
(2000) 02 MP CK 0084

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 1064/97

United India Insurance Co. Ltd.

APPELLANT

Vs

Goverdhan and Others

RESPONDENT

Date of Decision : 23-02-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27

Motor Vehicles Act, 1939 — Section 95

Motor Vehicles Act, 1988 — Section 147, 147(2), 149(2), 2(21), 2(47)

Citation : (2001) 5 MPHT 327 : (2001) 2 MPLJ 208

Hon'ble Judges : D.P.S. Chouhan, Acting C.J.; Arun Mishra, J

Bench : Division Bench

Advocate : A. Ruprah, for the Appellant; A. Dixit, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.

Insurer aggrieved by an award of Rs. 1,27,000/- along with interest at the rate of 12% per annum from the date of application, in claim petition with respect to death claim of Lacchinder who died in a motor accident dated 30-12-1992, filed the instant appeal.

The deceased was working on daily wages as watchman in the Weavers Society, Paulbel. The deceased was carrying bundle of clothes on a vehicle bearing registration No. M.P. 25/2588 from Paulbel to Jagdalpur. The vehicle met with an accident about 6 k.m. before Jagdalpur. In the incident, deceased was injured. He was admitted in the Hospital and succumbed to death same day. The Matador was owned by Sanjeev Kumar, non-applicant No. 2 and was driven by Vijay Yadav non-applicant No. 1 and was insured with United India Assurance Company. The claimants filed a claim petition for compensation of Rs. 4,23,000/-. The claimants are parents, widow and minor daughter of the deceased. The owner and driver in their joint reply admitted that the deceased was carrying the clothes. Accident was also admitted. However, it was denied

that the accident occurred due to rash and negligent driving and the liability, if any, has to be indemnified by the insurance company. The insurance company in its reply denied even the factum of accident and factum of insurance. Alternatively, plea was taken that the driver was not possessing the valid driving licence in accordance with the provisions of Motor Vehicles Act, 1988.

It was further contended that the vehicle in question was not insured for carrying passengers. Hence, there was violation of terms of the policy. Hence, the insurance company was not liable to indemnify.

The Claims Tribunal found that the deceased died in the accident. Deceased income was assessed at Rs. 700/- per month and the dependency was assessed at Rs. 500/- per month. It was found by the Claims Tribunal that the deceased was carrying goods in the vehicle and was a non-gratuitous passenger. The licence held by the driver of light motor-vehicle was held to be valid as unladen weight of Matador was found to be below 7500 k.g. Deceased was aged 35 years. The Tribunal has applied the multiplier of 20 and total award has been passed for a sum of Rs. 1,27,000/-.

In the present appeal it has been submitted by learned counsel Smt. A. Ruprah appearing for the insurer that the driver was not possessing a valid driving licence to drive the Matador vehicle which was the goods vehicle. He was possessing the licence of light motor vehicle. Goods vehicle is not light motor vehicle. As there was violation of condition of the policy, the insurer could not be held to be liable. The second submission raised is that the deceased was travelling as a passenger in goods vehicle i.e. Matador, hence, the insurance company could not be held liable to indemnity.

The first submission which has been raised has to be appreciated in view of the definition of light motor vehicle with respect to which driver was possessing a valid driving licence. "Light motor vehicle" has been defined in Section 2 Sub-section (21) of the Motor Vehicles Act, 1988 as under:

"Light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor-car or tractor or road-roller the unladen weight of any of which does not exceed 7500 kilograms."

The words used "transport vehicle" u/s 2 Sub-section (21) has been further defined in Section 2 Sub-section (47) as under :

"Transport vehicle" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle."

"Unladen weight" has been defined in Section 2 Sub-section (48) as under:

"Unladen weight" means the weight of a vehicle or trailer including all equipments ordinarily used with the vehicle or trailer when working, but excluding the weight of a driver or attendant; and where alternative parts or bodies are used the unladen weight of the vehicle means the weight of the

vehicle with the heaviest such alternative part or body."

From the definition of "transport vehicle" extracted hereinabove it is apparent that the goods carriage is included in the transport vehicle and such transport vehicle if its un-laden weight is below 7500 k.g. shall be a light motor vehicle as defined in Section 2 Sub-section (21) of the Motor Vehicles Act, 1988. Un-laden weight of Matador in question un-disputedly was less than 7500 k.g. Thus, in spite of it being goods vehicle, it was a light motor vehicle and the driver was possessing the licence Ex. D/1 for driving light motor-vehicle. Thus, the driver was having a valid driving licence to drive the vehicle.

9-A. It may further be seen that in the written statement filed by the insurance company, invalidity of the licence was not specifically set up except making a bald statement that the driver was not possessing the valid driving licence to drive the vehicle in question. Vijay Kumar, driver was examined as DW-1. He has deposed in Para-2 that he was possessing a valid driving licence to drive the vehicle. He was not cross-examined by the insurance company as to the validity of the licence. No cross-examination was made of the witness. Thus, the parties are bound by the pleadings and the statement of the driver has gone unchallenged. There is nothing on record that the driver has not passed test of competence to drive a vehicle as contained in Section 9. The driver was holding the licence to drive the vehicle of the category which he was driving. Thus, the submission raised by learned counsel for the appellant is devoid of substance.

