
(2006) 08 MP CK 0057
In the Madhya Pradesh High Court

Radhabai and Others

APPELLANT

Vs

H.K. Siddiqui and Others

RESPONDENT

Date of Decision : 03-08-2006

Acts Referred:

Constitution of India, 1950 — Article 136
Motor Vehicles Act, 1988 — Section 149, 163A, 165, 168
Penal Code, 1860 (IPC) — Section 304, 337

Citation : (2006) 3 JLJ 150

Hon'ble Judges : Shubhada R. Waghmare, J;K.K. Lahoti, J

Bench : Division Bench

Judgement

Shubhada R. Waghmare, J.—These are common appeals arising out of a common accident that occurred on 1.6.1998 between a jeep bearing registration No. MP 17-B 1451 and dumper bearing No. MP 27-B 3599 which resulted in death of the driver of the jeep Santlal and one Lakesh-war and injuries to passengers of both the vehicles. The admitted facts of the case are that H.K. Siddiqui was the owner of the jeep bearing No. MP 17-B 1451 whereas Daljeet Singh was the owner of the dumper bearing No. MP 27-B 3599. New India Assurance Co. Ltd. was the insurer of the jeep whereas Oriental Insurance Co. Ltd. was the insurer of the dumper and hence for the sake of convenience the appeals are bunched together and decided by this common order which shall govern all the cases.

2. Brief facts of the case are that at around 6 o'clock on 1.6.1998 on Johila Bridge near Pali Nawrozabagh Marg there was a collision between a jeep bearing No. MP 17-B 1451 and dumper bearing No. MP 27-B 3599 as a result of which as already stated above the driver of the jeep Santlal died along with another passenger Lakeshwar on the spot while the other claimants received injuries. The claimants injured in the jeep alleged that the accident had occurred due to negligence of the dumper driver Ramesh Kumar who driving rashly and negligently had caused the accident. The matter was reported at Police Station, Pali and crime registered at No. 73 under Sections 337 and 304 of the Indian Penal Code and as a result of the said accident all the claimants had filed claim

case before the Motor Accidents Claims Tribunal at Umaria.

The owner of the jeep H.K. Siddiqui, non-applicant No. 1, filed written statement in the aforesaid claim cases and admitted the accident and stated that the jeep was insured with New India Assurance Co. Ltd., Shahdol Branch, non-applicant No. 2. She alleged that the driver of the jeep deceased Santlal was driving the jeep in a controlled and proper manner when the alleged dumper coming from the opposite direction of Birsinghpur Pali being driven by Ramesh Kumar, non-applicant No. 3, collided with the jeep as a result of which the jeep overturned. The owner also stated that the driver of the jeep had been warned not to induct passengers and that he also held a valid and legal driving licence and hence under the circumstances insurance company New India Assurance Co. Ltd., non-applicant No. 2, as well as the other non-applicants were responsible for the accident and as such owner H.K. Siddiqui was not liable to pay the compensation as alleged.

Ramesh Kumar and Daljeet Singh, non-applicant Nos. 3 and 4, the driver and owner of the dumper did not file reply despite notice and were proceeded ex parte.

New India Assurance Co. Ltd., non-applicant No. 2, insurer of the jeep filed written statement denying its liability stating that the jeep was being plied contrary to the conditions of the policy by inducting passengers and the jeep driver also did not possess a legal and valid driving licence at the time of the accident and hence the insurance company was not liable to pay the compensation.

Non-applicant No. 5 the insurer of the alleged dumper admitted that the dumper was insured with the insurance company. However denied liability stating that since the driver of the dumper did not have a valid driving licence and the owner knew about the same it was a gross violation of the conditions of policy and hence the insurer was not liable to pay the compensation.

