

(1994) 12 MP CK 0004
In the Madhya Pradesh High Court

Premnarayan Bhatnagar

APPELLANT

Vs

Gyan Prakash Bhardwaj and Others

RESPONDENT

Date of Decision : 16-12-1994

Acts Referred:

Citation : (1995) 1 ACC 446

Hon'ble Judges : Tejinder Singh Doabia, J

Bench : Single Bench

Judgement

I.S. Doalia, J.—Premnarayan Bhatnagar is partially dissatisfied with the award of the M ACT. According to him, the Insurance Company is equally liable to pay the compensation and the award given by the Claims Tribunal absolving the Insurance Company on the ground that the offending vehicle was being driven by a person who was not duly authorised is not in accordance with law.

2. Brief facts of the case are that the claimant was 55 years of age at the time of the accident. It is stated that on 2.1.1990 he was going on his luna alongwith his friend. When he reached near the Library near Motimahahal, a motor cyclist driving bullet motor cycle bearing No. MPH 4492 hit him. He sustained bodily injuries. Tibia and Fibula bones of his right leg were fractured. He had stated that he had to stay in the Nursing Home and his leg was put in plaster twice. The Claims Tribunal awarded the compensation amounting to Rs. 45,274.00. This was given under the following heads:

Medical Expenses	4,174.00	Food	1,000.00	Mental pain and sufferings	
	10,000.00	Permanent disability	30,000.00		45,274.00

_____ 3. The Insurance Company has filed cross-objections. The quantum of compensation has been disputed.

4. I have gone through the facts of this case. The Insurance Company has been wrongly absolved. The plea which found favour with the Tribunal was that the person who was driving the motor cycle was not driving the same with the consent of the owner. Merely because the owner of the motor cycle was not

driving the motor cycle is no ground to absolve the Insurance Company from its liability for the accident.

5. In *Baldeo Raj Vs. Smt. Deowati and Others*, , a truck driven by the conductor caused accident with a rickshaw while the driver was sitting by his side. It was held that the owner of the truck was liable. Again in *The New India Assurance Co. Ltd. Vs. Lakhi Ram Prabhu Dayal and Others*, an accident was caused by a mechanic when he had taken the motor cycle for trial run after repairs. The owner was held to be vicariously liable. In *Putchala Achayamma and Others Vs. Pelava Rama Krishna Rao and Others*, driver of the lorry entrusted the driving to the cleaner and the cleaner caused accident killing the driver and another person. The owner of the vehicle contended that the deceased driver had brought death upon himself by unauthorisedly allowing the cleaner to drive the vehicle. It has held that the owner cannot be absolved of his liability.

6. In this case, there is nothing to suggest that the driver who was driving the vehicle unauthorisedly or that the owner had not consented the vehicle being driven by a person driving the same. As such, the award given by the Tribunal absolving the Insurance a Company cannot be sustained.

7. Counsel for the Insurance Company has raised another argument. This is to the effect that the person who was driving the vehicle was not having a license. The question as to whether this would absolve the Insurance Company has been examined in *Writ Petition No. 975/1994 United India Insurance Co. Ltd. v. Hukum Singh and Ors.* decided on 31.10.1994. It was held that the Insurance Company is liable. Reliance was placed on a decision given by the Supreme Court in *Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan and Ors.* 1987 (1) T.A.C. 471. It was observed:

To construe the provision differently would be to re-write the provision by engrafting a rider to the effect that in the event of the Motor Vehicle happening to be driven by an unlicensed person, regardless of the circumstances in which such a contingency occurs, the insured will not be liable under the contract of insurance. It needs to be emphasised that it is not the contract of insurance which is interpreted. It is the statutory provision defining the conditions of exemption which is being interpreted. These must therefore be interpreted in the spirit in which the same have been enacted accompanied by an anxiety to ensure that the protection is not nullified by the backward looking interpretation which services to defeat the provision rather than to fulfil its life aim. To do otherwise would amount to nullifying the benevolent provision by reading it with a non-benevolent eye and with a mind not tuned to the purpose and philosophy of the legislation without being informed of the true goals sought to be achieved.

The observations made by the Supreme Court in the above case to the following effect are also relevant and be noticed.

What the legislature has given, the Court cannot deprive of by way of an exercise in interpretation when the view which renders the provision potent is equally

plausible as the one which renders the provision impotent.

8. In this view of the matter, the argument raised by the Counsel appearing for the Insurance Company seeks the Insurance Company to be absolved cannot be accepted. The finding on this point is reversed and the Insurance Company is held to be liable. The cross-objections preferred by the Insurance Company with regard to the quantum of compensation have also been considered. I do not think that there is any scope for interference in this regard.

9. It has been brought on the record that the fibula and tibia bones of the claimants' s right leg were fractured and his right leg was put in plaster twice. It has also been brought on the record that the claimant was earning Rs. 3000/- at the time of the accident. The Punjab and Haryana High Court in Brij Lai v. Mangal Chand Maheswari (1987) 522 fixed the quantum of compensation at Rs. 75000/-. When there was a compound fracture of right tibia and the claimant had remained in hospital for 25 days. The Court granted Rs. 15000/- for pain, shock and suffering, Rs. 15000/- towards medical expenses, the total amount as noticed above was Rs. 75000/-. Again in State of Orissa Vs. Prafulla Kumar Satpathy, compensation of more than Rs. 1,00,000/- was allowed, In this case there was a compound fracture of tibia and fibula bones. As such, no exception can be taken to the quantum of compensation fixed by the Claims Tribunal.

10. This appeal is allowed. The Insurance Company is held liable for meeting the commitment. It was wrongly absolved by the Claims Tribunal. In so far as the quantum of compensation is concerned, this was rightly fixed. The cross-objections preferred are without any merit and are dismissed.