(2006) 07 MP CK 0100

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 423 of 2005

Smt. Sunia Bai and Others — APPELLANT

Vs

Rammu and Others — RESPONDENT

Date of Decision : 31-07-2006

Acts Referred:
Motor Vehicles Act, 1988 — Section 149(2)

Citation : (2007) 1 CGLJ 1

Hon'ble Judges : R.S. Jha, J;Arun Mishra, J

Bench : Division Bench

Advocate : Gopal Shrivas, for the Appellant; P. Tiwari, for Respondent Nos. 1 and 2, N.S. Ruprah and Ajay Gupta, for the Respondent

Final Decision : Allowed

Judgement

Arun Mishra, J.—In this appeal, Appellant has prayed for enhancement of compensation aggrieved by award dated 28-4-2004 passed by 4th Addl. Motor Accident Claims Tribunal, Katni in MCC No. 435/2002. On account of death of Mehngu Kushwaha, died in an accident dated 19-12-2001 the claimants widow, children and his mother filed claim petition before the Claims Tribunal claiming compensation.

2. The deceased was a labourer. He was going from his house to Katni. In front of house of Shree Ram Tailer, a Truck MP 21/1062 driven by Rammu Patel dashed him. He died on the spot. Truck was owned by Sanjay Khare and insured with the National Insurance Co. Ltd. A criminal case was registered against the driver. It was claimed that age of the deceased was 40 years. He was earning a sum of Rs. 100/- per day. A sum of Rs. 15 lakhs was claimed towards compensation. The owner and driver did not file written, statement. However, Respondent No. 3 insurer denied the income of the deceased and contended that excessive compensation was claimed. Driver was not having valid and effective driving licence on the date of accident.

3. The Claims Tribunal has come to the conclusion that accident was outcome of rash and negligent driving of Shri Rammu Patel. At the same time, the learned Claims Tribunal came to the conclusion that original licence was forged, though it was renewed, hence insurer has been exonerated from making the payment of the amount of compensation which has been arrived at by the Claims Tribunal. The income of the deceased has been arrived at Rs. 100/- per day as deceased was a skilled mason. His monthly income has been arrived at Rs. 1800/- per month. Total compensation awarded is Rs. 2,28,000/- alongwith interest @ 9% per annum from the date of filing of the claim petition till realization. Liberty has been given to the claimant to recover the amount from the insurer. In turn the insurer has been given liberty to recover the amount from owner.

4. Shri Gopal Shrivas, Learned Counsel appearing for the Appellants has submitted that the compensation which has been arrived at and awarded is inadequate. There is no evidence on record to indicate that owner had the knowledge that licence held by the driver was forged, it cannot be considered the breach on the part of the owner. Thus, joint and several liability ought to have been saddled on the driver, owner and insurer to make the payment of compensation.

5. Shri Pankaj Tiwari, Learned Counsel appearing for Respondent Nos. 1 and 2 has submitted that owner was not having the knowledge as to the forge licence, apart from that license was not forged, thus, liability has to be saddled on the insurer.

6. Shri N.S. Ruprah with Shri Ajay Gupta, Learned Counsel appearing for insurer has submitted that as the licence was forged, insurer has rightly been exonerated, no case for interference is made out.

7. The first question for consideration is whether compensation which has been awarded is adequate or not. We find that income has been assessed at Rs. 100/- per day which is reasonable in the facts and circumstances of the case. Deceased was a skilled mason, earning Rs. 100/- per day, however, based on that monthly income comes to Rs. 3000/- not Rs. 1800/- as arrived at by the Claims Tribunal, thus, we assess monthly income at Rs. 3000/- and Rs. 36,000/- per annum. After making l/3rd deduction, which the deceased would have spent on himself had he been alive, loss of annual dependency comes to Rs. 24,000/-. The age of the deceased has been found to be 40 years, thus, multiplier of 16 is applicable which we apply, as the widow, children and mother are the claimant, thus total loss of dependency comes to Rs. 24,000 x 16 = Rs. 3,84,000/-. In addition, we award a sum of Rs. 15,000/-towards customary head of loss of estate, loss of funeral expenses, loss of expectancy of life. For loss of consortium, we award Rs. 5000/- to widow. Thus, total compensation comes to Rs. 3,84,000 + 20,000 = Rs. 4,04,000/- (Rs. Four Lakhs Four Thousand only). The compensation enhanced by us to carry interest @ 6% per annum from the date of filing of the claim petition.

8. Coming to the liability of the insurer we find that in order to prove the licence held by the driver was forged, evidence of Shri M.L. Thakur, Accountant of ARTO, Shahdol was adduced. He has stated that Exhibit (D-1) report was based on the investigation made by surveyor. He has also stated that license was not issued from concerned RTO Office. Whatever that may be, there is no evidence on record to show that owner had the knowledge that license held by driver was forged. License was renewed is not in dispute, thus, in absence of knowledge, it cannot be said to be breach on the part of the owner. Owner is not supposed to make enquiry with respect to genuineness validity of license held by the driver in various RT Os in India from where licence could have been issued to the driver. Hence, it cannot be said to be substantial breach on the part owner, as such insurer cannot escape from liability to make payment of compensation. Apex Court in United India Insurance Company Ltd. Vs. Lehru and Others, , has held that the insurer has to pay and recover compensation from owner. Apex Court held that :

20. When an owner is hiring a driver he will, therefore, have to check whether the driver has a driving license. If the driver produces a driving license which on the face of it looks genuine, the owner is not expected to find out whether the license 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 RT Os, which are spread all over the country, whether the driving license shown to them is valid or not. Thus, where the owner has satisfied himself that the driver has a license and is 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 license was fake, the insurance company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the license 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 Insurance Co. Ltd. Vs. Kokilaben Chandravadan and Others, , Sohan Lal Passi Vs. P. Sesh Reddy and others, and New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., cases. We are in full agreement with the views expressed therein and see no reason to take a different view.

9. In National Insurance Co. Ltd. Vs. Swaran Singh and Others, , the Apex Court has held thus :

90. We have construed and determined the scope of Sub-clause (ii) of Sub-section (2) of Section 149 of the Act, Minor breaches of licence conditions, such as want of medical fitness certificate, requirement about age of the driver and the like not found to have been the direct cause of the accident, would be treated as minor breaches of inconsequential deviation in the matter of use of vehicles. Such minor and inconsequential deviations with regard to licensing conditions

would not constitute sufficient ground to deny the benefit of coverage of insurance to the third parties.

Summary of findings :

110. The summary of our findings to the various issues as raised in these petitions is as follows :

(iii) The breach of policy condition e.g. Disqualification of the driver or invalid driving licence of the driver, as contained in Sub-section (2) (a) (ii) of Section 149, has to be provided to have been committed by the insured for avoiding liability; by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability; towards the insured, the insurer has to prove; that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence (s) raised in the said proceedings but must also establish "breach" on the part or the owner of the vehicle; the burden of proof wherefor would be on them.

10. In view of the aforesaid dictum of the Apex Court, the insurer cannot escape the liability. Thus, it is held that driver, owner and insurer are liable jointly and severally to make the payment of compensation.

11. Consequently, appeal is allowed in part. We award the compensation of Rs. 4,04,000/-. Enhanced compensation to carry interest @ 6% per annum from the date of filing of the claim petition. Liability of the Respondents is held to be joint and several. No order as to costs.