

(1984) 12 MP CK 0007

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 153 of 1981

Patharibai and Others

APPELLANT

Vs

Firulalji Shankarlal and Others

RESPONDENT

Date of Decision : 01-12-1984

Acts Referred:

Motor Vehicles Act, 1939 — Section 110B, 95(1)

Citation : AIR 1985 MP 103 : (1986) 60 CompCas 482 : (1985) JLJ 205 : (1985) 30 MPLJ 84 : (1985) MPLJ 34

Hon'ble Judges : R.K. Varma, J; P.D. Mulye, J

Bench : Division Bench

Advocate : Amar Singhji, for the Appellant; Sujan Jain, V.S. Kokje and Sutjitsingh, for the Respondent

Judgement

R.K. Varma, J.

This order shall also govern the disposal of Misc. Appeal No. 179 of 1981 (Lalji Shankarlal v. Smt. Pathribai and Ors.).

This is an appeal filed by claimants against the Award dated 21-2-1981 made by the Motor Accident Claims Tribunal, Dewas praying for enhancement of the compensation amount awarded. Another appeal Misc. Appeal No. 179 of 1981 has been filed by M/s. Lalji Shankar, who is joined in the present appeal as respondent No. 1 being the owner of the truck, against whom an award of Rs. 20,000/- has been passed in favour of the claimants, legal heirs of deceased Karansingh who died as a result of the motor-truck accident.

The facts leading to this appeal briefly stated are as follows : --

ck No. MPO 1994, on the date of the accident i.e. 15-6-1977, was carrying deceased Karansingh, a labourer (Mammal) along with other labourers (Hammals) employed by Thakur Sawdekar & Co., Khategaon respondent No. 4 to Nasrullaganj to lift bags of Temproo leaves on the truck for bringing the same to Khategaon. The truck met with an accident on the way by colliding with a tree

resulting in injuries to the Hammals and ultimate death of deceased Hammal Karansinh. The driver of the truck at the time of accident was Babukhan, Respondent No. 2. The truck was insured with New India General Insurance Company, Indore respondent No. 5, by respondent No. 1. The Claims Tribunal found the negligence of the driver and awarded a compensation of Rs. 20,000/- to the claimants. The insurer respondent No. 5 was, however, absolved of its liability on a finding that the insured respondent No. 1 had sold the truck to respondent No. 2 under an IKRARNAMA (Ex. 5 EM) on 31-5-1977, prior to the date of the accident but the Tribunal gave the award against the respondent No. 1 M/s. Lalji Shankarlal.

It is obvious that the Tribunal having found that the truck had been sold by respondent No. 1 prior to the date of accident, the award could not have been given against the respondent No. 1 logically. However, it has been the case of the respondent No. 1 before the Tribunal that the agreement to sell (IRKARNAMA Ex. 5 D-4), dated 31-5-1977 had been subsequently cancelled before the date of accident vide Ex. EM dated 13-6-1977 (KARAR NIRASTI-KARANA LEKHA). As such the respondent No. 1 M/s. Lalji Shankarlal has filed the connected appeal Misc. Appeal No. 179 of 1981 contending that the Insurance Company is liable to pay compensation.

The learned Tribunal held that the deceased Karansingh and Kewelram etc. had gone on the truck on the date of accident to do the work (of lifting and loading of bags of Temroo leaves on the truck) for respondent No. 4 Thakur Sawdekar & Co. and as such they can be regarded to be in their employment. A partner of respondent No. 4, named Shriniwas stated as N. A. W-1, that hammals including the deceased were employed as Hammals on contract basis and that wages were paid to Kewelram and his companion hammals on piece rate basis i.e. per bag load of Temroo leaves lifted and loaded.

