(2006) 07 MP CK 0074

In the Madhya Pradesh High Court

Sunia Bai and Others APPELLANT

Vs

Rammu Patel and Others RESPONDENT

Date of Decision : 31-07-2006

Acts Referred:
Motor Vehicles Act, 1988 — Section 149

Citation : (2007) ACJ 2640

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

Bench : Division Bench

Judgement

Arun Mishra, J.—In this appeal the appellants has prayed for enhancement of compensation aggrieved by award dated 28.4.2004 passed by Fourth Additional Motor Accidents Claims Tribunal, Katni in M.C.C. No. 435 of 2002. On account of death of Mehngu Kushwaha, who died in an accident on 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 the house of Shree Ram, tailor, a truck No. MP 21-1062 driven by Rammu Patel dashed him. He died on the spot. The truck was owned by Sanjay Khare and insured with 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. 15,00,000 was claimed towards compensation. The owner and driver did not file written statement. However, insurer, the respondent No. 3, 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 the accident was outcome of rash and negligent driving of Rammu Patel. At the same time the learned Claims Tribunal came to the conclusion that the 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 the deceased was a skilled mason. His monthly income has been arrived at Rs. 1,800. Total compensation awarded is Rs. 2,28,000 along with interest at the rate of 9 per cent per annum from the date of filing of the claim petition till realisation. 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. Mr. 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 as breach on the part of the owner. Thus, joint and several liability ought to have been saddled on the driver, owner and the insurer to make the payment of compensation.

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

6. Mr. N.S. Ruprah and Mr. Ajay Gupta, learned Counsel appearing for the insurer submitted that as the licence was forged, the 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. The deceased was a skilled mason earning Rs. 100 per day, however, based on that monthly income comes to Rs. 3,000 not Rs. 1,800 as arrived at by the Claims Tribunal, thus we assess monthly income at Rs. 3,000 and Rs. 36,000 per annum. After making 1/3rd 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 the mother are the claimants, thus total loss of dependency comes to Rs. 24,000 ? 16 = Rs. 3,84,000. In addition we award Rs. 15,000 under the customary heads of loss to estate, funeral expenses and loss of expectancy of life. For loss of consortium, we award Rs. 5,000 to the widow. Thus, total compensation comes to Rs. 3,84,000 + Rs. 20,000 = Rs. 4,04,000 (rupees four lakh four thousand). The compensation enhanced by us to carry interest at the rate of 6 per cent 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 that the licence held by the driver was forged, the evidence of M.L. Thakur, Accountant of A.R.T.O., Shahdol was adduced. He has stated that Exh. DI report was based on the investigation made by surveyor. He has also stated that licence was not issued from concerned R.T.O. office. Whatever that may be, there is no evidence

on record to show that owner had the knowledge that licence held by driver was forged. Licence 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 licence held by the driver in various R.T.O.s in India from where licence could have been issued to the driver. Hence, it cannot be said to be substantial breach on the part of 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. Supreme Court held that:

(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 Skan-dia Insurance Co. Ltd. v. Kokilaben Chandravadan 1987 ACJ 411 ; 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.

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

(83) We have construed and determined the scope of Sub-clause (ii) of Sub-section (2)(a) 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 or inconsequential deviation in the matter of the 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:

(102) The summary of our findings to the various issues as raised in these

petitions is as follows:

(i) xxx xxx xxx(ii) xxx xxx xxx (iii) The breach of policy conditions, e.g., disqualification of driver or invalid driving licence of the driver, as contained in Sub-section (2)(a)(ii) of Section 149, have to be proved 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 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 duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) The insurance companies are, 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 of the owner of the vehicle, the burden or proof wherefor would be on them.

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

11. Consequently, the appeal is allowed in part. We award the compensation of Rs. 4,04,000. Enhanced compensation to carry interest at the rate of 6 per cent 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.

