
(1996) 06 MP CK 0021
In the Madhya Pradesh High Court
Case No : L.P.A. No. 18 of 1992

Niraj Dayal	Vs	APPELLANT
Mohanlal Bagora and Others		RESPONDENT

Date of Decision : 26-06-1996

Acts Referred:

Motor Vehicles Act, 1939 — Section 95

Citation : (1997) 2 MPLJ 119

Hon'ble Judges : S.B. Sakrikar, J;A.R. Tiwari, J

Bench : Division Bench

Advocate : Rajpal, for the Appellant; H.G. Shukla and A.H. Khan, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sakrikar, J.

The appellant/claimant has directed this Letters Patent Appeal under Clause 10 of the Letters Patent, against the order dated 11-8-1992, passed by learned Single Judge of this Court in Misc. Appeal No. 330/90, thereby allowing the appeal filed by respondent No. 2, Insurance Company and holding the Insurance Company liable to pay compensation to the extent of Rs. 10,000/- along with the interest at the rate of 18% p.a.

The facts in brief are that claimant/appellant filed claim petition before the Claims Tribunal on the assertion that on 6-11-1985, he was travelling as a passenger in a tempo bearing registration No. MPN 8177, at about 4.30 p.m. the tempo met with an accident. The claimant/appellant sustained injuries in the accident, and caused partial permanent disability in his hand. The Claim Petition was resisted by respondents. Learned tribunal partly allowed claim petition filed on behalf of the appellant and awarded compensation of Rs. 37,523/- along with interest at the rate of 12% p.a. from the date of filing of the petition with further direction that whole compensation amount shall be paid by the Insurer i.e.

respondent No. 2, Insurance Company. Aggrieved by the aforesaid direction of the Tribunal, respondent No. 2, Insurance Company filed Misc. Appeal No. 333 of 1990 before the learned Single Judge of this Court on the contention that as the claimant was travelling in the aforesaid tempo as a passenger, therefore, in view of the terms of the Policy, the liability of the Insurance Company is limited only to the extent of Rs. 10,000/-. Learned Single Judge by the impugned order partly allowed the appeal and held that the Insurance Company is liable to pay compensation only to the extent of Rs. 10,000/- and interest thereon. However, learned Single Judge, enhanced the rate of interest from 12% to 18% p.a. Aggrieved by the order of the learned Single Judge, the claimant/appellant has filed this appeal.

We have heard Shri Rajpal learned counsel for the appellant and Shri H. G. Shukla learned counsel for the respondent No. 2 and Shri A. H. Khan learned counsel for respondents Nos. 4 and 5. None appeared for other respondents.

The only contention raised by the counsel for the appellant is that as per terms of the Policy, Exh. D/1, the owner of the offending tempo, has paid extra premium and as per condition of the policy, maximum liability of Rs. 50,000/- has been fixed. Therefore, the order of the learned Single Judge, fixing the liability to the extent of Rs. 10,000/- only and the interest thereon, is not proper and deserves to be modified. Learned counsel relied on the following decisions of this court and the Apex Court.

(i) The United India Fire and Gen. Insurance Co. Ltd. Vs. Natwarlal and Others, . (ii) Murari Singh Vs. Ritu Tuteja and Another, . (iii) United India Insurance Co. Ltd. Vs. Smt. Neelambai and Others, . (iv) 1994 MPWN (II) 41; National Insurance Company Ltd. v. Ramswaroop; (v) 1981 ACJ 507; Motor Owner's Insurance Company Ltd. v. Jadavji Keshavji Modi and Ors.

In oppugnation, learned counsel for the respondents contended that because of payment of extra premium for the passengers travelling in the alleged tempo, the Insurance Company has extended statutory liability to indemnify the owner in case of injury caused to the passenger travelling in the tempo from Rs. 5,000/- to Rs. 10,000/- and therefore, learned Single Judge has rightly held the Insurance Company liable for the payment of compensation amount to the extent of Rs. 10,000/- only and the interest thereon. The counsel relied on the Supreme Court decision reported in New India Assurance Co. Ltd. Vs. Smt. Shanti Bai and others, .

We have carefully perused order of the learned Single Judge and also considered the facts of the case.

It is argued on behalf of the respondents that the learned Single Judge has rightly held the Insurance Company liable for the payment of compensation amount to the extent of Rs. 10,000/- only and as such the impugned order requires no interference.

On perusal of the order, it is found that alleged accident occurred on 6-11-1985 and therefore, the Amended Provisions of Section 95 of the Motor Vehicles Act as amended by Act No. 27 of 1982 which came into force w.e.f. 1-10-1982, shall apply to the instant case. It appears that the aforesaid Amendment was not brought to the notice of the learned Single Judge. This fact was also not argued before us. In view of the aforesaid legal position, the case deserves to be remanded to the Single Bench for passing fresh order in terms of the aforesaid Amended Provisions of the Act.

This is a Letters Patent Appeal. The Letters Patent Bench is the Court of correction and corrects its own orders in exercise of the same jurisdiction as was vested in the Single Bench. It is, therefore, obligatory on the part of the Letters Patent Bench to correct errors once the same are noticed.

In Baddula Lakshmaiah and Others Vs. Sri Anjaneya Swami Temple and Others, , the Apex Court has ruled that:-

"A Letters Patent Appeal, as permitted under the Letters Patent, is normally an intra-court appeal whereunder the Letters Patent Bench, sitting as a court of correction, corrects its own orders in exercise of the same jurisdiction as was vested in the Single Bench. Such is not an appeal against an order of a subordinate court. In such appellate jurisdiction, the High Court exercises the powers of a Court of error. So understood, the appellate power under the Letters Patent is quite distinct in contrast to what is ordinarily understood in procedural language."

In view of the aforesaid position, in order to give fair opportunity to all sides to agitate the aforesaid point before learned Single Judge, we allow this appeal and vacate the order passed by the Single Bench with the direction of remand to the Single Bench. The Single Bench shall now consider the matter afresh keeping in view the amended Provisions of the Act as noted above and decide the aforesaid appeal afresh in conformity with law after giving reasonable opportunity of hearing to both sides on all points as may be available to them.

We, however, make no order as to costs.

The office is directed to place the aforesaid Misc. Appeal before the Single Bench according to the Roster, for further action.