
(2003) 10 MP CK 0015
In the Madhya Pradesh High Court
Case No : M.A. No. 1665 of 2002

Prem Kumari and Others

APPELLANT

Vs

Prahlad Dev and Others

RESPONDENT

Date of Decision : 28-10-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2)

Citation : (2004) 2 ACC 163 : (2004) ACJ 507

Hon'ble Judges : S.K. Seth, J;Deepak Verma, J

Bench : Division Bench

Advocate : B.L. Agrawal, for the Appellant; V.K. Varangaonkar and S.S. Swami, for the Respondent

Judgement

Verma and Seth, JJ.—This appeal is directed against the award dated 8.8.2002 passed by IV M.A.C.T., Indore, in M.V. Case No. 154 of 1996.

2. For the death of Ramdhan in a road accident which took place on 23.12.1996, Claims Tribunal has awarded a sum of Rs. 2,56,000 (rupees two lakh fifty-six thousand) to claimants. By the impugned award the owner and driver of the offending vehicle bearing registration No. CPW 7344 only were found liable to pay the compensation. Tribunal found that accident was caused on account of rash and negligent driving of offending vehicle by respondent No. 2. Tribunal exonerated insurance company from its liability to pay compensation on the ground that respondent No. 2, the driver of vehicle was not holding a valid and effective licence on the date of accident. In order to satisfy ourselves, we had directed learned counsel for respondent Nos. 1 and 2, driver and owner of offending vehicle to produce the driving licence of the respondent No. 2 on the last date of hearing. In compliance of direction learned counsel for respondent Nos. 1 and 2 has produced duplicate licence which is claimed to have been issued by the Regional Transport Officer, Ujjain in favour of Mukesh, the respondent No. 2. We have critically examined the duplicate licence issued to respondent No. 2 Mukesh in the light of evidence of Balaram Singh, PW 3, L.D.C. from office of

R.T.O., Ujjain who was examined by insurance company. In the light of evidence of Balaram Singh, it is clear that the duplicate licence alleged to have been issued in favour of respondent No. 2 does not appear to be a proper duplicate licence. Name of Mukesh, respondent No. 2 is not reflected in the licence register at serial No. 1265 of 1995. At licence register serial No. 1265 of 1995 name of Mukesh Jagtap s/o Bhaskarrao Jagtap, r/o Ghati Niche Zanda Chowk, Agar, is mentioned: whereas in the duplicate licence name of Mukesh Deo s/o Shankarlal, r/o Sant Nagar, Ujjain is mentioned. Respondent Nos. 1 and 2 are brothers. They had filed their common written statement. The stand taken in the written statement was that their vehicle was not involved in the accident. They took the plea that deceased fell down after consuming excessive liquor and on account of the injuries sustained by him he died. During the pendency of the claim petition they sought permission to amend their written statement introducing the plea that the vehicle was being driven not by respondent No. 1 but their father Shankarlal. This amendment was disallowed by the trial court. Obviously, the attempt to introduce pleadings that the vehicle was being driven by Shankarlal at the relevant point of time was made so as to overcome the difficulty of respondent No. 2 not holding a proper and effective licence on the date of accident. Respondent Nos. 1 and 2 are the brothers and they must be aware of true picture. This aspect of the matter is also considered by the Tribunal in coming to the conclusion that on the date of accident respondent No. 2 was not holding a proper and effective licence. Thus, from evidence and perusal of duplicate licence it is clear that duplicate licence of respondent No. 2 does not appear to be genuine and authenticated licence issued by competent authority.

3. In the considered opinion of this court learned Claims Tribunal has rightly recorded finding that on the date of accident, respondent No. 2 was not having a valid and effective licence to drive heavy goods vehicle.

4. Now coming to the merits of the appeal learned counsel for the appellants submitted that deceased was only 36 years of age and was a carpenter by profession. Learned counsel for appellants submitted that the learned Tribunal wrongly assessed the income of the deceased at Rs. 2,000 per month. We find force in submission of learned counsel for appellants. In our most conservative estimate a carpenter could easily earn Rs. 100 (rupees one hundred) per day. Thus, monthly income of deceased could safely be taken at Rs. 2,500 (rupees two thousand five hundred) as deceased would not be engaged for all 30 days in a month. After deducting conventional 1/3rd amount annual loss of dependency comes to Rs. 20,000 (rupees twenty thousand). Tribunal has rightly applied multiplier of 16. Thus, future loss of dependency of appellants comes to Rs. 3,20,000 (rupees three lakh twenty thousand). To this we add another sum of Rs. 30,000 (rupees thirty thousand) as compensation on other heads like loss of consortium, loss of company, loss of love and affection, funeral expenses, etc. Thus, the appellants would be entitled to recover a total amount of Rs. 3,50,000 (rupees three lakh fifty thousand). The appellants would be entitled to recover aforesaid amount from respondent Nos. 1 and 2 jointly and severally. Difference

amount shall carry interest at the rate of 6 per cent from the date of application till it is actually paid to appellants. Since we have already held that respondent No. 2 was not having a valid and effective licence on the date of accident, therefore, no liability can be fastened on insurance company in the facts and circumstances of the case. Decisions of Supreme Court in the matters of New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., and United India Insurance Company Ltd. Vs. Leheru and Others, are not applicable to the facts of case in hand. Thus, it is only respondent Nos. 1 and 2 who are liable to pay compensation to appellants.

5. In view of the foregoing discussion the appeal is partly allowed. The impugned award is modified to the extent indicated above. Respondent Nos. 1 and 2 shall bear costs throughout. Counsel's fee Rs. 1,000 (rupees one thousand), if certified.