

Koushalbai and ors. Vs. Aabidali and ors.

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Court : Madhya Pradesh

Decided On : Apr-12-1999

Reported in : II(1999)ACC315; 2000ACJ569; AIR2000MP14; 1999(2)MPLJ587

Judge : B.A. Khan and ;Shambhoo Singh, JJ.

Acts : [Motor Vehicles Act, 1939](#) - Sections 95

Appeal No. : Letters Patent Appeal Nos. 362 of 1998 and 59 of 1996

Appellant : Koushalbai and ors.

Respondent : Aabidali and ors.

Advocate for Def. : Kutumbale for L.P.A. No. 362/98 and ;Dandwate, Adv.

Advocate for Pet/Ap. : Kutumbale, Adv. in LPA No. 59/96

Disposition : Appeal allowed

Judgement :

Khan, J.

1. These two appeals arise out of a common Judgment dated 9-2-96 passed by 1st Appellate Court in M. A. 263/90 limiting the liability of the Insurance Company to Rs. 15.000/- per passenger. The all important issue that arises in the matter was whether Tribunal was duty bound to examine copy of insurance policy on

record on its own without insurer taking the plea of limited liability specifically and without proving it in reference to the terms of policy.

2. Facts lie in a narrow compass. One Somariya, 35, died in a road accident while disembarking from the Bus. His claimants filed claim case No. 39/89. This was resisted by the insured owner and driver but the insurance company failed to file any written statement or to take any defence of its limited liability. M.A.C.T., Kukshi, on consideration of matter awarded compensation of Rs. 54,000/- to claimants with 12% interest holding both the insured and the insurer Jointly and severally liable. The company, however, questioned this in M.A. No. 263/ 90 and for the first time took the plea of its limited liability by invoking provisions of Section 95 of M.V.Act. It did not place any policy document on record to show that the insurance contract did not stipulate liability in excess of statutory liability. The company, however, relied upon a judgment of Supreme Court in 1987 Acc CJ 872 : (AIR 1987 SC 2158) and a Full Bench judgment of this Court in 1988 Acc CJ 956 to suggest that Tribunal should have examined the record which also bore a copy of the policy submitted by the insured and should have declared the liability of the company to be limited. The contention prevailed with the 1st Appellate Court holding that it was the duty of Tribunal to look into the terms of the policy and to pass an award in tune therewith. The view taken is under challenge in L.P.A. No. 59/ 96.

3. The other Appeal (L.P.A. No. 362/98) is filed by claimants who have gone unrepresented today. In any case it would have been difficult to accept their Appeal because of concurrent finding by the Courts below on the quantum of compensation. This appeal is accordingly dismissed for non-prosecution.

4. That leaves as to deal with the L.P.A. 59/96 raising the issue whether any duty was cast on Tribunal to embark on a sue motu exercise of scrutinising insurance documents to ascertain whether insurance company's liability was limited or unlimited.

5. Mr. Dandwate, L/C for insurer was at pains to justify the impugned judgment on the ground that the liability of the company was otherwise statutorily fixed under Section 95 of the old Rev. Act and. therefore, insurer was not required to take up the plea of limited liability before the Tribunal. He laid much stress on Supreme

Court judgment 1987 Acc CJ 872 : (AIR 1987 SC 2158) and also a Full Bench judgment of this Court in 1988 Acc CJ 956 to suggest that Tribunal was otherwise duty bound to hold the insurer liable only to the extent of statutory liability contemplated by provisions of Section 95 and that no plea or defence was required to be taken by the company in this regard.

6. L/C for insured Mr. Kutumbale on the contrary repelled that any such obligation was cast on the Tribunal, more so when the company had not even bothered to raise any such defence or plea before it. He alternatively argued that the deceased was any way a third party entitled to compensation to be indemnified by the company in full.

7. It must be pointed out at the very outset that there could be no dispute with the propositions of law laid down in 1987 Acc CJ 872 : (AIR 1987 SC 2158) or for that matter in 1988 Acc CJ 956: (Madh Pra) (FB). These Judgments interpret terms of Section 95 envisaging statutory liability by the insurer and also talk about the requirement by the Tribunal to take the terms of policy document in regard for determination of insurer's liability for which insurance company was to satisfy certain requirements by way of producing the undisputed policy and showing that its terms envisaged a limited liability. These Judgments, when read in correct perspective nowhere ruled that Tribunal should take upon itself the burden of ascertaining the extent of liability of the company. In our view also no such duty or obligation could be attributed to the Tribunal. This is so for the simple reason that Tribunal was not expected to prove the case of the insurance company. It was for the company to raise its defence and to see it through by whatever means. Where it had failed to do so and had also defaulted in taking follow-up action by not producing authentic insurance documents, it was not for the Tribunal to embark on a roving inquiry and to scrutinise the records to make out a case for it. It is true that insurer could also produce a copy of the authentic and genuine policy document even before the Appellate Court but that is only if it had taken any defence of limited liability before the Tribunal which it may otherwise have omitted to substantiate. But where no such defence was taken by the company, Tribunal could not be held bound to examine the records and to search for a proof of the insurer's limited liability. There is also no dispute with the settled position that the

Tribunal cannot shut its eyes to any crucial insurance document on record and brush it aside where its genuineness is not otherwise in dispute between the parties. But that is only where the insurer had done its bit by raising the plea of its limited liability. We find it difficult to fathom that Tribunal should be burdened with onus to scrutinise the records to make out a case for the insurance company even when it had failed to satisfy the basic requirement of setting up a defence.

8. Viewed thus we hold that Ist Appellate Court had placed wrong reliance on judgments supra and had wrongly cast a duty on the Tribunal to determine the insurer's limited liability on its own in the facts and circumstances of the case. The impugned judgment is accordingly set-aside and this Appeal allowed.

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