

Ramesh Singh Vs. Subhash Singh and ors.

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SooperKanoon Citation : sooperkanoon.com/511228

Court : Madhya Pradesh

Decided On : Feb-25-2008

Reported in : 2009ACJ1510

Judge : P.K. Jaiswal, J.

Appellant : Ramesh Singh

Respondent : Subhash Singh and ors.

Advocate for Def. : Mr. B.D. Verma

Judgement :

P.K. Jaiswal, J.

1. This appeal and M.A. No. 771 of 2000 arise out of common award passed by the Member, Motor Accidents Claims Tribunal in Claim Case No. 44 of 1994; decided on 26.8.2000. M.A. No. 771 of 2000 is filed by the claimant Darshanlal arising out of the Claim Case No. 43 of 1994 for enhancement of compensation. As both these appeals arise out of the same accident, they are heard together and disposed of by this common judgment.

2. In M.A. No. 768 of 2000, on the date of accident, i.e., 27.11.1993 the claimant was working as cleaner on truck bearing No. MP 06-E 0024 and his salary was Rs. 1,000 per month plus Rs. 30 daily diet allowance. On account of negligence of

driver of truck bearing No. MP 06-E 0024, he sustained injuries and was admitted in the hospital from 29.11.1993 to 30.11.1993 and again from 17.12.1993 to 10.1.1994. His right leg was amputated from knee (amputated stump at femur). The claimant Ramesh filed Claim Case No. 44 of 1994 claiming compensation of Rs. 10,70,000 before the Motor Accidents Claims Tribunal, Shivpuri.

3. M.A. No. 771 of 2000 is filed by the claimant Darshanlal and he was travelling in truck No. MP 06-6887 and the truck was driven by Mewalal. Subhash Singh, respondent No. 1, who was driving the truck bearing No. MP 06-E 0024 and on account of rash and negligent driving, the appellant received severe injury on his right leg and, therefore, filed claim petition under Section 166 of the Motor Vehicles Act, 1988 vide Claim Case No. 43 of 1994 claiming compensation of Rs. 4,50,000.

4. Respondent Nos. 2 and 3 filed their separate written statements and denied the allegations made in the claim petition. The owner of the vehicle, respondent No. 2, in para 20 of his written statement stated that the respondent No. 1 was having driving licence to drive the truck and at the time of accident, the vehicle was duly insured with respondent No. 3. Respondent No. 3 in its written statement admitted the accident, but denied that accident was caused due to rash and negligent driving of the vehicle by respondent No. 1. The respondent No. 3 disputed the driving licence No. 11517 issued by the Licensing Authority, Kota in favour of respondent No. 1 and stated that no driving licence was issued in favour of the respondent No. 1 and at the time of accident driver of the offending vehicle was having a forged driving licence and, therefore, insurance company is not liable to indemnify the insured.

5. Claims Tribunal after appreciating the oral and documentary evidence has held that due to accident appellant Ramesh Singh was seriously injured and his right leg was amputated and he suffered permanent disability. On the basis of the statement of NAW 1, the Tribunal has held that as per endorsement made by the Licensing Authority, Kota on 2.3.2000, no driving licence was issued in favour of respondent No. 1 vide Exh. D1 and the said licence was issued by the licensing authority in the name of one Deepak K. Singh. Licensing authority issued a

certificate to that effect vide Exh. D2 and held that the respondent No. 1 was not having any valid licence and the documents filed by the insurance company vide Exh. D1 and Exh. D2 are public documents under Section 74 (1) (iii) of the Evidence Act and had taken the said documents on record. The Tribunal relying on the statement of Babulal Agrawal, NAW 3 and the certificate, Exh. D2, filed by the Licensing Authority, Kota has held that at the time of accident, the respondent No. 1 was not having valid driving licence to ply the vehicle and he was driving the vehicle contrary to the terms and conditions of the policy and exonerated the insurance company, respondent No. 3 from indemnifying the insured. The Tribunal considering the medical receipts filed by the appellant vide Exh. P8 to Exh. P53, which is of Rs. 13,035 has held that appellant Ramesh Singh spent a sum of Rs. 13,100 on medical expenses. On the basis of the evidence of Ramesh Singh, AW 1, the Tribunal held that at the time of accident, the appellant was earning Rs. 1,000 per month and awarded Rs. 2,000 lump sum loss of income for the period of 2 months. On the head of permanent disability, the Tribunal awarded Rs. 25,000 to the appellant, Rs. 10,000 towards pain and suffering. The Tribunal awarded total compensation of Rs. 50,100 to the appellant Ramesh Singh in Claim Case No. 44 of 1994 and Rs. 40,000 to appellant Darshanlal in Claim Case No. 43 of 1994. In both the cases, Claims Tribunal exonerated the insurance company from indemnifying the insured.

