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Court : Madhya Pradesh

Decided On : Oct-02-1999

Reported in : I(2000)ACC266; 2001ACJ2071

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

Appeal No. : M.A. Nos. 314 and 331 of 1999

Appellant : Mahesh Kumar and anr.

Respondent : Hari Shanker Patel and ors.

Advocate for Def. : H.C. Jindal and ;H.G. Shukla, Advs.

Advocate for Pet/Ap. : H.S. Rajpal, Adv.

Disposition : Appeal dismissed

Judgement :

Shambhoo Singh, J.

1. This judgment shall govern the disposal of M.A. Nos. 314 and 331 of 1999 filed against the award dated 30.1.1999 passed by the M.A.C.T., Shajapur in Claim Case No. 53 of 1999.

2. Appellant/claimant's case, in brief, was that he was engaged as a cleaner on Matador No. MP 13-B 6084, owned by the respondent No. 1 and driven by

respondent No. 2. On 29.5.1994 respondent No. 2 drove the Matador in a rash and negligent manner, resulting in overturning near Convent School, Shajapur, on the culvert of the canal wherein the appellant sustained grievous injury in his left leg and ultimately it was amputated below the knee. He filed claim and sought compensation of Rs. 4,75,000. The respondent resisted the claim. Respondent No. 3, the insurance company, inter alia, pleaded that the respondent No. 2 had no valid and effective licence and, therefore, it was not liable to pay compensation. The Tribunal on appreciation of evidence held that the accident occurred due to rash and negligent driving of the Matador by respondent No. 2, as a result of which the appellant sustained fracture of his right leg which was later amputated and awarded the compensation of Rs. 1,30,000 and directed the appellant-owner and the respondent-non-applicant driver and the insurance company to pay Rs. 12,000 and appellant-owner and driver to pay Rs. 1,18,000 with interest. Appellant-claimant filed M.A. No. 314 of 1999 for enhancement and appellant-non-applicant owner of the vehicle of the minibus filed M.A. No. 331 of 1999 against exoneration of the insurance company from paying compensation and also for reducing compensation amount.

3. Mr. Rajpal, learned counsel for the appellant, submitted that the Tribunal committed error in holding that the respondent No. 2 was not having valid licence. He further contended that the amount of compensation awarded by the Tribunal is on lower side. On the other hand, Mr. H.G. Shukla, learned counsel for the respondent No. 3 insurance company supported the impugned award.

4. At the time of argument Mr. Rajpal, learned counsel for the appellant, restricted his argument only to the point of liability of the insurance company to pay compensation. He argued that the learned Tribunal committed error in holding that respondent No. 2 had no valid driving licence. He contended that the offending vehicle, the Matador, was light motor vehicle and respondent No. 2 was holding light motor vehicle driving licence. On the other hand, Mr. H.G. Shukla, learned counsel submitted that the respondent No. 2, driver was not authorised by the Licensing Authority to drive a transport vehicle, therefore, the Tribunal rightly exonerated the insurance company from its liability.

5. We have considered the arguments advanced by counsel for both sides and perused the record. Admittedly, the offending vehicle Matador is a light motor vehicle as defined in Section 2(21) of the Motor Vehicles Act. But, admittedly, this Matador was used for transporting passengers and, therefore, it was a transport vehicle under Section 2(47) of the Motor Vehicles Act and was being used as public service vehicle for carrying passengers. Section 3 is relevant for resolving the controversy whether the respondent driver had valid driving licence. It is quoted below:

3. Necessity for driving licence.-(1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle [other than a motor cab hired for his own use or rented under any scheme made under Sub-section (2) of Section 75] unless his driving licence specifically entitles him so to do.

The plain reading of Section 3 makes it clear that no person can drive a motor vehicle in any public place unless he holds an effective driving licence issued to him licensing him to drive the vehicle. It is also clear that no one can drive a transport vehicle except motor cab, hired for his own use or rented under any scheme made under Sub-section (2) of Section 75, unless his driving licence specifically entitles him so to do, if there is no authorisation of the Licensing Authority on the driving licence to drive the transport vehicle, holder of such licence cannot be said to be possessed of a valid driving licence to drive transport vehicle. [See National Insurance Co. Ltd. v. Mahadevayya AIR 1982 Madras 151 and Manohar Jamatmal Sindhi v. Ranguba 1994 ACJ 1280 (Gujarat)]. This court also took the same view in Mohd. Karim Khan v. Shamsheer Khan 1999 ACJ 1250 (MP). In this case the driving licence was held valid as the offending vehicle was motor cab and the owner himself was the driver of the vehicle. In the case in hand, appellant was holding a light motor vehicle licence, Exh. D-2. The letter of R.T.O. which is a public document and has also been proved by non-applicant No. 3, shows that respondent No. 2 was holding light motor vehicle licence which was renewed up to 14.6.1999. However, the endorsement of professional licence was made with effect from 12.12.1994 while the accident had taken place on

29.5.1994. As endorsement of authorisation of the Licensing Authority on the licence of the respondent driver to drive transport vehicle was not made on 29.5.1994, therefore, he was not holding valid driving licence on the date of accident-29.5.1994. Therefore, the learned Tribunal rightly held that respondent No. 2 was not having valid and effective driving licence on the date of accident, therefore, the owner committed breach of the terms and conditions of the insurance policy and exonerated the insurance company from its liability to pay compensation. The argument that Section 10 does not speak of any endorsement on the licence, therefore, endorsement of authorisation is not required, is not acceptable. Section 10 does not override the specific provision of Section 3. As observed earlier, Mr. Rajpal did not advance arguments for enhancement of compensation and rightly so in view of the evidence on record. Both M.A. Nos. 314 and 331 of 1999 deserve dismissal.

In the result, both the appeals are dismissed. No order as to costs.

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