3. On appreciation of the evidence the Tribunal came to a conclusion that since all the claimants, who were also eyewitnesses submitted that the accident had occurred due to rash and negligent driving of the dumper and since the owner and driver of the dumper remained ex parte and did not contradict the evidence the Claims Tribunal inevitably concluded that on the basis of these facts on the alleged date of the accident the deceased Santlal did not hold a valid driving licence and was plying the vehicle as a taxi. The Tribunal so surmised that he was also equally responsible along with the driver of the dumper Ramesh Kumar, non-applicant No. 3, for causing the accident by rash and negligent driving and held that it was a case of composite negligence.

Tribunal further held that since the jeep was being plied contrary to conditions of policy by utilizing the vehicle for purposes of taxi and inducting passengers for fare completely exonerated the insurance company from the liability to pay the compensation. Regarding the dumper on the basis of the facts that Oriental

Insurance Co. Ltd., non-applicant No. 5, had examined Assistant R.T.O., Jhansi who had deposed that there was no valid licence in the name of Ramesh Kumar, non-applicant No. 3, the trial court inferred that the driving licence produced was fake and the alleged dumper was being driven against the conditions of the policy and exonerated the insurer of the dumper Oriental Insurance Co. Ltd. also from its liability to pay the compensation.

Thus, both the insurance companies were exonerated from the liability to pay compensation. Thereafter the claims of rest of the claimants were decided on the basis of the evidence by holding that the drivers of both the vehicles were equally liable for payment of compensation and held the non-applicant Nos. 1, 3 and 4 jointly and severally liable to pay the various amounts computed and assessed after taking the evidence on record.

4. The only appeal filed by the claimants" for enhancement before us is that of Radhabai and her sons Brijlal and Tiritrām Sahu in Claim Case No. 51 of 1998 before the M.A.C.T., Umariā present appeal M.A. No. 251 of 2001. The rest of the appeals have been filed either by the owner of the jeep or the owner of the alleged dumper. Hence the matter of Radhabai in M.A. No. 251 of 2001 is taken up first.

M.A. No. 251 of 2001 Radhabai v. H.K. Siddiqui

5. The claimant in this case Radhabai was the widow of deceased Lakeshwar Sahu and Brijlal and Tiritrām Sahu are his sons. They claim that deceased Lakeshwar was working in the colliery and earning Rs. 10,000 per month. That he was 60 years of age and he had two years of service remaining prior to retirement. Whereas claimant Radhabai was 50 years of age and refuted that her husband had retired at the time of accident. However, since proper documentary evidence was not available, Tribunal on the basis of notional income held that deceased was earning Rs. 15,000 per year and after deducting one-third for personal expenses, dependency was decided at Rs. 10,000 per year and applying the multiplier of 6 under Second Schedule as deceased was 60 years of age arrived at the amount of Rs. 60,000 and Rs. 5,000 was awarded towards consortium and Rs. 2,500 as loss of property. Thus, a sum total of Rs. 67,500 was awarded.

Counsel for appellant-claimant Radhabai and sons contested that the award is too meagre under the circumstance since the Claims Tribunal had failed to consider that the deceased was earning Rs. 10,000 per month and the widow Radhabai had no other source of income and the loss of future income has not been computed, nor any sum awarded towards loss to estate and funeral expenses. We have given our anxious consideration to these facts and attending circumstances. Considering the fact that claimant is a widow we find that the sum awarded is quite low since she is only 50 years of age and would be dependent on her sons and the compensation awarded for the rest of her life. Moreover, the multiplier used as per Schedule under the Act is also incorrect.

According to the Second Schedule of Section 163A of the Motor Vehicles Act the multiplier of 8 would be proper multiplier and considering the age of the claimant 50 years Rs. 1,00,000 would be just and proper sum to be awarded as compensation under the circumstances. Thus, the award is modified to the extent that the compensation awarded shall be as follows: Rs. 1,00,000 towards dependency for the loss of life of deceased Lakeshwar, Rs. 5,000 for the loss of consortium, Rs. 2,500 for the loss to estate, Rs. 2,000 for the funeral expenses. Thus, a total of Rs. 1,09,000 is awarded to claimants as just and proper compensation under the circumstances.

