
(2008) 01 MP CK 0066
In the Madhya Pradesh High Court

The New India Assurance Co. Ltd.

APPELLANT

Vs

Nandram Prajapati and Another

RESPONDENT

Date of Decision : 18-01-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 173
Penal Code, 1860 (IPC) — Section 304A

Citation : (2009) ACJ 1944 : (2008) ILR (MP) 325 : (2008) 1 MPHT 361

Hon'ble Judges : U.C Maheshwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

U.C. Maheshwari, J.

This appeal is preferred by the Insurer/appellant u/s 173 of the Motor Vehicles Act, 1988 (in short "the Act") being aggrieved by the award dated 10-7 2002 whereby the claim of the respondent No. 1 regarding death of his daughter in vehicular accident has been awarded against the appellant for the sum of Rs 65000/ along with the interest at the rate of 9% P.A. from the date of filing the claim petition

2 The facts giving rise to this appeal in short are that on dated 25-2 2001 at about 1 O'clock in the noon, Ms Priyanka aged 6 years daughter of respondent No. 1 died in a load accident near Int-Bhatta, Rajiv Nagar Ward, Sagar I he alleged incident was caused by a tractor bearing Registration No MP 15 F 1684, due to negligence of respondent No. 2 the driver of such truck (sic tractor) Such tractor was registered in the name of respondent No. 1 and insured with the appellant On the aforesaid date it was stationed with the running condition of its engine, resultantly it proceeded and ran over the said Priyanka On receiving the information, an offence u/s 304A of the IPO was registered at Police Station, Moti Nagar, Sagar Alter investigation, respondent No. 2 was charge sheeted for such offence Due to untimely death of the daughter, respondent No. 1 was deprived from her love and affection and also sustained the mental pain It is also pleaded

that due to shock of this incident, his wife also died. With these averments, the claim was preferred for the sum of Rs. 10,10,000/ with a prayer to award the interest at the rate of 18% P.A.

3 Respondent No. 2 remained ex parte before the tribunal while in reply of appellant the averments of the claim petition are denied In additional pleadings, it is pleaded that respondent No. 1 being the registered owner of the vehicle and insured person is not entitled to get any award of the alleged incident as the tractor was insured only to cover the risk of third party and respondent No. 1 being insured, is not covered within the purview of the third party I he claim petition is preferred with the collusion of the respondent No. 2 The respondent No. 2 did not possess the valid and effective driving licence to drive such tractor Accordingly, the tractor was plied contrary to the terms and conditions of the policy With these averments the prayer for dismissal of claim was made

4 The issues were framed and the evidence was recorded by the Tribunal, on appreciation of the same, the claim of respondent No. 1 was awarded against the respondent No. 2 and the appellant, for the sum as mentioned above the same as under challenged at the instance of the appellant/ insurer.

5 While arguing the case on merits, Shri V.K. Pandey, learned Counsel for the appellant assailed the impugned award only on the question that the respondent No. 1 being the registered owner of the tractor and the insured person was not entitled for the award as the policy of the tractor was issued by covering the risk of only third party and the respondent No. 1 could not be treated as third party for awarding the claim. With these submissions, he prayed to exonerate the appellant from indemnifying the liability of the awarded sum to respondent No. 1 by allowing this appeal.

6. None appeared on behalf of any of the respondents to respond the aforesaid arguments.

7. Having heard the learned Counsel after examining the record of the Tribunal and perusing the impugned award, I am of the considered view that the Tribunal has not committed any error in awarding the claim against the appellant and the respondent No. 2.

8. It is undisputed fact on record that in the alleged road accident the daughter of the respondent No. 1 died and subsequent to it, his wife, the mother of the deceased also died. Before giving any finding, I would like to mention here that on the death of the daughter, her mother had a right to file the claim petition against the appellant, respondent No. 2 the driver and respondent No. 1 the registered owner of the tractor. On demise of the mother of the deceased, the respondent No. 1 being her husband, inherited all rights as her legal representative and was also having the right to file the claim as one of the legal representatives of the deceased as the deceased was the third party for which the policy was issued by the appellant. In such circumstances, the respondent No. 1 had three different capacities; (i) the registered owner of the alleged

vehicle; (ii) one of the legal representatives of the deceased Priyanka; and (iii) the sole legal representative of his wife who died due to shock of the death of her daughter deceased Priyanka. Thus, in any case, in the aforesaid (ii) and (iii) capacities, respondent No. 1 had the right to file the claim and get compensation regarding death of his daughter. Although the Tribunal has not examined the case deeply with the aforesaid approach but the ultimate approach of Tribunal in awarding the claim appears to be correct.

9. I deem fit to mention here that if any injury was sustained by respondent No. 1 himself in the alleged accident and his personal risk was not covered by the insurer in the lack of additional premium, in such situation the claim of respondent No. 1 could not be awarded but his claim could not be defeated when the same is filed by the respondent No. 1 as one of the legal representatives of deceased Priyanka and also the sole legal representative of the mother of the deceased Priyanka and not as registered owner of the tractor. It is undisputed fact that the deceased was the third party for whom the vehicle was duly insured and in view of settled proposition that the legal representatives and dependent of the deceased of vehicular accident are entitled for the award of compensation. In such premises the claim of respondent No. 1 was rightly awarded by the Tribunal.

10. Under the aforesaid premises, it is held that the Tribunal has not committed any error in awarding the claim of the respondent No. 1.

11. Thus by affirming the impugned award, this appeal is hereby dismissed. There shall be no order as to the cost.