

Pushpabai and ors. Vs. Ramotibai and ors.

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Court : Madhya Pradesh

Decided On : Sep-04-2000

Reported in : 2002ACJ1341

Judge : Dipak Misra, J.

Appeal No. : C.R. No. 1055 of 2000

Appellant : Pushpabai and ors.

Respondent : Ramotibai and ors.

Advocate for Def. : Sanjay Agrawal, Adv.

Advocate for Pet/Ap. : P. Diwakar, Adv.

Disposition : Revision dismissed

Judgement :

Dipak Misra, J.

1. Invoking revisional jurisdiction of this Court under Section 115 of the Code of Civil Procedure ('the Code' for short) the claimants/applicants have called in question the defensibility of the order dated 10.3.2000 passed by the Additional Motor Accidents Claims Tribunal, Dhamtari in Claim Case No. 62 of 1999.

2. The facts as have been depicted are that the applicants as claimants filed the aforesaid case against the non-applicants claiming compensation of Rs. 8,40,000. It is stated in the claim petition that the applicant No. 1 is the widow of late Bhikan Ram and the applicant Nos. 2 and 3 are the minor children. It is pleaded that the late Bhikan Ram was a co-owner of the tractor along with the non-applicant Nos. 1 to 4. It is also set forth that he was engaged as a driver in the vehicle and was getting Rs. 1,500 towards his salary. That apart, he was also getting Rs. 1,500 from his agricultural property. It is further set forth that the said vehicle is insured with the non-applicant No. 5, Oriental Insurance Co. Ltd. In this factual backdrop a claim for the aforesaid amount has been advanced.

3. The non-applicant Nos. 1 to 4 appeared before the court below and filed their written statement admitting the facts and further stating that as the vehicle was insured the insurance company was liable to make good the claimed amount. A written statement was filed by the insurer denying the liability on the ground that the vehicle was registered in the name of late Bhikan Ram and others and, therefore, he was the co-owner of the vehicle and as far as the co-owner is concerned, the insurer is not liable to indemnify the claim put forth for his death. The insurer filed a preliminary objection to the claim petition. The Tribunal on consideration of the facts and circumstances of the case and appreciating the stand of the insurer came to hold that the insurance company was not liable to pay the compensation and exonerated it. The said order accepting the preliminary objection is the cause of grievance of the present revisionist.

4. I have heard Mr. P. Diwakar, learned Counsel for the applicants and Mr. Sanjay Agrawal, learned Counsel for the non-applicant No. 5.

Assailing the impugned order it is submitted by Mr. Diwakar that the Tribunal should have first recorded the evidence and thereafter proceeded to fasten the liability and should not have exonerated the insurance company on the basis of preliminary objection. It is also put forth by the learned Counsel that the deceased was employed as a driver and was getting the regular monthly salary and hence, the insurance company was liable to indemnify for his death.

In support of the impugned order Mr. Agrawal, learned Counsel for the insurer has contended that indisputably late Bhikan Ram was the co-owner of vehicle and on the basis of the aforesaid status his legal heirs are not entitled to sustain the claim against the insurer by advancing a plea that he was also engaged as a driver. The learned Counsel in support of his contention has placed reliance on the decisions rendered in the cases of Minu B. Mehta v. Balkrishna Ramchandra Nayan 1977 ACJ 118 (SC); Darshani Devi v. Sheo Ram 1987 ACJ 931 (Rajasthan); M. Akkavva v. New India Assu. Co. Ltd. 1988 ACJ 445 (Karnataka); Mathew Koshy v. Oriental Insurance Co. Ltd. 1989 ACJ 21 (Kerala); National Insurance Co. Ltd. v. Annamma Babu 1990 ACJ 909 (Kerala); United India Ins. Co. Ltd. v. Lakshmi 1990 ACJ 390 (Madras); Oriental Fire & Genl. Ins. Co. Ltd. v. Shakuntala Devi 1991 ACJ 177 (Allahabad); United India Insurance Co. Ltd. v. Kantabai 1991 ACJ 22 (Bombay) and Oriental Insurance Co. Ltd. v. Chimajirao Kanhojirao Shirke 1992 ACJ 452 (Bombay).

