

Karcharmal and anr. Vs. Chenram and anr.

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Court : Madhya Pradesh

Decided On : Aug-30-1991

Reported in : 1(1992)ACC592

Judge : R.K. Verma, J.

Appellant : Karcharmal and anr.

Respondent : Chenram and anr.

Judgement :

ORDER

R.K. Verma, J.

1. This is an appeal filed by the owner and the driver of the offending bus No. MPU 5006 against the Award dated 29.1.1982 passed in Claim Case No. 7 of 1977 by the Motor Accident Claims Tribunal, Mandsaur, whereby the claimants has been awarded an amount of Rs. 3,622.20 ps. as compensation.

2. The claimants-respondent chenram filed the instant Claim petition for compensation, amounting to Rs. 17, 324.05ps. Before the Claims Tribunal, against his brother kacharmal owner of the bus hearing registration No. MPU 5006 and its driver and the Insurance Co. which had insured Kacharmal against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the

use of the laid bus in a public place, on the ground that the driver had reversed the bus rashly and negligently and dashed against the claimants's bus causing damage to that bus. The claimants alleged that as a result of the accident, his bus, which was being plied on the route in competition with Kacharmal's bus No. MPU-5006, remained out of use for nine days causing loss of income to the claimants for that period and that the claimants had to pay the repairing charges of his bus. The Claim was resisted by the appellant's owner and driver as well as the Insurance Company-respondent No. 2.

3. After trial, the learned Tribunal found that the driver of the offending bus No. MPU-5006 caused the damage to the claimant's bus due to rash and negligent reverse driving of the offending bus MPU-5006 which dashed against the claimant's bus.

4. As regards the quantum of compensation, the learned Tribunal found that the claimants had incurred expenses on repairs of his damaged bus amounting to Rs. 3,497/- and that the claimants had suffered loss of earnings of Rs. 675/- during the period of nine days when his bus was out of use. The learned Tribunal also found that the claimants had received Rs. 550/- from the Insurance Company which amount was liable to be deducted while determining the amount of compensation payable. Accordingly, the learned Tribunal allowed a total compensation of Rs. 3,622.20 Ps. in favour of the claimants Chenram.

5. Being aggrieved by the award, the owner and the driver of the offending bus No. MPU-5006 have filed this appeal

6. The respondent-claimants has filed cross-objection for enhancement of the amount of compensation.

7. The learned Counsel for the appellant has submitted that instant Claim petition was not maintainable and the Motor Accident Claims Tribunal constituted under Section 110 of the Motor Vehicles Act, 1939 (hereinafter referred to as the Act) had no jurisdiction to try the Claim for compensation, since it was not a case of accident but a case of deliberate mischief.

8. It has been submitted on the basis of the statement of Chenram (PW2) that the appellant No. 2 Ramesh, driver of the bus No. MPU-5006 belonging to Kacharmal appellant No. 1 was commanded by the owner Kacharmal's son Kantilal to hit and damage the bus of respondent Chanram. The driver Ramesh accordingly, drove the offending bus with speed and dashed it against the bus of Chenram causing damage to that bus.

9. The damage thus caused to the respondent's bus arised out of an incident which was intended and not unexpected and as such, it cannot be called an accident.

10. The learned Counsel for the appellant submitted that the word 'Accident' used in the Motor Vehicles Act, 1939 has not been defined in the Act

11. The meaning of the word 'accident' is given in legal Glossary published by the Government of India, Ministry of Law Justice and Company Affairs as under:

A Sudden event occurring without intent or volition whether through negligence, carelessness, unawareness, ignorance or a combination of causes and producing and unfortunate result; and unexpected happening causing loss or injury which is not due to the fault of the person.

12. The learned Counsel for the appellant has also cited two decisions under the Workmen's Compensation Act, 1923; wherein the word 'Accident' used in Section 3 of that Act has been construed to mean a mishap or untoward even not expected or designed. These decisions are Sarangpur Cotton Manufacturing Company Limited v. Smt. Dev Karsan and Anr. 1967 ACJ 252 and Ramlal Jawaharlal v. Leelabai and Ors. 1973 ACT 476.

13. The contention on behalf of the appellant is that the Claims Tribunal is constituted by the State Government under Section 110 of the Act for the purpose of adjudicating upon Claims for compensation in respect of accident involving the death, of or bodily injury to, persons, arising out of the use of motor vehicles or damage to any property of a third party so arising, of or death. The incident in the instant case out of which the Claim arises being not an accident, the Claim was

not triable by the Claims Tribunal and as such, the Award made by it is without jurisdiction.

14. The contention, in my opinion, has no merit Any damage caused to the person or property of a third party, as a result of use of a vehicle in a public place, is an accident from the view-point of the third party. Even though the driver of owner of the offending vehicle may be entertaining the intention to cause damage to the third party, the incident resulting in damage caused by use of the vehicle, cannot be said to be expected or intended by the third party and as such, looked at from the view-point of the injured third party claimants, the incident resulting in damage is an accident. So long as the injured third party does not share the intention of bringing about the damage deliberately, the occurrence of the incident resulting in damage to the person or property of the third party must be construed as an accident in respect of which the tribunal shall have the jurisdiction to adjudicate upon the Claim of compensation in respect of the damage arising out of the use of the motor vehicle.

