
(2006) 04 MP CK 0085
In the Madhya Pradesh High Court

United India Insurance Co. Ltd.

APPELLANT

Vs

Kamodi Bai and Others

RESPONDENT

Date of Decision : 13-04-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 149, 2

Citation : (2007) ACJ 2031

Hon'ble Judges : S.K. Seth, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.K. Seth, J.—This appeal by the insurance company is against the award dated 7.2.2005 passed by the Third Additional Motor Accidents Claims Tribunal, Ujjain in M.V.C. No. 28 of 2004. By the impugned award for the death of Shyama in an accident arising out of use of motor vehicle in a public place, Claims Tribunal assessed and awarded total sum of Rs. 1,70,000 (rupees one lakh seventy thousand) as compensation payable to legal representatives of the deceased. The driver and owner of the vehicle remained exparte before Claims Tribunal whereas the appellant insurance company contested the claim denying its liability to pay compensation. Overruling the objection of the insurance company learned Claims Tribunal has fastened the liability jointly and severally on the driver, owner and the appellant insurance company. Hence this appeal by the insurance company.

2. At the outset, it may be stated that there is no cross-appeal or cross-objection for enhancement. Learned Counsel appearing for the appellant also submitted that the quantum of compensation determined and awarded by the Claims Tribunal is not under challenge in this appeal. It is confined only to the limited question of liability of the insurance company to pay the compensation either jointly or severally.

3. In order to appreciate the controversy, relevant facts in brief are as under:

On 7.10.2003 deceased Shyama was travelling as gratuitous passenger on the

tractor belonging to respondent No. 5. It was being driven by the respondent No. 4. Shyama who was sitting on mudguard due to jerks, fell down and wheel of tractor ran over him leading to his death on the spot. Claimants, who are widow and children of the deceased Shyama, filed a claim petition against the owner, driver and the appellant claiming compensation. Suffice it to say that learned Claims Tribunal appreciating evidence with regard to income and age and other relevant factors, assessed the total amount of compensation at Rs. 1,70,000 and held that appellant along with owner and driver of the tractor, were jointly and severally liable to pay compensation to the claimants together with interest. Learned Claims Tribunal fastened the liability on the insurance company holding that the insurance company failed to prove that at the time of accident, tractor was being used for non-agricultural purpose when Shyama met with his tragic end.

4. The learned Counsel for appellant contended that Claims Tribunal erred in law in holding the insurance company liable. He submitted that tractor is neither a goods vehicle nor a public service vehicle, therefore, insurance company under the law was not obliged to cover the risk of any person other than the driver travelling in the tractor. The learned Counsel for appellant further submitted that the rules of pleadings do not require pleading of law and no evidentiary proof is required in respect of such law. The courts and Tribunals are bound to take judicial notice of law of the land enacted by the legislature. In support of his contention learned Counsel appearing for the appellant made reference to Sections 147, 149 read with relevant clause of Section 2 (definition section) of the Motor Vehicles Act, 1988 (for short "the Act"). According to him as per policy, appellant had covered the third party risk and the risk of driver only and not the risk of any passenger. It was the case of no insurance and as such the appellant was not required to indemnify insurer (owner of tractor) in respect of liability arising out of use of tractor. Thus, according to him the appellant in the facts of the present case, could not be jointly and severally held liable to pay the amount of compensation. The amount of compensation was exclusively payable by the owner and driver, therefore, directing insurance company to pay the amount jointly and severally is illegal. He further contended that insurance company even could not be asked to pay the amount with a liberty to recover it from the owner and driver as is usually done in case of a driver having invalid driving licence. Thus, according to him, the appeal deserves to be allowed and impugned award qua the insurance company is unsustainable in law. Per contra, learned Counsel appearing for claimants-respondents as well as the owner and driver supported the impugned award and submitted that insurance company is jointly and severally liable to satisfy the award. The learned Counsel for claimants submitted that amount may be paid by the insurance company and then it may recover from the owner and driver. Thus, learned Counsel appearing for respondents supported the impugned award.

5. After having heard rival submissions at length and going through the material available on record, this Court is of the view that this appeal deserves to be

allowed.

6. It is no longer in dispute that deceased died on account of accident on the fateful day. It is also not in dispute that on the fateful day respondent No. 4 was engaged as driver of the tractor and said tractor was insured with appellant insurance company. The amount of compensation assessed by the Tribunal is also not in dispute. From the evidence available on record, it is clear that on the fateful day deceased Shyama was travelling as gratuitous passenger in the tractor and he came under the wheel when on account of jerk he fell down. Thus, it is clear that respondent No. 4 was responsible for causing the accident and as such assessed the amount of damages.

7. After going through the evidence and the provisions of law as contained in the Act, there is no hesitation in the mind of this Court that the insurance company could not be held liable to pay the amount of compensation to the claimants. The word "tractor" is defined u/s 2(44) to mean motor vehicle which is not itself constructed to carry any load except the equipment required for the purpose of propulsion of tractor. Propulsion is not defined, therefore, one has to look to the ordinary dictionary meaning. As per Chamber's Dictionary (Deluxe Edn.) "propulsion" is a noun and means "the act of causing something to move forward; force which causes forward movements". It is, thus, clear that the only load which can be carried on a tractor is of the propulsive equipment which provides forwarding movement to the tractor. Thus, comparing the definition of tractor with that of goods vehicle and public service vehicle, it is clear that the tractor is not a motor vehicle of either of above two categories. It is clear that the tractor alone cannot be used for carrying passengers either for hire or gratis. In the case in hand it is clear from the evidence that deceased was travelling in the tractor as gratuitous passenger. There is no statutory requirement to cover the risk of gratuitous passenger like the deceased travelling in a tractor. Learned Counsel for appellant, therefore, is right in his contention that it was a case of no insurance at all and not a mere breach of insurance policy. Once it is held that it was a case of no insurance then certainly the appellant insurance company could not be held jointly and severally liable to pay compensation to the claimants. Learned Counsel for claimants-respondents made a feeble attempt to have the amount of compensation from the insurance company with a liberty to later recover from the owner and driver so as to avoid hardship to the claimants. However, one may be sympathetic towards the claimants, but the court cannot rewrite the statutory provisions. The statutory provisions as it stands has to be read in proper perspective and not de hors the law. In view of legal position, learned Claims Tribunal was not justified in fastening the liability jointly and severally on appellant insurance company. Thus, the impugned award to this extent cannot be sustained and deserves to be set aside. The learned Claims Tribunal failed to see and appreciate that it was for the claimants or owner of the offending vehicle to establish that as per the statutory policy of insurance, appellant was liable to pay compensation jointly and severally. The inevitable result is that the appellant insurance company is exonerated from its liability to

pay compensation either jointly or severally to claimants.

8. Before parting with this appeal, it is clarified that the appellant insurance company would not be entitled to refund of any amount of compensation received by the claimants and the appellant insurance company would be free to recover it from the owner and driver of the offending vehicle. So far as balance amount of compensation is concerned, the respondents-claimants would be at liberty to recover it from the owner and driver of the offending vehicle.

9. In view of the foregoing discussion, the appeal is hereby allowed to the extent indicated above. However, in the facts and circumstances of the case, parties are left to bear their own costs.