

Badrilal Vs. Kamlabai and anr.

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Court : Madhya Pradesh

Decided On : Mar-15-1991

Reported in : [1993]76CompCas34(MP)

Judge : A.G. Qureshi, J.

Appeal No. : Miscellaneous Appeal No. 84 of 1990

Appellant : Badrilal

Respondent : Kamlabai and anr.

Advocate for Def. : M.R. Khan, Adv. for respondent No. 2

Advocate for Pet/Ap. : Salim Khan, Adv.

Disposition : Appeal partly allowed

Judgement :

A.G. Qureshi, J.

1. This appeal has been filed against the award dated December 21, 1989, passed by the Member, Motor Accidents Claims Tribunal, Mandsaur, in Motor Accidents Claim Case No. 55 of 1987, whereby the learned lower Tribunal has awarded Rs. 13,300 as compensation to the appellant with interest, but has absolved respondent No. 2, the insurance company, from the liability to pay the

compensation.

2. The facts leading to this appeal, in short, are that the appellant-claimant filed a claim petition before the lower Tribunal claiming Rs. 50,000 as compensation against the respondents on the allegation that, on 30th May, 1985, at 9.30 a.m. bus number CPF 9233 owned by respondent No. 1 and driven by the driver, Manju Khan, rashly and negligently dashed against the claimant causing injuries to him due to which the appellant has become permanently disabled. Therefore, the claimant claimed compensation of Rs. 50,000 under different heads.

3. Respondent No. 1 resisted the claim on the ground that although she is the owner of the bus in question and it was driven by her driver, Manju Khan, at the time of the accident and that it was insured with the insurance company, respondent No. 2, however, there was no negligence on the part of the driver. The accident occurred due to the fault of the claimant because he tried to cross the road even after seeing the bus in question. It was also averred that the claimant had given in writing that the accident was caused due to his own fault. The insurance company denied the fact that, at the time of the accident, the vehicle was insured with it.

4. The learned lower Tribunal, on the aforesaid pleadings, raised six issues to decide the petition and held that the accident was caused due to the dash by the bus, but there was also contributory negligence on the part of the claimant. It has also been held that, as a result of the injury, the claimant became permanently disabled and, therefore, it awarded compensation of Rs. 13,300 to the applicant. It was further held that the accident vehicle was not insured with the insurance company at the time of the accident and, therefore, passed the award accordingly. Hence this appeal.

5. Learned counsel for the appellant challenges the finding of the learned lower Tribunal on the ground that the finding that there was contributory negligence on the part of the appellant is based on improper appreciation of evidence. Learned counsel also challenges the finding of the Tribunal in absolving the insurance company.

6. Learned counsel for respondent No. 1, the owner of the vehicle, supports the appellant in respect of the argument advanced by the appellant absolving the insurance company from liability. However, he argues that the lower court has rightly held that it was the contributory negligence on the part of the claimant which caused the accident. Learned counsel for the insurance company, Shri A.H. Khan, argues that the insurance company has rightly been absolved of the liability to pay the compensation in view of the fact that, at the time of the accident, the vehicle was not insured with the insurance company.

7. As regards the first argument advanced by learned counsel for the appellant in respect of contributory negligence, the learned lower Tribunal has dealt with that aspect in detail in the light of the evidence before it while deciding issue No. I. In para 6 of the order of the lower Tribunal, there is a detailed discussion on this point. The facts which appear from the evidence clearly indicate that there was contributory negligence on the part of the claimant. It has come in the evidence of the claimant that he had seen the bus approaching from a distance of about 50 feet and still he tried to cross the road. However, the driver also is responsible for negligence because he could have avoided the accident. But the fact remains that the applicant knowing that he is likely to meet with an accident in view of the approaching bus, still crossed the road and thereafter he even did not lodge a report at the police station and then executed a document, exhibit P-1, in favour of the owner of the bus that no accident was caused to him due to the bus belonging to non-applicant No. 1. As such, in my opinion, the learned lower Tribunal has not erred in any way in arriving at a finding that the accident was caused due to the contributory' negligence of the applicants. Learned counsel has not been able to demonstrate as to how the learned lower Tribunal has failed to appreciate the evidence properly. Therefore, I find no force in the argument advanced by the learned counsel for the appellant that the finding of the lower Tribunal regarding contributory negligence is erroneous.

8. The second argument advanced by learned counsel for the appellant is that the learned lower Tribunal has wrongly held that the vehicle was not insured with the insurance company at the time of the accident. According to Shri Salim Khan, learned counsel for the appellant, the learned lower Tribunal has not considered

the fact that the policy commences from the date of the accident and even if it has been stated in the policy that it would commence from a particular time on the date of the commencement, it is of no help to the company. On the other hand, learned counsel for the insurance company, Shri A. H. Khan, forcefully argued that the finding of the lower Tribunal is based on the evidence on record and the lower court, while deciding issue No. 4, has rightly held that the vehicle was not insured at the time of the accident.

9. It is not disputed that the accident took place at 9.30 a.m. and, according to the insurance company, the office of the insurance company starts work at 10-30 a.m. This fact has weighed with the learned lower Tribunal in holding that the insurance policy was obtained after the accident. But the learned lower Tribunal has failed to take this material fact into consideration that, whenever a policy is issued on a particular date, it comes into force from the previous midnight of the date of insurance. Whenever a policy is taken on a particular date, its effectiveness is from the commencement of that day. In a latest decision, the Supreme Court of India in the case of *New India Assurance Co. Ltd. v. Ram Dayal* [1990] 68 Comp Cas 580 ; [1990] 2 AC] 545, has held that, when a policy is obtained on the date of the accident and the insurance company repudiates its liability on the ground that the policy has been taken after the accident, then the effectiveness of the policy is from the commencement of that date on which the policy has been taken. In that case, the Supreme Court was considering the issue as to whether the policy obtained on the date of the accident becomes operative from the previous midnight of the date of insurance and, whether the insurance company is liable. In that case also, the insurance company has repudiated its liability maintaining that the policy has been taken after the accident and that, therefore, it had no liability to meet the award of compensation against the owner. The Supreme Court, after considering the judgments of the various High Courts, came to the conclusion that the policy shall be effective from the commencement of the date of the insurance. In that case, the vehicle was insured up to August 31, 1984, and the policy was taken on September 28, 1984, which was the date of the accident. However, the Supreme Court, agreeing with the view taken by the Punjab and Haryana High Court, held that, when a policy is taken on a particular date, its effectiveness is from the commencement of that day and, therefore, the insurance company was

liable in terms of the Act to meet the liability of the owner under the award. As such I hold that the learned lower Tribunal has erred in absolving the insurance company from the liability to pay the compensation.

10. In view of the aforesaid, the appeal of the appellant is partly allowed. The award of the lower Tribunal awarding compensation to the appellant and the quantum of compensation determined by it is maintained. However, the decision of the lower Tribunal on issue No. 4 absolving the insurance company from its liability to pay the compensation is set aside and instead, it is held that the insurance company shall also be liable to pay compensation to the appellant. Accordingly, the award of compensation is passed against the insurance company also along with the owner of the vehicle. The award of the lower Tribunal is modified as above: In the circumstances of the case, there shall be no order as to costs.