
(1996) 08 MP CK 0021

In the Madhya Pradesh High Court

Case No : M.A. No's. 611, 726 and 842 of 1994

United India Insurance Co. Ltd.

APPELLANT

Vs

Sushila Bai and Others

RESPONDENT

Date of Decision : 14-08-1996

Acts Referred:

Motor Vehicles Act, 1939 — Section 96(2)(b)

Citation : (1998) 2 ACC 362 : (1998) ACJ 132

Hon'ble Judges : Usha Shukla, J;S.K. Dubey, J

Bench : Division Bench

Advocate : Sanjay Agarwal, for the Appellant; S.L. Kochar, for the Respondent

Judgement

Usha Shukla, J.—A head-on collision took place between truck No. CPB 2031 and bus No. CPF 8729 in the afternoon of 21.6.1986 near the Dehar Bridge on Maharajpur-Sagar road. One Puranlal, a constable posted at P.S. Maharajpur, died in this accident. He was travelling in the aforesaid truck which was owned by respondent Ganesh Prasad, and was insured with United India Insurance Co. Ltd., respondent No. 2. The bus belonged to the M.P.S.R.T.C, and respondent Ayub was driving it at the relevant time. The widow and minor sons and daughters of the deceased claimed Rs. 2,02,000/- as compensation before the Claims Tribunal.

2. By an award dated 1.7.1994 in Claim Case No. 58 of 1991, III Additional Motor Accidents Claims Tribunal, Sagar found that the accident was as a result of the negligent driving of both the vehicles. It awarded Rs. 1,08,000/- as compensation with interest at the rate of 12 per cent per annum. After deducting the amount of Rs. 15,000/-, the balance Rs. 93,000/- was apportioned between the two sets of respondents, directing respondent Nos. 1, 2 and 3 to pay Rs. 54,000/- and respondent Nos. 4, 5 and 6 to pay Rs. 39,000/- to the claimants. This award gave rise to three appeals. Appeal No. 842 of 1994 is by the heirs of the deceased, seeking enhancement. Appeal No. 726 of 1994 is by the insurance company challenging the award on the ground that the deceased was travelling

in the truck in violation of the terms of the policy, which would absolve the insurance company from liability. The M.P.S.R.T.C. on its part filed Appeal No. 611 of 1994 challenging the findings of negligence of its driver as well as quantum. It also challenged the validity and propriety of the ratio in which the apportionment was made. All these appeals will be decided by this common order.

3. That Puranlal lost his life in this accident, is not in dispute. He was a Government servant working as a constable and earning about Rs. 1,000/- per month as salary. His wife Sushila Bai, AW 2, also deposed that besides salary, he used to get T.A. & D.A. He had a pretty large family of 5 children of whom two sons and a daughter were teenagers. A man having so many liabilities would naturally spend the very minimum towards his personal expenses, leaving the bulk of his income for his dependants. We would take the dependency to be Rs. 800/- per month. The annual dependency comes to Rs. 9,600/-. And since he was aged about 40 years and had a comparatively young wife, and so many children to fend for, the proper multiplier would be 16. The amount of compensation, thus calculated, comes to Rs. 1,53,600/-. To this should be added Rs. 15,000/- towards loss of consortium. The amount claimed for funeral expenses is only Rs. 2,000/-. There is no reason not to allow the same. The total compensation thus comes to Rs. 1,70,600/-. We do not know as to how the Tribunal arrived at Rs. 1,08,000/- as compensation. We would allow the appeal of the claimants and enhance the compensation amount to Rs. 1,70,600/-.