Regarding the liability of the owners of the vehicles to pay the compensation awarded to various claimants including Radhabai and others as contested by Siddiqui the owner of the jeep and the owner of the alleged dumper Daljeet Singh and considering the exoneration of the insurance companies it is held as follows:

The counsel for the owner of the alleged jeep H.K. Siddiqui has stated that the Claims Tribunal has wrongly come to the conclusion of exoneration of non-applicant New India Assurance Co. Ltd. when the vehicle was admittedly insured at the time of the accident. Moreover, if the deceased driver Santlal was carrying passengers contrary to instructions and behind the back of the owner of the jeep then the liability cannot be mulcted on the owner alone by exonerating the insurance company and the Tribunal has erred in doing so.

6. Counsel for the owner of the jeep H.K. Siddiqui also stated that the earlier view expressed by the Apex Court in *New India Assurance Co. Ltd. Vs. Asha Rani and Others*, , was that insurer is not liable with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time of the contract of insurance was entered into, nor was any premium paid to the extent of the benefit of insurance to such category of people.

Whereas in the matter of *National Insurance Co. Ltd. Vs. Swaran Singh and Others*, , stated that the liability of the insurance company to satisfy the decree at the first instance and to recover the awarded amount from the owner thereof has been holding the field for a long time and whether the insurer has been able to establish that insured has committed a breach of contract of insurance as envisaged under Sub-clause (ii) of Sub-section (a) of Sub-section (2) of Section 149 of the Act and only then it could be adjudicated whether the insurance company shall be entitled to realise the awarded amount from the owner or driver of the vehicle, as the case may be, in execution of the same award having regard to the provisions of Sections 165 and 168 of the Act.

And in the instant case the insurance company had been unable to dislodge the burden of proving that the owner H.K. Siddiqui had knowledge that the vehicle was being plied for carrying the passengers. However, on perusal of the case we find that Mahesh Pratap Singh Baghel appeared on behalf of New India Assurance Co. Ltd. and stated that deceased Santlal was holder of a light motor

vehicle licence bearing No. S-2230/SDL/95 which was valid from 8.2.1995 to 2.2.2009. However, the licence holder of a light motor vehicle was not authorised to drive commercial jeep carrying passengers. The licence could not be used for driving a taxi for commercial purpose thus the vehicle was being driven contrary to the conditions of the policy. Similarly Hari Prasad Singh, witness No. 4, who was working in the R.T.O., Shahdol has testified that the jeep bearing No. MP 17-B 1451 was registered as a private vehicle and could not be used as a taxi and the Assistant Administrative Officer of New India Assurance Co. Ltd., Deepak Bahale as non-applicant has stated that the jeep was insured as a private vehicle and so also the deceased Santlal did not have an effective licence for driving taxi at the time of accident. Moreover he was plying passengers for profit. H.K. Siddiqui, non-applicant No. 1, has in one of the appeals testified that she had no knowledge that the driver of the jeep Santlal was driving the jeep by ferrying passengers. However, the same has not been relied on by the Tribunal.

7. In view of the above, the matter would have to be decided on the anvil of the judgment of the Apex Court in *United India Insurance Company Ltd. Vs. Lehu and Others*, and *National Insurance Co. Ltd. Vs. Swaran Singh and Others*, . However, the point would be taken up by discussing the liability of the insurer of the alleged dumper *Oriental Insurance Co. Ltd.*, its driver and owner. The counsel for *Oriental Insurance Co. Ltd.* Mrs. Amrit Ruprah has stated that the R.T.O. employee Yogendra Kumar Garg, witness No. 1, who was working as an Assistant Divisional Inspector in the R.T.O., Jhansi and had on record deposed that the licence of the driver Ramesh Kumar was fake since the number bearing the same registration contained a different photo than the one that was filed as Exh. D2 and name of non-applicant Ramesh Kumar, son of Kalu was nowhere mentioned in the licence. Thus, it has been proved that it was a fake licence and hence the insurance company was not liable to pay the compensation and the Tribunal had rightly exonerated the insurance company.