5. To appreciate the rival submissions raised at the Bar, I have carefully perused the claim petition filed by the claimants and the written statements filed by the non-applicant Nos. 1 to 4 as well as non-applicant No. 5. On a scrutiny of the aforesaid documents it becomes graphically clear that the deceased Bhikan Ram was the co-owner of the vehicle in question. True it is, a stand has been taken that Bhikan Ram was engaged as a driver in respect of the vehicle and was getting Rs. 1,500 towards his monthly salary. The Tribunal has taken note of this fact and came to the conclusion that Bhikan Ram was the co-owner and Rs. 1,500 was his monthly income from the vehicle. Submission of Mr. Diwakar is that late Bhikan Ram was getting salary as a driver. In my considered opinion whether Bhikan Ram was employed as a driver or not, would not make much difference as long as he was the co-owner of the vehicle. He does not cease to be co-owner. The question that falls for consideration is whether the insurer is liable to indemnify in the obtaining factual matrix. In this context, I may profitably refer to the decision rendered in the case of Mathew Koshy, 1989 ACJ 21 (Kerala), wherein it has been held as under:

The plea of the claimant ignores the basic requirement of the owner's liability; the right to receive compensation can only be against a person who is bound to compensate due to failure to perform a legal obligation; compulsory insurance is to

indemnify the owner of the vehicle from the liability, if any, but if the owner himself suffers an injury in an accident, he does not acquire any right to get compensation from the insurance company. A personal accident insurance alone can cover this claim and the policy issued to the claimant was not a personal accident insurance policy and it does not cover such liability.

In the case of *Chimajirao Kanhojirao Shirke*, 1992 ACJ 452 (Bombay), a Division Bench of Bombay High Court held that death of owner-driver of the truck when it met with an accident is not covered even if terms of the policy mention 'unlimited personal injury'.

In the case of *Kantabai*, 1991 ACJ 22 (Bombay), a Division Bench of Bombay High Court was considering death of a partner of a firm travelling in the jeep owned by the partnership firm when the vehicle met with an accident due to its rash and negligent driving. It was contended by the claimant that individuality of the partner is separate and distinct from the character of the firm. The Bench held that the owner is not covered by the expression 'any person' or 'third party' and, therefore, liability cannot be extended to include the risk to the owner. To quote their Lordships:

Even on general principles it is difficult to entertain the contention that the liability in respect of tortfeasor himself would be covered by the insurance company and that the tortfeasor under the contract of indemnity could ask the insurer in the event of his rashness or negligence to pay compensation to him or under the law of Torts.

In the case of *Lakshmi*, 1990 ACJ 390 (Madras), a Division Bench of Madras High Court held as under:

Section 95(1)(b) requires a policy of insurance to cover any liability which may be incurred by the insured in respect of death 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 vehicle in a public place. There ought to have been a liability incurred by the insured to a third party. The terms of the policy of insurance issued, being in accord with Section 95(1)(b)(i) of the Act, the policy of insurance could cover only

the liability of the insured to a third party. The purpose of the provision is to protect the interests of third parties who are involved in motor accidents. In order to fix liability on the insurance company, the liability must be first established against the insured. It is only in that case the liability of the insurance company would arise. In the instant case the owner of the lorry or in other words the insured having himself died in the accident, caused by his own driver, and there being no liability on his part or on the part of his legal representatives, towards any third party, the insurance company's liability does not at all arise.

6. In view of the aforesaid enunciation of law, I am of the considered view that the liability cannot be fastened on the insurance company as the co-owner, insured himself, having died in the accident. Therefore, I do not find any error in the order passed by the Tribunal. Consequently, the civil revision being devoid of merit, stands dismissed. However, there shall be no order as to costs.