(2005) 10 MP CK 0008

In the Madhya Pradesh High Court

United India Insurance Co. Ltd. APPELLANT

Vs

Bhagwati Bai and Others RESPONDENT

Date of Decision : 24-10-2005

Acts Referred:

Citation : (2006) 1 ACC 670

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Judgement

N.K. Mody, J.—This order shall also govern the disposal of M.A. No. 449/2000.

2. Being aggrieved by the award dated 17.11.1999 passed by MACT, Badwah, in Claim Case No. 13/97 and Claim Case No. 2/97, the present appeal has been filed.

3. Short facts in both the claim cases are that accident took place on 29.2.1996 with a truck bearing Registration No. MP09D2172, which was being driven by respondent No. 4, Yusuf Khan, s/o Mangu Khan owned by respondent No. 3, Fajal, Haque, s/o Bhurekhan and insured with appellant.

4. Claim petitions were opposed by the appellant on the ground that the respondent No. 4 was not having a valid driving licence at the relevant time. Learned Tribunal after framing of issues and recording of evidence, awarded compensation in both the claim cases holding that appellant is liable for payment of compensation along with respondent Nos. 3 and 4.

5. Learned Counsel for the appellant submits that at the relevant time respondent No. 4 was not having valid driving licence. This fact has been proved by the appellant by examining Aatma Singh Greval, D.W.-2. It is submitted that Aatma Singh Greval was the Investigator, who has made the investigation and specifically stated that driving licence which alleged to have been issued in favour of respondent No. 4 has been issued by RTO, Roopad, while there is no RTO Office at Roopad.

6. Learned Counsel for respondent No. 3 Mr. H.S. Rajpal placed reliance on a decision of Hon''ble Supreme Court in the matter of Narcinva V. Kamat and Another Vs. Alfredo Antonio Doe Martins and Others, , wherein Hon''ble Apex Court has observed that, "the Insurance Company failed to prove that there was a breach of the terms of the contract of insurance as evidenced by the policy of insurance on the ground that the driver who was driving the vehicle at the relevant time did not have a valid driving licence. Once the Insurance Company failed to prove that aspect, its liability under the contract of insurance remains intact and unhamperd and it was bound to satisfy the award under the comprehensive policy of insurance". Further reliance was placed on a decision in the matter of Jagdish and Another Vs. Raj Kumar and Another, wherein Division Bench of this Court has held that, even if no licence is produced on notice to owner and driver, no adverse inference can be raised against them". Further reliance was placed on a decision in the matter of United India Insurance Company Ltd. Vs. Lehru and Others, , wherein Hon''ble Apex Court has held that, "In order to avoid its liability, Insurance Company has to prove that driver was not duly licensed and that the owner-insured was aware or had noticed that the licence was fake and still permitted that person to drive, even in such a case, the Insurance Company would remain liable to the third party, but it may recover the amount from the insured. In the case of Lehru (supra), the Insurance Company produced the record of the concerned RTO of the year 1996, but no efforts were made to get produce the concerned record of the year 1989. In the circumstances, the Hon''ble Apex Court has held that the burden was on the Insurance Company.

7. In the present case the statement has been given by Atma Singh Grewal, D.W.-2, who has stated that there is no office of the RTO at Roopad. In the circumstances, what further evidence was required to be given by the Insurance Company. The burden was on the respondents to prove this fact that in what circumstances the licence was issued by the alleged RTO, Roopad in favour of respondent No. 4. Since amount awarded has already been paid to the claimant, therefore, only for the limited purpose whether the amount can be recovered from the respondent No. 3 and respondent No. 4 who are driver and owner of the vehicle the case is remanded to learned Tribunal. Appellant as well as respondent Nos. 3 and 4 shall be at liberty to adduce the evidence, after giving an opportunity to the parties. Learned Tribunal shall decide the liability in that regard within a period of six months. If it is found that the alleged licence was fake then the appellant shall be at liberty to lodge the FIR for criminal action.

Parties are directed to remain present before the learned Tribunal on 5th of December, 2005.

