
(1996) 08 MP CK 0020
In the Madhya Pradesh High Court
Case No : M.A. No. 60 of 1994

Phool Chand

APPELLANT

Vs

Kamlesh Mishra and Others

RESPONDENT

Date of Decision : 14-08-1996

Acts Referred:

Motor Vehicles Act, 1939 — Section 103A, 96(2)

Citation : (1998) 2 ACC 443 : (1998) ACJ 218

Hon'ble Judges : Usha Shukla, J;S.K. Dubey, J

Bench : Division Bench

Advocate : V.P. Verma, for the Appellant; Ashok Lalwani, for the Respondent

Final Decision : Allowed

Judgement

Usha Shukla, J.—Appellant Phool Chand had put up a claim for compensation amounting to Rs. 2,00,000/- on account of injuries sustained by him in an automobile accident which had occurred on the night of 6.4.1989 near Hanuman Mandir, Sehore. The Motor Accidents Claims Tribunal had passed an award of 10,000/- only. This amount was recoverable from the respondent Kamlesh Mishra alone, who was driving the offending scooter at the time of the accident. Respondent Nos. 2, 3 and 4, being the purchaser, the insurer and the original owner of the vehicle, were exonerated, This appeal has been filed by the claimant for enhancement of compensation. He has also urged that respondent Nos. 2 and 3 being the owner and insurer of the vehicle should also be made liable for compensation. Relief has been claimed against all the respondents.

2. The manner and circumstances in which the accident occurred are not under challenge in this appeal. That the claimant sustained injuries on his person is also proved from the medical evidence of Dr. Gupta, AW 4. As many as 4 injuries were on found including a bleeding injury on his nose. X-ray was advised with respect to 3 of these injuries. The claimant had to be Rshospitalised. From the District Hospital, Sehore, he had to be shifted to Hamidia Hospital at Bhopal. The report of radio logist Exh. P 5 shows that fracture of head of humerus was found.

Unfortunately report about any fracture of ribs or other parts of the body could not be commented in this report Exh. P 5 due to poor exposure. Hence, there was no corroborative evidence to hold that the collar bone or ribs of the claimant were also fractured as alleged by him.

3. The claimant is an old man who was aged about 70 years at the time of the accident. He was hospitalised for about 15 days. Looking to the facts and circumstances narrated above, we find that compensation of Rs. 5,000/- as expenses of treatment to be inadequate. It is a well-known fact that medical treatment these days is very costly, specially when a person is brought from out-station for treatment to another hospital. Some amount must have also been spent on taking the claimant from Sehore to Bhopal and back to Sehore after recovery. Considerable expenditure must have also been incurred on conveyance, boarding and lodging etc. of his attendants. Then, he must have spent money on X-ray, plaster, medicines and doctor's fees. Therefore, although no bills or vouchers were proved, we are of the opinion that Rs. 10,000/- would be proper compensation towards expenses of treatment. We would also enhance general damages from Rs. 5,000/- to Rs. 10,000/- looking to the nature of injuries, the age of the claimant and other circumstances of the case.

4. It was urged on behalf of the claimant that he was also entitled to compensation for loss of earning and loss of earning capacity. We, however, do not agree. The learned Tribunal has given cogent reasons for disallowing this claim. We would therefore award total compensation of Rs. 20,000/-.

5. The findings of the Tribunal that it was only respondent No. 1 who was liable to pay compensation was also vehemently challenged by the claimant/appellant. It was urged that respondent No. 2 being the purchaser of the vehicle, respondent No. 3 being the insurer and respondent No. 4 being the registered owner, were equally liable. These respondents, on the other hand, supported the findings of the Tribunal that they were not liable at all.

