeal.

5. After the judgment has been dictated, Shri Mittal has appeared to plead the case of respondent No. 1. His submission is three-fold. Firstly, it is submitted that no reference can be made to the insurance Policy as it has not been formally proved. I see no merit in this contention for several reasons. Firstly .because, Shri Mittal himself relied on the Policy to enforce the liability of the insurer to satisfy in full the claim. Secondly, because it was well within the jurisdiction of the Tribunal to accept in evidence insurance Policy, dispensing formal proof inasmuch as section 110 C authorises the Tribunal to adopt such a procedure, which contemplates "such summary procedure" to be followed by the Tribunal "as it thinks" fit. Thirdly, because section 58 of the Evidence Act itself dispenses formal proofing a case when a fact is admitted, and in the instant case, as alluded, the owner himself having invoked insurer''s liability under the Policy, the Policy must be deemed to have been admitted by the owner.

6. The second contention of the Shri Mittal is based on the provisions of section 96 (4) of the Act and he has cited case law. The provision is extracted below.

(4) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person. I have no doubt about the purport of the above provision and indeed the case law cited, does support my view. I entertain no doubt at all about the position that a civil suit may also be instituted in respect of a claim as respects damage to property suffered by any person in the course of motor accident and in that event, on the suit being decreed, the claimant-decree-holder is enabled by sub-section (4) to enforce the claim against the insurer and on the insurer satisfying such claim, the latter is entitled by virtue of sub-section

(4), to recover from the judgment-debtor (owner of the offending vehicle) the amount paid by him to the claimant in excess of his statutory liability, inscribed in section 95 of the Act. I have no doubt at all that sub section (b) does not over-ride the limit or liability of the insurer inscribed in sub-section (2) of section 95 of Act. In Central Road Transport Corporation Ltd. Vs. Orissa State Commercial Transport Corporation and Others, , cited by Shri Mittal, it was held that prior to amendment of the Act in 1969, the owner of the property claiming compensation for damages to the property arising out of the accident of motor vehicle had the only remedy of approaching the civil Court in common law and civil Court had jurisdiction to decide the lis, but the situation has changed and new the claim must be lodged in the Tribunal. But, in the event of the claim exceeding the limit of Rs. 2,000/-, the claimant can get the matter referred to civil Court for adjudication at his option. Therefore, the short question in this case is, if the option was not exercised earlier, at trial stage, before the Tribunal, can the option be now exercised ? The answer to the question has to be clear ''No''. That being the position, the second contention of Shri Mittal must fail as no option was exercised by first respondent before the Tribunal and consequently, the third contention that, even at this stage, the claim may be referred by this Court to the Civil Court must also fail. It was well within the jurisdiction of the Tribunal to adjudicate claim as option was not exercised by the claimant who had the right to exercise the option. The right cannot be exercised to the detriment of the insurer. It is not possible to hold the award wanting in jurisdiction and to entertain claimant''s prayer for adjudication of the claim by civil Court by setting aside the award.

7. Shri Mittal has also cited decision of this Court reported in (R. Gopaldas v. Sardar Mahendrasingh) AIR 1984 MPLJ 537, as well as those in Banwari Lal v. Vishunnarayan 1975 ACJ 40 and Manohar Singh v. Canara Motor General Insurance Company) 1977 ACJ 280, but I do not read anything therein to support the contentions pressed by Shri Mittal, Indeed, in all the three cases, the decision merely was that the claims Tribunal had jurisdiction to award compensation for loss of or damage to property. Another decision, on which Shri Mittal has relied, in the case of Shyamlal 1979 ACJ 208 in support of the contention that Policy of Insurance should have been proved and no reliance can be placed on the policy which was admittedly "produced" by the insurer. However, the decision does not support his contention and indeed, the insurer was faulted for not "producing" the Policy to show its limited liability; and not for any other purpose. The decision in National Insurance Company 1981 ACJ 93 is also on the question of general burden of proof, which question, as alluded, as respects the Policy, is not at all germane to this lis. However, a decision of the Delhi High Court in Satyawati Pathak 1983 ACJ 424 is also relied on, because at para 32 of the report, reference to Shyamial and National Insurance Company''s case (supra), decided by this Court, are mentioned. I have already examined those decisions and demonstrated that contention canvassed, does not find support from those decisions. I wonder how Pushpabai Pushpabai Purshottam

Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, can at all be pressed in service, because it deals with applicability of the doctrine res ipsa loquitur.

8. For the foregoing reasons, I am constrained to hold that the view I have already taken does not merit reconsideration.