The main controversy in this appeal is with regard to the two contentions of the Insurance Company which have apparently been accepted in the findings of the learned Tribunal. The first contention is that the owner of the truck, (respondent No. 1) had sold the truck to the driver-respondent No. 2 before the date of the accident and consequently the Insurance policy in favour of respondent No. 1 had lapsed and did not subsist on the date of the accident and, therefore, the Insurance company was automatically absolved of its liability under the insurance contract which was with respondent No. 1 who no more remained the owner on the date of the accident. The second contention is that the deceased Karansingh, a labourer (Hammal), being not the employee of the insured owner of the truck, the Insurance Company was not liable in respect of death of such an employee under the Insurance policy or the provisions of Section 95(b) of the M. V. Act.

On the question of alleged transfer of the truck by respondent No. 1 by IKRARNAMA (Ex. 5 D-4), dated 31-5-1977, the learned Tribunal held it to be a sale and not an agreement to sell. The IKRARNAMA aforesaid states that the driver respondent No. 2 Babukhan contracted to purchase the truck in question

from the owner respondent No. 1 on 23-5-1977 for a sum of Rs. 38,001/- and paid Rs. 501/- and took possession of the truck and was running the same. He paid Rs. 7,500/- as per the term of the bargain on 31-5-1977 and promised to pay Rs. 30,000/- within three months and get the registration of the truck transferred in his name. The agreement also stipulated that if within three months the driver Babukhan was unable to pay Rs. 30,000/- and get the registration of the truck effected in his favour, the owner firm Lalji Shankarlal would be at liberty to take back the possession of the truck. It was stipulated that in the event of breach of contract the respondent No. 2 would not claim back Rs. 8,000/- which had been paid and that he would also be liable to pay for the damage if any to the truck. It is to be noted that this IKRARNAMA is in form of a letter addressed by respondent No. 2 Babukhan to respondent No. 1 owner of the truck.

From a reading of Ex. 5 D-4 (IKRARNAMA, dated 31-5-1977), it is clear that there was no completed sale and the property in the vehicle was intended to pass only on payment of full consideration and transfer of registration of the vehicle was to be done on such completed sale, as agreed between the owner and the purchaser-driver. This agreement to sell was to subsist until payment of Rs. 30,000/- within three months. If the amount was not paid within three months the right of the driver to purchase the truck came to an end and the owner had the right to take back the possession of the truck and to retain the amount of Rs. 8,000/- already paid. In the circumstances it is obvious that the ownership of the truck remained with the owner respondent No. 1 on the date of the accident. If the party had intended a complete sale on the date of IKRARNAMA, it would not have contemplated return of possession to the owner for non-payment of price within three months.

Learned counsel appearing for the Insurance Company (respondent No. 5) contended that upon payment of consideration and the delivery of the vehicle, the transfer of the truck in favour of the driver-respondent No. 2 was completed on the date of IKRARNAMA Ex. 5 D. 4. Learned counsel cited a Division Bench decision in Balwant Singh v. Jhannubai 1980 Acc CJ 126 (Madh Pra). That case lays down that the transfer of the vehicle is complete upon payment of consideration and delivery of possession and the endorsement of the transfer in the records of Registering Authority was not a condition precedent to the transfer. The above cited case is not applicable in the facts and circumstances of the present case where for completing the sale, the price was to be paid within three months and the consequence of non-payment would have resulted in redelivery of possession to the owner.

Learned counsel for the appellant has argued that there was no concluded contract of sale of the truck and the IKRARNAMA (Ex. 5 D-4) dated 31-5-1977 was merely an agreement to sell. The sale was to become absolute only on payment of full consideration within three months and on failure of such payment the possession of the truck was to be returned to the owner. In the

circumstances, it cannot be contended that there was concluded sale and that respondent No. 1 had ceased to have any interest or control over the said truck. The finding of the learned Claims Tribunal, that on the date of the accident, i.e. 15-6-1977, the truck stood sold absolutely to driver respondent No. 2 cannot be sustained. The 1KKARNAMA dated 31-3-1977 (Ex. 5 D-4) is an agreement to sell and the same cannot be treated as an absolute sale. As such the property of the vehicle still vested with the insured respondent No. 1 on the date of the accident i.e. 15-6-1977. The learned counsel cited a single Bench Decision of this Court in United India Fire and General Insurance Co. Ltd., Indore Vs. Smt. Kanchanbai and Others, which fully supports the appellant's arguments and appears aptly applicable in the facts and circumstances of the present case.