6. We have carefully gone through the award given by the Tribunal and have given our anxious consideration to the reasonings recorded by it for exonerating the owner and insurer of the offending vehicle. In our opinion the reasoning of the Tribunal is faulty and fallacious. The finding that it was respondent No. 2 who was the registered owner of the vehicle is factually incorrect and is not supported by the evidence on record. It is significant to note that it was specifically pleaded in para 4 of the claim petition that respondent No. 4 was the registered owner of this vehicle. This fact was not denied by any of the respondents in their pleadings. On the contrary, respondent No. 4 admitted in his written statement that although he had parted with possession of the vehicle by handing it over to respondent No. 2 and delivering to him the transfer forms duly filled in, yet respondent No. 2 did not take any steps to get the registration transferred in his name. The pleadings of the insurance company, respondent No. 3 are very specific. It was averred in para 16 of its reply that scooter in question was registered in the name of Devendra Kumar, respondent No. 4, in the records of

the R.T.O. The registration certificate was not produced before the Tribunal. And yet, on the basis of oral testimony of one Amarjit Singh (W. No. 2 for N.A. No. 2), the Tribunal recorded a finding that respondent No. 2 was the registered owner of this vehicle. This finding cannot be upheld in the circumstances of the case.

7. We find that respondent No. 2 does not deserve any credence at all. He has set up a patently false plea that the scooter was stolen and misused by someone. He even went to the extent of concocting evidence to that effect by making a report to the police. He stuck to this defence even at the stage of pleadings. This written statement was jointly filed by respondent Nos. 1 and 2. But they did not show the honesty and fairness to admit that it was respondent No. 1 who was driving the scooter at the relevant time. They, however, could not deny the fact that, respondent No. 1 was hauled up by the police for the accident and that in due course he was convicted by the court on the basis of his admission. The Tribunal rightly recorded the finding that the scooter was being driven by respondent No. 1 at the time of accident. We disbelieve the assertion that this driving was unauthorised. Respondent No. 2 cannot evade responsibility for the use of this vehicle by respondent No. 1.

8. So far as respondent No. 4 is concerned, we are satisfied that he continued to be the registered owner of this vehicle. Therefore, under the principle of vicarious liability he would be liable in damages to the victim of the accident.

9. It was strenuously urged on behalf of the insurer that liability of the insurance company ceased on the transfer of the vehicle by the insured without complying with the requirement of Section 103-A of the Motor Vehicles Act, 1939. This argument had appealed to the Tribunal which placed reliance on *National Insurance Co. Ltd. v. Purshotamdas Maheshwari* 1987 ACJ 209 (MP) and *United India Fire & Genl. Ins. Co. Ltd. v. Chennamma* 1982 ACJ 53 (Karnataka). But we find that these cases are distinguishable on facts. In *National Insurance Company's* case, the judgment proceeds on the premise that the vehicle stood transferred in the name of the purchaser. This judgment nowhere shows that the insured continued to be the registered owner. But in the case before us, the transfer of vehicle was not complete and the insured continued to be the registered owner of the vehicle. In a recent decision *Har Charan Singh Vs. Smt. Turza Bai and Others*, , this question has been discussed in detail and considering various decisions of the High Court, a learned Judge of this Court has held that the defence that sale of vehicle during the period of insurance cover absolves the insurer, is not available to it u/s 96(2) of the Motor Vehicles Act, 1939, against third party claim. It is another matter that the insurer company could claim reimbursement of the compensation amount which it may be required to pay under the cover of policy to the third party. But that would be an independent proceeding against the insured and would be based on the conditions of the insurance policy. We find ourselves in complete agreement with this decision and hold that since the insured continued to be the registered owner, the insurance

policy continued to remain in force and the liability of the insurance company was not extinguished.

10. As a result of the above discussion, we hold that compensation of Rs. 20,000 awarded above is recoverable from all the respondents jointly and severally. This amount will carry interest at the rate of 12 per cent per annum from the date of application till payment. The costs of the appellant will also be borne by the respondents. Counsel's fee Rs. 500/, if certified.

11. Respondent No. 3, the insurer shall deposit the aforesaid amount, within two months from the date of this order failing which interest would be payable at the rate of 15 per cent per annum.

12. In the result, the appeal is allowed with costs. The award of the Tribunal shall stand substituted as indicated hereinabove.