(2004) 08 MP CK 0013

In the Madhya Pradesh High Court

Case No : M.A. 1004/02

Smt. Bharti APPELLANT

Vs

Smt. Gujabai RESPONDENT

Date of Decision : 03-08-2004

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2005) 2 MPJR 485

Hon'ble Judges : S.K. Kulshrestha, J;Rajeev Gupta, J

Bench : Division Bench

Advocate : Aditya Sanghi, for the Appellant; Sanjeev Mishra, Counsel for respondent no. 1 to 5 (claimants) and Mr. Rakesh Jain, counsel for respondent no. 7 (Insurance Company), for the Respondent

Judgement

Since this appeal involves a short question, the matter was finally heard.

This appeal by the owner of the vehicle involved in the accident u/s 173, assails the validity and propriety of the award dated 22.3.2002 passed by the Motor Accident Claims Tribunal, Umaria in Claim Case No. 54/2000 by which, exonerating the Insurance Company, compensation of Rs. 1,85,000, - has been awarded to the respondents-claimants against the appellant insured.

The grievance of the learned counsel for the appellant is two fold namely (1) the Tribunal ought not to have proceeded ex parte against the owner without satisfying itself that summon of the Tribunal had duly been served and (2) the Insurance Company could not been exonerated since it was not a case that vehicle was being driven by person without licence but only a case where it was alleged that the licence was fake with no evidence to suggest that the owner had any knowledge about the defect in the licence.

Learned counsel for appellant has anchored his contention with regard to the liability of the Insurance Company on the decision of the Apex Court in United India Insurance Company Ltd. Vs. Lehru and Others, and for the purpose of the defect in service of notice of the Tribunal, he has placed reliance on the decision in Sushil Kumar Sabharwal Vs. Gurpreet Singh and Others,

Taking the first contention first, we have examined the record and we find that there is an acknowledgement of the appellant/owner about the receipt of the registered A.D. post under which the notice were sent to the appellant. Nothing has been placed on record to suggest that the signatures on the acknowledgement are of a different person. In view of this factual position, we are not inclined to accept the contention of the learned counsel that summon/ notice of the proceedings was not received by the appellant.

Now coming to the second contention, learned counsel submits, that liability of the Insurance Company towards third party does not get absolved or extinguished merely on the ground that the licence was fake but the Insurance Company has to place material to import Knowledge to the owner with regard to the defect in the licence. Paragraph 20 of the report in which the observations are contained, reads as under :-

20. When an owner is hiring a driver he will therefore have a 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 RTO''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 a driving competently there would be no breach of Section 149(2)(a)(ii). The Insurance Company would not then be absolved of 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 notice 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, Sohan Lal Passi''s and Kamla''s case. We are in full agreement with the views expressed therein and see no reason to take different view.

From the above decision, it is clear that where the owner has satisfied himself that the driver has a licence, there would be no case of breach of section 149(2)(a)(ii) and in such a situation the Insurance Company would not be absolved of liability. Eventually if the licence turns out to be fake, the Insurance Company would continue to remain liable unless it proves that the owner (insured) was aware or had notice that the licence was fake and still he permitted the driver to drive the vehicle. In the present case, there is no finding that the owner knew about the defect in licence. Under these circumstances, the Insurance Company could not have been absolved of the liability to pay compensation to third party

However, the Insurance Company does not, even in such a situation, forfeit its right to recover the amount from the owner by establishing before proper forum that the owner knew about the defect in the licence and still permitted the driver to drive the vehicle.

In the result, we modify the award only to the extent that in addition to the parties directed to pay the amount of award, the Insurance Company/ respondent no. 7 shall also be liable, severally and collectively, to satisfy the award of the Tribunal subject to the condition that the Insurance Company will be at liberty to establish in an appropriate proceeding that the owner knew about the defect in the licence and to recover the amount paid to the claimants.

Appellant/owner shall, however, be not entitled to recover the amount deposited towards satisfaction of the award or towards no fault liability from the claimants.

The appeal is, thus, disposed of with no order as to costs.