

(1991) 02 MP CK 0029
In the Madhya Pradesh High Court
Case No : M.A. No. 245 of 1981

Oriental Fire and General Insurance Co., Indore
Vs

APPELLANT

Gangabai and Others

RESPONDENT

Date of Decision : 21-02-1991

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 110B, 2(18), 81, 82

Citation : (1992) ACJ 106 : AIR 1991 MP 323 : (1993) 38 MPLJ 233 : (1993) MPLJ 233

Hon'ble Judges : A.G. Qureshi, J

Bench : Single Bench

Advocate : Dhupar, for the Appellant; G.K. Nasre, B.C. Verma and Vasistha, for the Respondent

Final Decision : Dismissed

Judgement

A.G. Qureshi, J.

The appellant Insurance Company has filed this appeal aggrieved by the Award dated 23-7-81, passed by the Additional Motor Accidents Claims Tribunal, Indore in Claim Case No. 136 of 1979.

The facts leading to this appeal, in short, are that the respondents Nos. 1 and 2 had filed a claim petition u/s 110-A of the Motor Vehicles Act for awarding compensation amounting to Rs. 30,000/-. The case of the respondents Nos. 1 and 2, in brief, before the lower Tribunal was that on 30-3-1979, tanker No. MPG 7685 of the ownership of respondent No. 3 and respondent No. 4 being its driver was parked on the road in front of the workshop of respondents Nos. 5 and 6 and some welding work was being carried on on the aforesaid tanker. At that time the deceased with one Ramlal was going towards Naulakha at about 3 p.m. When they were near the tanker the diesel tank exploded and on account of which the deceased received serious burn injuries. The deceased was treated at the M.Y. Hospital, Indore, but he succumbed to the injuries on 4-4-1979. The claimants

claimed Rs. 30,000/- on the averments that the deceased was 54 years of age at the time of his death and was getting a salary of Rs. 630/- per month as a jobber and due to his death the petitioners have suffered the pecuniary loss and have also suffered mentally. The claim was made against the Insurance Company also in view of the fact that the aforesaid tanker was insured with the appellant Insurance Company.

The claim of the petitioners was resisted by respondents Nos. 3 and 4 on the ground that there was no negligence on the part of non-applicant No. 2 and the tanker was not in use at the time of the accident and it being parked inside the workshop the Tribunal had no jurisdiction to entertain the claim. The other respondents Nos. 5 and 6 also resisted the claim on the same grounds. The Insurance Company, further contended that the risk was not covered by the policy of Insurance.

The learned Tribunal framed seven issues to decide the claim and it held that the claimants are the legal representatives of the deceased Radhakishan and are entitled to get the compensation. It was also held that the accident tanker was being repaired in contravention of the road rules and there was negligence on the part of the driver and the mechanic which resulted in the said accident and the deceased died due to the injuries received due to the accident. It was also held that the accident is covered by the terms of the policy and the Court has jurisdiction to hear the claim petition. Accordingly an award of Rs. 20,000/- was passed against the respondents Nos. 3 to 6 and the appellant. Hence this appeal by only the Insurance Company which was non-applicant No. 3 before the lower Tribunal. The other non-applicants have not filed any appeal.

The grievance of the appellant is that the vehicle being stationary and not parked in a public place, the lower Tribunal had no jurisdiction to entertain the appeal. The Insurance Company covered the risk only when the vehicle was in motion and not when it is stationary and, therefore, the Insurance Company cannot be called upon to satisfy award. It was further argued that the driver of the vehicle being in no way negligent, the Insurance Company is not vicariously liable to pay the damages.

The respondents Nos. 1 and 2 have filed a cross-objection wherein they have prayed for the enhancement of the award amount.

As regards the negligence, it is clear from the evidence that the tanker in question was parked partly in the garage and partly on the public road. It is also corroborated by the spot map Ex. C-2. It is also not disputed that the diesel tanker of the accident vehicle caught fire and burst as a result of the welding near the diesel tank. Now the negligence on the part of the vehicle driver is apparent in not emptying the diesel tank at the time of the repair and also in not ensuring the proper parking of the vehicle. The parking of the vehicle on the road with a hazardous work being carried on the vehicle is manifestly an act of negligence on the part of the driver and the mechanic. Further more to avoid any

accident it was necessary to either remove the diesel tank or to empty it when the work of welding which is done with the aid of flames is undertaken. As such, in my opinion, the learned lower Tribunal has rightly held that there was negligence on the part of the driver of the vehicle in parking the vehicle partly on the road and then allowing the hazardous work of welding being done with the diesel tank being full of diesel.

As regards the accident having taken place in a public place, the evidence on this point is also clear that part of the vehicle was on the road and actually because of the fact that the vehicle was on the road that the deceased, who was a passer-by, received injuries to which he succumbed. Had the repair work been carried on in the garage itself, the deceased would not have received any injuries who was going on the road. Therefore, the plea of the Insurance Company that the accident took place in a private is also without any merit.

Now the crucial point on which emphasis has been laid by the learned counsel for the appellant is that the vehicle was not in use at the time of the accident. On the other hand the learned counsel for the respondents Nos. 1 and 2 has cited many authorities to support the finding of the lower Tribunal holding that the accident arose out of the use of the vehicle.