An application has been filed under Order 41 Rule 27 of C.P.C. before this Court so as to submit that the driver was not possessing the licence to drive a transport vehicle. No valid reason has been given to file the said application at the appellate stage. No evidence has been led before the Tribunal by the insurance company. No cross-examination of the driver has been made as to validity of the licence. Cross-examination is not an empty formality, but, is a matter of substance. Parties are required not to only plead the invalidity specifically, but, also to put the same in the cross-examination as his case, failure of which debars a party from setting up defence as not taken or substantiated. Invalidity has to be specifically set up.

It may further be seen that cross-examination as a matter of substance even was put once own version in the cross-examination, as has been held in ampteen number of times. Reliance is placed on AIR 1945 Nag 60 (Maroti Bansi Teli v. Radhabai); Chuni Lal Dwarka Nath Vs. Hartford Fire Insurance Co. Ltd. and Another, and AIR 1950 Nag 83 (Kuwarlal Amritlal v. Rekhlal Koduram).

Question of unladen weight was considered by Karnataka High Court in case of United India Insurance Co. Ltd. Vs. Smt. Lakshamma and Others, , wherein driver was possessing the licence to drive light motor-vehicle. The accident caused by driver while driving a truck. The truck in question was having un-laden weight of less than 7500 k.g., was held to be light motor vehicle. The insurance company was held to be liable.

The second submission raised by learned counsel for the appellant is that the deceased was travelling as a passenger in the goods vehicle, as such the insurance company could not be held liable in the case. No cross-examination has been made by the claimants that the deceased was travelling as a non-gratuitous passenger i.e. a fare paying passenger. It is established from the evidence of Kachru that the deceased was carrying the cloth belonging to Weavers Society, to Jagdalpur at the relevant time, where the accident took place. The cover note Ex. D/2 shows that three coolies were authorized to travel in connection with operation or loading of motor-vehicle. The cover note also shows that the insurance company was liable to make the payment with respect to non-gratuitous passenger. It has charged premium for that purpose.

It may further be seen that the Supreme Court in case of New India Assurance Company Vs. Shri Satpal Singh and Others, has held that third party insurance covers a risk of gratuitous passengers also. The Supreme Court has considered the difference between Section 95 of the Motor Vehicles Act, 1939. The said provision contained a rider in clause (ii) of the proviso to Sub-section (1) which is absent in the corresponding provision in the New Act of 1988. Considering the provision of the new Act, Section 147 of the new Act has been incorporated which corresponds Section 95 of the old Act under the new Section 147. Section 147 Sub-section (2) provides that a policy of insurance shall cover any liability incurred in respect of any accident, upto the following limits, namely:-

- (i) save as provided in clause (b) the amount of liability incurred;
- (ii) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier. It has been held by the Supreme Court that limit contained in the old Act has been removed and the policy should insure the liability incurred and cover injury to any person including owner of the goods or his authorised representative carried in the vehicle. The Legislature has also taken care even the policies which were in force on the date of commencement of the Act by specifically providing that any policy of insurance containing any limit regarding insurer's liability shall continue to be effective for a period of four months from commencement of the Act or till the date of expiry of such policy, whichever is earlier, from the commencement of the new Act, thereafter only a policy in consonance with the Act is required to be obtained. It has been held subsequently by the Supreme Court that under the new Act an insurance policy covering third party risk is not required to exclude gratuitous passengers in a vehicle, no matter that the vehicle is of any type or class. Hence, the decisions rendered under the old Act vis-a-vis gratuitous passengers such as Smt. Mallawwa Etc. Vs. The Oriental Insurance Co. Ltd. and Others, and Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and

Another, are of no avail while considering the liability of the insurance Company in respect of any accident which occurred or would occur after the new Act came into force. Thus, a new Act has plugged a wrong which may be suffered by gratuitous passenger and has to be given full effect to.

In the present case cover note Ex. D/2 also goes to show that, that covered the liability of gratuitous passengers and the person carrying the goods.

It was further submitted that the multiplier of 20 has been adopted which could not be adopted in the case. Reliance is placed on U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, wherein it has been held that higher multiplier which could be adopted is 18 but, in the instant case firstly; the quantum is not open to challenge to the insurance company as per Section 149(2) of the Act and secondly dependency has been assessed at Rs. 500/- per month only and the income per month was assessed at Rs. 700/- which is extremely on low side. The minimum income which has to be assessed is Rs. 1500/- and if income is assessed at Rs. 1500/- per month, as a matter of fact the award would multiply to it double. However, in the absence of appeal or cross-objection by the claimants, we are not inclined to enhance the compensation. The compensation which has been awarded cannot be said to be excessive. Substantial justice has been done.

In the result, there is no merit in the appeal and same is dismissed.