4. Coming to the question of liability of the respondents, there is ample evidence on record that both the vehicles were running at excessive speed when the collision took place. The accident occurred in broad daylight on a clear straight road which, according to bus driver Ayub himself, was 80 ft. wide. The witnesses do not speak of any other traffic on the road. The driver of the truck did not bother to appear before the Tribunal to offer an explanation about the occurrence. And Ayub, the driver of the bus, belied his own pleadings when he took the witness-box. In his written statement this driver had set up a case that the truck lost its balance when it overtook a jeep going ahead of it. Seeing this, he brought his own vehicle to a standstill. But the truck driver dashed against his stationary vehicle. In the witness-box however, he denied that the truck had overtaken any jeep. He stated that he had stopped his vehicle to drop some passengers when the truck driver dashed against it head-on. But as many as 5 witnesses, namely, Dayashankar, AW 1; Shivnath Dubey, AW 2; Samarsingh, AW 4; Rarn-krishna, AW 5; and Ramesh Prasad, AW 6, have testified that both the vehicles were in motion and were coming from opposite sides at considerable speed when the accident occurred. Driver Ayub evidently has not come with clean hands and has not given the true description of the manner in which the accident occurred. The Tribunal rightly disbelieved him and held on the basis of the statements of the aforesaid witnesses that the accident was a result of composite negligence of the drivers of both the vehicles. The M.P.S.R.T.C. could not therefore escape from liability and the total amount of compensation with interest can be recovered from the tortfeasors jointly or severally.

5. However, the Tribunal has apportioned the liability in an unequal ratio. The Tribunal has not given any reason for unequal apportionment. Considering the circumstances, we would fix the liability of each set of respondents to be 50 per cent. Thus, the owner and driver of bus No. CPF 8729 will be jointly and severally liable for payment of 50 per cent of the compensation awarded along with interest thereon at the rate of 12 per cent per annum and for the remaining 50 per cent the insurer, driver and owner of truck No. CPB 2031 will be liable along with interest at the same rate, till the deposit.

6. It was argued on behalf of the insurance company that it could not be held liable because the truck driver was carrying the deceased in violation of the terms of the policy. It must be kept in mind that it is not every breach of the conditions of the policy that entitles the insurer to escape from liability, Section 96(2)(b) of the Motor Vehicles Act, 1939 makes it clear that it is only breach of such conditions of the policy which have been specified in Sub-clauses (i)(ii)(iii) of the aforesaid section which provide a defence to the insurance company. The relevant provision is as follows:

Section 96(2) ...an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:

(a) XXX XXX XXX (b) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:

(i) a condition excluding the use of the vehicle?

(a) For hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward; or

(b) for organised racing and speed testing; or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle; or

(d) without side-car being attached, where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

xxx xxx xxx

7. In this particular case, the learned Counsel for the insurance company has not been able to point out the breach of any of these conditions. We are, therefore, not prepared to hold that the insurance company is entitled to avoid liability under the policy.

8. Even otherwise, the insurance policy Exh. P-3 shows that carrying 6 persons besides driver and conductor was permissible under it. Lifting a few more persons cannot be said to constitute such a fundamental breach that the owner be denied indemnification, as held by the Supreme Court in B.V. Nagaraju Vs. M/s. Oriental Insurance Co. Ltd., Divisional Officer, Hassan, . We therefore find no substance in the appeal filed by the insurance company. The same must therefore fail.

(1) The result is that Appeal No. 726 of 1994 by the insurance company is dismissed with costs.

(2) Appeal No. 611 of 1994 by the M.P.S.R.T.C. also fails and is hereby dismissed with costs.

(3) Appeal of the claimants No. 842 of 1994 is allowed. The compensation is enhanced to Rs. 1,70,600/-.

9. The liability of two sets of respondents for payment of compensation will be 50 per cent each. Thus the owner and driver of bus No. CPF 8729 will be jointly and severally liable for payment of 50 per cent of the compensation awarded along with interest thereon at the rate of 12 per cent per annum from the date of application till payment, and for the remaining 50 per cent the owner, driver and insurer of truck No. CPB 2031 will be liable along with interest at the same rate and for the same period. The respondents shall also pay the costs of the claimants. The award stands modified to the extent stated herein-above. Counsel's fee Rs. 1,000/-, if certified.

10. The M.P.S.R.T.C. and the insurance company should deposit their share of the compensation inclusive of interest within two months from the date of this order, failing which interest will be payable at the rate of 15 per cent per annum. On deposit the Tribunal shall disburse the amount as per the guidelines of the Supreme Court in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, .