In my opinion, the arguments advanced by the learned counsel for the appellant on this point is also without any force. The learned Tribunal has rightly applied the principles enunciated in the case of V.G. Sumant Vs. Shailendra Kumar and Others, In this decision a Division Bench of this High Court has considered this aspect of the matter in the light of various authorities on this point. The facts of the aforesaid case were that the claimant had gone to the market for making some purchase from a hardware shop in Bhopal and he was sitting on a stool outside the shop. A jeep car was parked at some distance from where he was sitting. At that time a minor son of the owner of the vehicle alleged to have driven the jeep negligently as a result of which the jeep ran over the claimant fracturing his right ankle. The defence of the owner was that the jeep was parked near the shop of respondent No. 2 when the children got into the jeep without the knowledge of the respondent No. 2 and somehow the jeep was set in motion by the children with the result that the jeep started sliding down the slope on the road and injured the claimant who happened to be sitting on the road. The main plea in that case was that the accident did not occur as a result of the use of the motor vehicle and, therefore, the Tribunal had no jurisdiction to entertain the claim.

The Tribunal came to the conclusion that the jeep was not being driven on account of which the accident had occurred and therefore, the claim did not arise out of the use of a motor vehicle. Accordingly it held that it had no jurisdiction to entertain the claim. In appeal by the appellant injured, the Division Bench, while considering this aspect of the matter first considered the provisions contained in Sections 81 and 84 of the Motor Vehicles Act. Along with the definition of the "motor vehicle" in the Motor Vehicles Act, held that a distinction had to be drawn

between a motor vehicle which is in a fit condition for mechanical propulsion and a vehicle out of use being incapable of mechanical propulsion on account of some defect. Once it is found that the motor vehicle which is fit for mechanical propulsion on the road and which during its use has been parked negligently on the road and later starts sliding down the road, then if the parking is contrary to the statutory provisions contained in Sections 81 and 84 of the Motor Vehicles Act dealing with the stationary vehicles, any negligence on the part of the driver or owner of such vehicle in this respect leading to an accident, would lead to a conclusion that such an accident arises out of the use of the motor vehicle. The definition of "motor vehicle" given in Section 2(18) must be read to mean any such vehicle which is capable of mechanical propulsion adopted for use upon roads and, therefore, a vehicle which for the time being is incapable of mechanical propulsion would not fall within the ambit of the definition, but where a motor vehicle is capable of mechanical propulsion and for use, but for the time being was only been parked or left stationary, is included in the definition of the motor vehicle.

In *Government Insurance Office of New South Wales v. R. J. Green & Lloyd Pvt. Limited* 1967 Acc CJ 329 the High Court of Australia has held that when a workman is injured while placing the load on the stationary truck, the injury has to be held to have been caused by the use of the vehicle. It was further held that the term "use" did not necessarily mean that the truck should be in motion. It was held by the Court that there is no valid reason to restrict the phrase "the use of motor vehicle" to mean injury resulting from the movement of the vehicle or from the operation of some part of its mechanism. The only limitation upon its generality was that the injury must be in some way a consequence of the use of the vehicle as a motor vehicle. Any use that was not utterly foreign to its character as a motor vehicle was covered by the words.

Now, in the instant case it has not been brought on record or has been pleaded by anyone that at the time of the accident the vehicle was not in a fit condition and being incapable of mechanical propulsion. Therefore, it has to be held that the vehicle at the time of at the accident was capable of mechanical propulsion. It was in the workshop, only for some welding work and, therefore, in view of the definition of "motor vehicle" given in Section 2(18) of the Motor Vehicles Act, 1939 it was a "motor vehicle" parked on the road for welding work. Now the welding work was also incidental to the use of the vehicle. According to Section 81 of the Motor Vehicles Act there is a clear prohibition for causing or allowing the vehicle to remain at rest on any road in such a position or in such a condition or in such circumstances as to cause or to be likely to cause danger, obstruction or undue inconvenience to other users of the road. From the facts of this case it cannot be denied that the accident vehicle was parked partially on the road in such a position where it was likely to cause danger to the users of the road and, therefore, the parking was in contravention of Section 81 of the Motor Vehicles Act 1939 and it is also not in dispute that while so parked on the road the diesel tank of the vehicle caught fire and burst due to the welding. As such there can

be no hesitation in holding that the accident took place because of the use of the vehicle. Therefore, I hold that the deceased Radhakishan had received injuries as a result of the use of the accident vehicle and, therefore, the lower Tribunal has rightly held that it had jurisdiction to entertain the claim petition. Consequently this contention of the learned counsel for the appellant is also without any force.

As regards the cross-objection, the learned lower Tribunal has already taken a reasonable view or rather a view favourable to the claimants. Therefore, in view of the fact that the age of Radhakishan has been assessed at 60 years and despite the non-production of the record of the Mills where he was alleged to have been serving, the Court has assessed the compensation holding the life expectancy of the deceased up to 70 years, in my opinion, the award of compensation is proper and does not require any interference.

In view of the aforesaid both the appeal and the cross-objection have no force. They are accordingly dismissed with costs. The appellant shall bear his own cost and shall pay the cost of the respondents. Counsel's fee taxed at Rs. 250/-.