8. Counsel appearing for Daljeet Singh owner of the dumper has per contra stated relying in the matter of *United India Insurance Company Ltd. Vs. Lehu and Others*, , the Apex Court has expressed the view thus:

(17) When an owner is hiring a driver he will therefore have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. We find it rather strange that insurance companies expect owners to make enquiries with R.T.O.'s which are spread all over the country, whether the driving licence shown to them is valid or not. Thus where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii). The insurance company would not then be absolved of its liability. If it ultimately turns out that the licence was fake the insurance company would continue to remain liable

unless they prove that the owner-insured was aware or had noticed that the licence was fake and still permitted that person to drive. More importantly, even in such a case the insurance company would remain liable to the innocent third party, but it may be able to recover from the insured. This is the law which has been laid down in *Skandia's case* 1987 ACJ 411 (SC); *Sohan Lal Passi Vs. P. Sesh Reddy and others*, and *New India Assurance Co., Shimla Vs. Kamla and Others etc. etc.*, . We are in full agreement with the views expressed therein and see no reason to take a different view.

And whereas in the instant cases the Tribunal had totally exonerated the insurance companies. The counsel in view of the judgments cited above also drew attention to the recent judgment passed by the Apex Court in the matter of *National Insurance Co. Ltd. Vs. Kusum Rai and Others*, , as pointed by the counsel for *Oriental Insurance Co. Ltd.* while considering the question of defence open to the insurer u/s 149 and the insurer's liability the Supreme Court held that if the offending vehicle was being used as a taxi, therefore, it would be a commercial vehicle and if the driver was holding only a light motor vehicle and not any licence to drive commercial vehicle it would be termed as a breach of condition of contract of insurance and the insurer company could raise the said defence to avoid its liability. The Apex Court held in the said case that since the matter pertained to the victim of 12 years of age and claimants being from very poor background held that the insurance company though not liable to pay compensation in view of the non-appearance of the owner, the High Court was right in holding the insurance company liable to pay the compensation and the same could not be interfered with under Article 136 of the Constitution. However, it directed the appellant insurance company to recover the amount from the owner.

Considering the above discussion in the light of the judgment cited above the question to be decided is whether the exoneration of the insurance company by the Tribunal has been correct in this context. We find that these appeals have been filed by the owners of the vehicle involved in the accident challenging the award on the ground that the insurance companies have been wrongly exonerated and the liability fastened on the owners alone.

Fastening of liability on the insurer has gone a sea change. After the decision in *New India Assurance Co. Ltd. Vs. Asha Rani and Others*, , the Apex Court has now come to a conclusion that in cases of fake licences and fraud alleged by the insurance company and the violation of other conditions of policy the insurance company would continue to remain liable to the innocent third party but could recover the same from the insured. The liability vis-a-vis the insurance company and the third party claimants would be that the insurance company would be liable to the innocent third party but it would be able to recover from the insured as already discussed in the matter of *United India Insurance Company Ltd. Vs. Lehu and Others*, ; *National Insurance Co. Ltd. Vs. Swaran Singh and Others*, and in the matter of *National Insurance Co. Ltd. Vs. Baljit Kaur and Others*, .

9. In view of the above the complete exoneration of the insurance company by the Claims Tribunal is not justified and considering that there was violation of the conditions of policy due to fake licence held by the driver Ramesh Kumar as well as carrying passengers for fare by deceased Santlal then considering these facts on the anvil of the judgments cited above there can be no doubt that the insurance companies have to pay and realise the amount as per the law laid down by the Apex Court. In the matter of M.A. No. 251 of 2001 the enhanced compensation shall be paid to the claimants within two months from the date of this order with interest at the rate of 6 per cent till realisation. Enhanced compensation shall, on deposit, be invested in a beneficiary scheme of nationalised bank for a period of 5 years, thereafter claimants may withdraw it with the permission of the Tribunal.

10. Resultantly, the appeals are allowed in part and the awards are modified as stipulated above.