In the instant case, the Insurance Company was not informed about any transfer of ownership of the truck nor was any change of ownership registered with the Transport Authority. The Insurance Company (respondent No. 5) also appears to have paid the own damage claim of respondent No. 1 after getting the survey report about the damaged truck involved in the accident. These facts are only consistent with the position that there was no completed sale so as to divest the respondent No. 1 from the ownership of the truck. As such the Insurance Company, in our opinion, would not be entitled to avoid the liability under its contract of insurance.

With the owner respondent No. 1. The learned Tribunal's finding of no liability of the Insurance Company because of IKARNAMA dated 31-5-1977 (Ex. 5 D-4) is, therefore, erroneous and is liable to be set aside.

Learned Counsel for the appellant argued that the IKARNAMA dated 31-5-1977 embodying the agreement to sell the vehicle, had also been cancelled by another KARNAMA dated 13-6-1977 (Ex. D-1) that is prior to 15-6-1977 the date of the accident, but the learned Tribunal has held this latter document of cancellation of the earlier agreement to be fake one. The respondent No. 2 had applied to the Judicial Magistrate Class I, Kannod, on 11-8-1977 for delivery of the seized vehicle on his Supratnama claiming himself to be the owner of the vehicle. But for the purpose of the recovery of the own damage claim in respect of the truck, it was the respondent No. 1 who had asserted to be the owner of the truck and the Insurance company had made the payment on that basis.

Learned Counsel for the appellant has contended that in the circumstances of the present case the registered owner ought to be held vicariously liable. Learned counsel cited the Division Bench decision of this Court in Smt. Geetabai v. Hussainkhan (Misc. Appeal No. 92 of 1978 decided on 18-4-1984), in support of his contention. The Division Bench in that case has made the relevant observation in para 10 of the judgment as under : --

"10. From the cases which have come up before us we find that the tendency by the registered owners of the vehicles to transfer them by private arrangement without transferring the registration in favour of the transferees is on the

increase. There is also the possibility of an unscrupulous owner of a vehicle indulging in fake transfer of a vehicle to avoid his liability to pay compensation to the claimants claiming compensation on account of an accident caused by the vehicle. The principle of vicarious liability must be extended in such cases so that effective relief may be given to the claimants. In such cases there is no valid reason why the registered owner should not be held vicariously liable for the negligent act of the transferee or his servant or agent in driving the vehicle.

But in view of our finding that the IKRARNAMA Ex. 5D-4, dated 31-5-1977 is merely an agreement to sell, which cannot be treated as an absolute sale, it is not necessary to examine whether Ex. 5D-4 represented a fake transfer,

Coming to the second contention of the Insurance Company, namely, that it is not liable under the Insurance Policy as well as Section 95(b) in respect of the death of Karansingh, he being not an employee of the owner of the truck respondent No. 1. The Insurance Policy, Ex D-2 in Clause 1, u/s 11 liability to third parties makes the relevant provision as under:--

"1. Subject to the Limits of Liability the Company will indemnify the Insured against all sums including claimants' costs and expenses which the insured shall become legally liable to pay in respect of

(i) death of or bodily injury to any person caused by or arising out of the use (including the loading and/or unloading) of the Motor vehicle.

(ii)...

Provided always that.--

(a)...

(b)...

(c) Except so far as is necessary to meet the requirements of Section 95 of the M. V. Act, 1939, in relation to liability under the Workmen's Compensation Act, 1923, the company shall not be liable in respect of death of or bodily injury to any person (other than a passenger carried by reason of or in pursuance of a contract of employment) being carried in or upon or entering or mounting or alighting from the Motor Vehicle at the time of the occurrence of the event out of which any claim arises."

