
(1993) 07 MP CK 0016
In the Madhya Pradesh High Court
Case No : M.A. No. 267 of 1986

Prem Lal Shriwas and Another	Vs	APPELLANT
Manager, Perfect Pottery and Others		RESPONDENT

Date of Decision : 27-07-1993

Acts Referred:

Citation : (1994) 1 ACC 281 : (1993) ACJ 1069

Hon'ble Judges : P.P. Naolekar, J

Bench : Single Bench

Advocate : T.K. Modh, for the Appellant; P.C. Naik and Manish Datt, for the Respondent

Final Decision : Dismissed

Judgement

P.P. Naolekar, J.—The order in this appeal shall also govern the disposal of Miscellaneous Appeal No. 313 of 1986 (Oriental Fire & General Insurance Co. Ltd. v. Premlal Shriwas). Misc. Appeal No. 267 of 1986 is filed by the claimants, parents of the deceased, Manoj Kumar and Misc. Appeal No. 313 of 1986 is filed by the insurance company against the award dated 24.4.1986 passed in Claim Case No. 73 of 1983, whereby the Claims Tribunal has awarded Rs. 35,000/- as compensation together with the interest at the rate of 10 per cent from the date of award till realization on account of death of Manoj Kumar, who had died as a result of motor accident on 20.1.1983 when he was struck down by truck No. MPQ 3024 and died on the spot. The truck is owned by Perfect Pottery, respondent No. 1 and at the relevant time was driven by Onkar Prasad as per the claimants. The truck was insured with the Oriental Fire & General Insurance Co. Ltd.

2. The Claims Tribunal after recording the evidence has recorded the finding that the accident occurred because of the rash and negligent driving of the truck No. MPQ 3024 by its driver and as a result thereof, Manoj Kumar had sustained injuries and has died. The finding of the Tribunal about the negligent driving of the vehicle by the driver of the truck is not challenged in both the appeals.

Naturally so by the claimants, who have filed appeal No. 267 of 1986 and also by the insurance company as it is not permissible under the law to challenge these findings by the insurance company.

3. In para No. 1 of the claim petition, it has been specifically alleged that Onkar Prasad, respondent No. 2, after the accident ran away with the truck and was caught at Ranjhi, thus, there is an allegation against Onkar Prasad, respondent No. 2, that at the relevant time, he was driving the vehicle, truck No. MPQ 3024.

4. The owner of the vehicle and the driver have filed joint written statement and none of them has denied the fact that the vehicle at the relevant time was driven by Onkar Prasad, respondent No. 2. In the written statement filed by the respondent No. 3, insurance company, in reply to para No. 1, it is denied that the truck driver ran away and was caught near Ranjhi and in para No. 5, it is alleged that the non-applicant No. 2 was not holding a valid driving licence at the time of the accident. The vehicle was not being plied by regular driver of the truck.

5. On these pleadings and on the basis of the evidence of Onkar Prasad, wherein he has stated that at the relevant time he was not driving the vehicle and the vehicle was driven by Shahadat Khan, although he was sitting with him, it has been argued by the counsel for the insurance company that the vehicle was driven by a person who was not holding a valid driving licence and, therefore, under the conditions of the policy, the insurance company is not liable to make the payment of compensation.

6. On perusal of the written statement filed by the insurance company, it is abundantly clear that no such plea has been raised by the insurance company nor there is any evidence that Shahadat Khan was not having a valid driving licence. The plea raised is against the respondent No. 2, Onkar Prasad, but there is no evidence to support this plea that Onkar Prasad was not holding valid driving licence at the time of the incident. It is a settled principle of law that burden to prove this fact lies on the insurance company. There is also no plea in the written statement that at the relevant time, the vehicle was driven by Shahadat Khan. The plea is only that it was not driven by regular driver of the truck. There is no evidence as to who was the regular driver of the truck in question at the relevant time. That being the position, the contention of the learned counsel for the insurance company is without any force. Assuming for a moment that Shahadat Khan was driving the vehicle at the relevant time and he was not a regular driver, yet the insurance company is liable to pay the compensation. Unless the insured is at fault and is guilty of a breach of the condition, the insurer cannot escape from the obligation to indemnify the insured. I may also state that without the knowledge of the insured, if by driver's acts or omission others meddle with the vehicle and cause an accident, the insurer would be liable to indemnify the insured. The insurer in such a case cannot take the defence of a breach of the condition of policy. Reliance is placed on Kashiram Yadav and Another Vs. Oriental Fire and General Insurance Co. and Others,

7. In the aforesaid view of the matter, the insurance company is liable to pay and indemnify the insured, the appeal filed by the insurance company is dismissed.

8. The appellants in appeal No. 267 of 1986 have claimed the enhancement of the award given by the Claims Tribunal. The deceased Manoj Kumar, son of the claimants, was 9 years of age at the time of his death. His parents claim compensation on the ground that had he lived, they would have made him a doctor and he would have spent the amount for their maintenance. In the present days, the competition and the admission to the medical colleges are so tough, it is too tall a claim that the deceased would have become a doctor and spent and supported the claimants with his earnings. However, it could be reasonably said that he would earn Rs. 1,000/- and would have spent Rs. 200/- to Rs. 300/- on his parents. On this assumption the Tribunal has rightly given an award of Rs. 25,000/- and Rs. 10,000/- for mental pain and suffering to the claimants, parents of the deceased Manoj Kumar. The total award of Rs. 35,000/- for the death of the boy aged 9 years is just and proper.

9. I am also supported for assessment of the compensation by a decision of the Division Bench of this court in Kanhaiyalal and Another Vs. Dr. Anil Kumar and Another, wherein, on account of death of a boy aged 12 years, the court has granted compensation of Rs. 30,000/- with 12 per cent interest per annum. So far as the question of award of interest by the Claims Tribunal is concerned, I direct that the claimants shall be entitled to have the interest on the award passed from the date of the application till the date of realization of the amount. As the entire amount of compensation award was already deposited with the interest, I direct that the interest at the rate of 10 per cent on the amount of award shall be paid by the respondents jointly and severally from the date of the application till the date of the award. Subject to the aforesaid modification, the appeal No. 267 of 1986 is dismissed.

10. In the circumstances of the case, the parties shall bear their own costs.