
(2007) 01 MP CK 0004
In the Madhya Pradesh High Court

New India Insurance Co. Ltd.

APPELLANT

Vs

Santosh and Others

RESPONDENT

Date of Decision : 18-01-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 147(2), 173

Citation : (2008) ILR (MP) 322 : (2008) 3 MPHT 356

Hon'ble Judges : U.C Maheshwari, J

Bench : Single Bench

Judgement

U.C. Maheshwari, J.—This appeal is directed on behalf of the insurer/appellant u/s 173 of the Motor Vehicle Act (in short "the Act") being aggrieved by award dated 9-10-02 awarding the claim of respondent Nos. 1 and 2 for the sum of Rs. 47000/- alongwith interest at the rate of 9% P.A from the date of filing the claim petition.

2. The facts giving rise to this appeal in short are that on dated 29-6-2001 at about 10.30 P.M in the night, the respondent No. 2 being employee of respondent No. 1, after giving the services of his horse in some marriage ceremony was returning to home, on the way such horse was dashed by the auto bearing registration No. CIQ 3937 driven by respondent No. 3 in a rash and negligent manner, resultantly alongwith respondent No. 2 such horse also sustained the injuries in its right leg and in consequence of it, the horse succumbed to injuries. The F.I.R regarding the incident was lodged at P.S. Cantt, Sagar. The post-mortem of the horse was carried-out at Veterinary Hospital, Sagar, while respondent No. 2 was taken to the hospital where his MLC report was prepared. Respondent No. 2 suffered huge expenses on his treatment and also sustained the loss of income. As per further averments, the earning of the respondent No. 2 was Rs. 20,000/- per annum, while the cost of the horse was Rs. 35,000/-. The respondent No. 1 has been deprived from the future income which he would have earned had the horse alive. With these averments, the respondent No. 1 preferred his claim for Rs. 3,00,000/- regarding horse and its

income while the respondent No. 2 preferred his claim for the sum of Rs. 18,000/-.

3. Respondent No. 3 remained ex parte in the Tribunal while in reply of respondent No. 4, the averments of the claim petition are denied. It is also stated that the claim is preferred on false pretext, while in the reply of the appellant insurer it is stated that the alleged claim is not tenable either in law or on facts. It is accepted that the auto was insured with it with covering the risk of third party, therefore, its liability, regarding the damages of the property, was limited only upto Rs. 6,000/- and not more than this amount. It is also stated that respondent No. 3 did not have a valid and effective driving licence to drive the alleged vehicle.

4. The Tribunal framed the issues and recorded the evidence, on appreciation of the same, by holding the respondent No. 3 is liable for the alleged accident, awarded the claim against the appellant and respondent Nos. 3 and 4 jointly and severally for the sum of Rs. 35,000/- in respect of the horse and Rs. 10,000/- in respect of the income from such horse. Besides this, Rs. 2,000/- was awarded to respondent No. 2 regarding the injuries sustained by him. The interest at the rate of 9% P. A from the date of filing the claim petition was also awarded on the awarded sum.

5. Being aggrieved by such award the insurer has come to this Court with this appeal.

6. Shri Anup Nair and Shri Shishir Dixit, the appearing Counsel for the appellant argued that in the lack of any additional premium for covering the additional risk regarding the damages of the property of third party, the claim regarding loss of the horse or its income could not be awarded against it for more than Rs. 6,000/-. He also referred the provision of Section 147 of the Act in this regard. In continuation he said that as per the policy, no additional premium was paid by respondent No. 4 in this regard. He did not assail the part of the award, by which the claim of respondent No. 2 has been awarded in respect of the injuries sustained by him. With these submissions they prayed for modification in the impugned award by allowing this appeal.

7. None appeared on behalf of respondent Nos. 1 to 3 to respond the aforesaid arguments while Shri Devendra Shukla, learned Counsel for respondent No. 4 by supporting the impugned award said that the same is based on proper appreciation of the evidence and also is in conformity with law. It does not require any interference at this stage. As per his submission, in any case, the appellant could not be exonerated from the liability to indemnify the awarded sum.

8. Having heard the Counsel on perusing the record of the Tribunal and the impugned award, I have not found any entry in the Insurance Policy (Exh. D-1) showing that any extra premium for covering the additional risk of the property of third party was paid. In such circumstance, I am of the considered view that

the Tribunal ought to have decided the matter in accordance with the provision of Section 147 of the Motor Vehicle Act. It appears that without taking such provision in consideration the joint and several liability for the entire sum has been saddled against the appellant.

9. The findings of the Tribunal, holding that the alleged accident was the cause and consequence of rash and negligent driving of the alleged autorickshaw by the respondent No. 3 and the offending vehicle was insured with the appellant, in the light of available evidence do not require any interference at this stage. Hence the same are hereby affirmed.

10. So far the liability of the appellant to indemnify the claim is concerned, firstly, I would like to reproduce the provision of Sub-section (2) of Section 147 of the Act. The same reads as under:

147. Requirements of policies and limits of liability.--

(1) *** ***(2) Subject to the proviso to Sub-section (1), a policy of insurance referred to in Sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely: (a) save as provided in Clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

(3) *** ***(4) *** ***(5) *** ***

A bare reading of the aforesaid provision clearly shows that the liability against the appellant insurer regarding damages of the property like horse could be saddled by the Tribunal only upto Rs. 6,000/- and not more than that. It is noted that I have not been shown any provision or the legal position contrary to the aforesaid provision by the Counsel for respondent No. 4. Apart this he could not show from the policy that any extra premium was paid to cover the additional risk of the property of third party.

11. It appears from Para 21 and onwards of the impugned award that in the lack of any rules, regulations or provisions the liability to pay the entire sum has been saddled jointly and severally against the appellant alongwith respondent Nos. 3 and 4. In the light of the aforesaid provision such approach of the Tribunal does not appear to be correct. Hence such finding of the Tribunal is set aside.

12. In the aforesaid premises, the impugned award requires modification for holding the liability of the appellant/insurer upto the limit of Rs. 6,000/-, therefore, by allowing this appeal in part, the joint and several liability of the insurer/appellant alongwith respondent No. 3 and 4 to indemnify the claim

regarding damages of horse is reduced from Rs. 35,000/- to Rs. 6,000/-and interest on it at the rate as awarded by the Tribunal while the liability of the aforesaid remaining sum Rs. 29,000/- regarding the horse is saddled against respondent Nos. 3 and 4. Besides this, the remaining part of the impugned award is hereby affirmed. It is further directed that if any excess amount has been paid by the appellant to the claimants then the appellant shall be at liberty to recover the same from respondent Nos. 3 and 4 by filing the execution on the basis of this award only and no separate proceedings will be required for it. In the facts and circumstances of the case, there shall be no order as to the cost. The appeal is allowed in part as indicated above.