On a plain reading of the above provision it becomes clear that a passenger carried by reason of or in pursuance of a contract of employment, is not concluded from the insurer's liability in respect of death of such passenger being carried in the Motor Vehicle at the time of the accident out of which the claim arises. But the contention of the learned counsel for the Insurance Company that a Company is liable to indemnify the insured and the passenger carried by reason of employment should be an employee of the insured

Section 95 of the Motor Vehicles Act provides for the statutory requirements of

policies and limits of liability. The relevant portion of this clause which requires construction for the purpose of the instant case is reproduced as under :--

"95. Requirements of policies and limits of liability : --

(1) In order to comply with the requirements of this chapter, a policy of insurance may be a policy which

(a)

(b) insures the person or classes of persons specified in the policy to the extent specified in Sub-section (1) : --

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place.

(ii)

Provided that a policy shall not (***) be required : --

(i)

(ii) Except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises.

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Learned counsel for the appellants has cited a Full Bench decision of the Punjab High Court in *Oriental Fire and General Insurance Co. Ltd. Vs. Smt. Gurdev Kaur and Others*, which on construction of the relevant provision of Section 95(b) has held that the "contract of employment" need not necessarily be with the insured alone. Employees of the owner of the goods carried in a truck are as well entitled to the protection of compulsory insurance u/s 95(1)(b). Referring to the judgment of the House of Lords in *Izzard v. Universal Insurance Co. Ltd. (1937) A.C. 773*, the Full Bench observed as under : --

"The decision in this case settled that the expression "contract of employment" in Clause (ii) of the proviso to Sub-section (1) of Section 95 of Act 4 of 1939 refers not only to a contract of employment with the insured but also to a contract of employment of a person who is on the insured vehicle for sufficient or business reasons, and has taken a contract of employment in pursuance of which he is on the vehicle as the adequate criterion of such reasons. He need not, therefore, be under a contract of employment with the insured so long as he was on the insured vehicle by reason of or in pursuance of his contract of employment, in other words, when because of his contract of employment he was on the vehicle."

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Learned counsel for the appellant has also cited a judgment of Madras High Court in the Venguard Insurance Company Ltd. v. Chinnamal 1969 Acc CJ 226 : (AIR 1976 Mad 236), which contains the following observation while construing the words "contract of employment" found in Section 95 of M. V. Act." Thus, though on a superficial view of the section, it might appear that the words "contract of employment" found in Section 95 of the M. V. Act would cover only a contract of employment with the owner of the insured vehicle, there is a preponderance of authority in favour of the other view that it would cover not only such persons but also persons who are on the vehicle in pursuance of a contract of employment with the owner of the goods carried in it. What is necessary, is that for sufficient practical or business reasons, the person must be the person on the vehicle in pursuance of a contract of employment. If he is such a person, any injury caused to him would also be covered by the section."

Learned counsel for the appellants further cited a Division Bench decision of the Gujarat High Court in United India General Insurance Co. Ltd. Vs. Shantaben Jerambhai and Others, , in support of his argument that the deceased who was on the vehicle at the time of his accidental death for practical and business purposes relating to his employment, must be deemed to be on the vehicle by reason of and in pursuance of a contract of employment. In this case the deceased was an agent of a milk society who used to travel daily on tempo for collecting milk from village for society and was getting commission for the same from the society. The tempo which belonged to one Daulatsingh Chandrasingh met with an accident and the deceased fell down and died. The presence of the deceased on the tempo at the time of accidental death was held to be in pursuance of a contract of employment and as such the risk of the deceased was statutorily covered by the insurance policy u/s 95(1)(b) proviso (ii).