15. Learned Counsel for the appellants has next submitted that in an application for compensation under Section 110-A of the Act, the claimants must establish that there was negligence and rashness on the part of the driver of the vehicle and establish connection with the injuries sustained by the person involved and if the claimants fails to prove either of them, the action must fail. He cited a decision of the High Court of Mysore in *Cecelia Ferrao and Ors. v. Shanker Vithal Motor Co. Ltd. and Anr.* 1971 ACJ 108 in support of his submission. It has been submitted that in the instant cause the damage done to the respondent's bus is not on account of negligence on the part of the driver of the offending bus belonging to the appellants, but due to his criminal act of mischief done at the instance of the sons of the bus-owner appellant No. 1.

16. I do not agree with the above submission of the learned Counsel. The Criminal intent to cause wrongful loss or damage to the injured party does not affect the tortious content of the act of mischief. In spite of the element of the criminal intent involved in the offence of mischief, the act of mischief is necessarily rash and reckless act of tort. As such, when the damage has been caused to the

respondent's bus by rash and reckless use of the offending bus owned by the appellant No. 1 and driven by appellant No. 2, the Tribunal shall have jurisdiction to adjudicate upon a Claim for compensation in respect of the damage caused to the property of the respondent arising out of the accident by reckless use of the offending bus. The impugned Award, therefore, cannot be challenged on the aforesaid submission of the learned Counsel for the appellants.

17. Lastly, the learned Counsel for the appellants has submitted that in case the appellants are found liable for compensation, the Insurance Company-respondent No. 2 with whom the offending bus of the appellant No. 1 stood insured, must also be held jointly and severally liable to pay compensation and that the learned Tribunal has wrongly exonerated the Insurance Company on the ground that the accident related to the intentional acts. The learned Counsel appears to be right in this submission of his. The learned Counsel appearing for the claimants respondent has referred to the following observations of Lord Dinning in the case of *Hardy v. Motor Insurers' Bureau* 1964 2 All E.R. 742 which are instructive and applicable in the facts and circumstances of the present case.

The policy of insurance, which a motorist is required by statute to take out, must cover any liability which may be incurred by him arising out of the use of the vehicle by him. It must, I think, be wide enough to cover, in general terms, any use by him of the vehicle, be it an innocent use or a criminal use, or be it a murderous use or a playful use. A policy so taken out by him is good altogether according to its terms. Of course, if the motorist intended from the beginning to make a criminal use of the vehicle intended to run down people with it or to drive it recklessly and dangerously and the insurers knew that was his intention, the policy would be bad in its inception. No one can stipulate for iniquity. But that is never the intention with which such a policy is taken out, At any rate no insurer is ever party to it. So the policy is good in its inception. The question arises only when the motorist afterwards makes a criminal use of the vehicle. The consequences are then these; if the motorist is guilty of a crime involving a wicked and deliberate intent, and he is made to pay damages to an injured person, he is not himself entitled to recover on the policy. But if he does not pay the damages, then the injured third party can recover against the insurers under Section 207 of the Road Traffic Act, 1960, for

its is a liability which the motorist, under the Statute, was required to cover. The injured third party is not affected by the disability, which attached to the motorist himself. So here, the liability or phillips to the plaintiff was a liability which phillips was required to cover by a policy of insurance, even though it arise out of his willful and culpable criminal act. If Phillips had been insured, he himself would be disabled from recovering from the insurers. But the injured third party would not be disabled from recovering from them.

18. If the appellants do not pay the damages the claimants-respondent can recover against the Insurer since it is the liability which the owner of the vehicle was required to cover and has by virtue of the policy covered in the instant case.

19. As regards the amount of compensation of Rs. 3, 622.20Ps. Determined by the learned Tribunal as payable to the claimants-respondent, it has been submitted on behalf of the appellants that the amount so determined, wrongly includes a sum of Rs. 675/- awarded on account of loss of earning when the vehicle of the respondent was out of use for nine days. This Claim of loss of earning for non-user of the vehicle cannot be allowed. A decision of this Court in *Rajkumar v. Mahendra singh and Ors.* AIR. 1985 MP. 4 has been relied upon in this connection wherein it has been held that a Claim for loss of business on account of vehicle remaining idle during repairs is not a 'damage to the property' of the owner but may be damage or loss to the owner. Therefore, the Claims Tribunal is not empowered under Section 110 to entertain such a Claim.

20. Learned Counsel appearing for the respondent Insurance Co., has submitted that the limit of liability covered by the Insurance Policy is only Rs. 2000/- in respect of damage to property.

21. In view of the discussion aforesaid, the compensation of Rs. 3622.20 as awarded by the learned Tribunal must be reduced by Rs. 675/- Claimed on account of the loss of earnings during the period the vehicle was out of use. Thus, the claimants-respondent is held entitled to a total compensation of Rs. 2947.20 in respect of which the respondent Insurance Co, shall be jointly and severally liable to the extent of Rs. 2000/- only.

22. The cross-objection filed by the claimants has no merit and is liable to be dismissed.

23. Accordingly this appeal is partly allowed. The Award of the learned Tribunal is modified in as much as the claimants respondent shall be entitled to a compensation of Rs. 2947.20 from the appellants who are held liable jointly and severally to pay the same. So far as the respondent Insurance Co., is concerned, it shall be liable jointly and severally with the appellants to pay compensation to the extent of Rs. 2000/- only. The amount of compensation shall carry interest @ 6% per annum from the date of the accident till realisation, as awarded by the learned Tribunal. The cross-objection is dismissed. In the circumstances of the case there shall be no order as to costs.

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