Learned counsel for the Insurance Company on the other hand has argued that in order to make the Insurance Company liable, the person or passenger being carried in the goods vehicle should be an employee of the insured and he has cited a Division Bench decision of this court in South India Insurance Co. Ltd., Indore v. Heerabai 1967 Acc CJ 65. This is a case which lays down the proposition that the Insurance Company was not liable to pay compensation for the death of the passenger carried in a truck unless he was carried by reason of or in pursuance of a contract of employment. The deceased passenger in that case was one Chhotelal a contractor, who had hired the truck for carrying a tar mixture machine belonging to the Public Works Department. He was on the truck at the time of accident and was not a passenger carried by reason of or in pursuance of a contract of employment. However, in para 8 of this judgment while construing the terms of the insurance policy in that case, their Lordships have observed that in order to make the Insurance Company liable the person or passenger being carried in the goods vehicle should be an employee of the insured. This decision is, therefore, not a direct authority on the construction of

Section 95 (1)(b) proviso (ii).

Learned counsel for the Insurance Company also placed reliance on another Division Bench decision in *New India Assurance Co. v. Roopsingh* (M. A. No. 87 of 1977 decided on 23-6-1982), reported in 1982 M. P. W.N. 507. It was a case of the accident resulting in injury to the driver of the contractor who had hired the truck for carrying goods therein. It was held that the Insurance Company could not be made liable to indemnify insured, i.e. owner of the truck. In this case also the relevant provision of Section 95(1)(b) proviso (ii) has not been considered. The decision has proceeded apparently on the basis that the Insurance Policy being the contract between insurer and the insured, the scope of liability under the policy is limited to indemnifying the insured in respect of the death or injury to an employee of the insured being carried in the vehicle in the course of his employment. The statutory obligations of the Insurance Company under the proviso (ii) of Section 95(i)(b) in respect of passenger being carried in pursuance of contract of employment does not appear to have been discussed.

On a plain reading of the language of Section 95(1)(b) proviso (ii) it seems to us that the coverage of risk is extended to all those who are required of necessity to be on the insured vehicle by reason of or in pursuance of contract of employment and the employer having not been specified therein there is no reason to put a limitation that the benefit of coverage of risk is intended only for those who are in the employment of the insured owner of the vehicles.

The view of the authorities cited by the learned counsel for the appellants on the construction of statutory requirement u/s 95(i)(b) proviso (ii) favours a larger coverage of risk by insurance of the motor vehicle benefiting all those persons who by reason of or in pursuance of contract of employment are required to travel on the vehicle. It stands to reason that the risk to body or life of a person who is not a gratuitous passenger but is under an obligation to travel on the insured vehicle by reason of or in pursuance of contract of employment should be covered by insurance. Such a view is in consonance with the recent trend of enlarging the coverage of risk to life by accident and thereby promoting social justice.

We are, therefore, in respectful agreement with the view taken in the Full Bench decision of Punjab High Court in *Oriental Fire and General Insurance Co. Ltd. Vs. Smt. Gurdev Kaur and Others*, , and other decisions taking that view as cited by the learned counsel for the appellants.

Some controversy was raised in the arguments of counsel on the question whether or not the deceased Karansingh was a workman within the meaning of Workmen's Compensation Act. However, that question is not material for decision of this case since as has been indicated above the deceased was travelling on the vehicle by reason of or in pursuance of contract of employment with the Thakur Sawdekar & Co., Khategaon, respondent No. 4, the hirer of the truck.

The amount of compensation as determined by the learned Tribunal has not been seriously challenged in the arguments. In our opinion the amount as awarded appears to be just and reasonable and there is no reason for enhancing the same.

In view of the discussion aforesaid, this appeal is partly allowed. The Award passed by the Motor Accidents Claims Tribunal, Dewas is modified. It is directed that the amount of Rs. 20,000/- as determined by the learned Tribunal as compensation payable to the claimants-heirs of the deceased shall be paid by the respondent No. 5. Insurance company also together with interest at the rate of 6% per annum from 20-7-1977 the date of filing the claim petition before the Tribunal.

The other connected Misc. Appeal No. 179 of 1981 (Lalji Shankerlal v. Smt. Pathribai and Ors.) is also partly allowed inasmuch as along with the appellants in that case the Insurance Company is also held jointly and severally liable to pay compensation.

The parties shall, however, bear their own costs as incurred in both these appeals.