6. Mr. Arun Sharma, learned Counsel for the claimants, at the outset, stated that the amount awarded by the Tribunal in M.A. No. 771 of 2000 is just and proper. He further submitted that Tribunal committed an error in exonerating the insurance company. In M.A. No. 768 of 2000, he submitted that the amount awarded by the Claims Tribunal is on the lower side. The appellant in para 17 of the claim petition very specifically stated that he was working as a cleaner and was getting the salary of Rs. 1,000 per month plus daily allowance (bhatta) at the rate of Rs. 30 per day. Appellant Ramesh, AW 1, in para 1 of his statement, has stated that his right leg was amputated from knee. In para 2, he stated that his salary was Rs. 1,000 per month and he was getting daily allowance at the rate of Rs. 30 per day. He further in para 6 of his cross-examination stated that he was working as cleaner and his salary was Rs. 1,000 per month.

7. In rebuttal, the respondents have not led any evidence to prove otherwise or that the appellant was not working as cleaner. It is submitted by the learned Counsel for the appellant that daily allowance, which was being paid to the appellant, is a part of the wages and the allowance was not paid only for taking food on outside duty, but it was paid as allowance in addition to the monthly salary. In reply, the learned Counsel for the respondent No. 3 submitted that the allowance is not a part of wages, i.e., only being paid for taking food when the person is on duty outside the city, therefore, the allowance cannot be considered as a part of wages and supported the award. The Tribunal assessed the income of the appellant as Rs. 1,000 per month, but has not recorded any finding as to whether daily allowance is a part of wages or not. No document or certificate has been filed by the appellant to prove that he was getting daily allowance at the rate of Rs. 30 per day. Nothing has come on record that it was paid either as a food allowance while on duty outside the city or it was not part of wages. The Division Bench of this Court in the case of *Shakuntala v. Kanna Dangi* : 2007 ACJ 2486 (MP), has held that daily allowance paid to a driver or cleaner is a part of wages. Therefore, I consider that the daily allowance paid to the appellant was part of wages. In fact, bhatta or allowance paid to the cleaner or driver should be regular and not conditional and there should be clear evidence of this on record.

8. It was submitted by the learned Counsel for the appellant that the appellant had suffered serious injuries and as per Schedule to the Workmen's Compensation Act, 1923 and the medical certificate issued vide Exh. P54, the disability is 60-70 per cent and appellant is unable to perform his duties so the appellant should have been granted compensation treating him to have lost 100 per cent earning capacity, rendering to the definition of total disablement as indicated in the Workmen's Compensation Act and placing reliance on various judgments it was argued that as the appellant is found to be unable to perform his duties, he was entitled for grant of full compensation treating him to be completely disabled to perform the duties of the cleaner.

9. Refuting the aforesaid, Mr. R.V. Sharma, learned Counsel for the insurance company, respondent No. 3, urged that as the compensation is awarded reasonably, no case for interference in this matter is called for. Accordingly, he

seeks for rejection of the appeal. The appellant placed reliance on the various decisions, which are as under:

- (1) National Insurance Co. Ltd. v. Moliya Devi : 2007 ACJ 1116 (MP);
- (2) Pratap Narain Singh Deo v. Shrinivas Sabata 1976 ACJ 141 (SC);
- (3) Oriental Insurance Co. Ltd. v. Mani Ram : 2003 ACJ 1181 (MP);
- (4) Vilas v. Madhya Pradesh State Road Trans. Corporation : 2003 ACJ 1234 (MP);
- (5) Ashok Gaud v. Banshilal M.A. No. 275 of 2001; decided on 13.2.2007; and
- (6) Gabdaram v. Kailash 2007 (1) DMP 141 (MP).

10. Para 9 of Ashok Gaud v. Banshilal M.A. No. 275 of 2001; decided on 13.2.2007 is relevant, which reads as under:

(9) Now, coming to the question of granting 100 per cent compensation, total disablement is defined under Section 2 (1) (1) of the Workmen's Compensation Act, 1923, which means such disablement, whether of a temporary or permanent nature for all work which he was expected of performing at the time of accident. Admittedly, in the present case, before the accident, appellant was performing the duty of cleaner which requires a lot of moving around on his legs and now because of the injuries suffered, he is unable to move around freely and perform the duty as he was doing prior to the accident. That being so, it is a case where now the appellant is totally disabled from performing the normal work, which he was performing prior to the accident. Even though his disablement is assessed as 50 per cent, but his earning capacity has been totally reduced and now he cannot carry on his work. That being so, he is entitled to 100 per cent compensation in the light of the legal principle that emerges from the complete reading of the various judgments relied by the learned Counsel for the appellant.

11. Learned Counsel for the appellant urged that the certificates, Exh. D1 and Exh. D2 filed by the insurance company, respondent No. 3, is not a public document under Section 74 read with Section 65 of the Evidence Act. In support of the said

contention, he drew my attention to the decision in the case of National Insurance Co. Ltd. v. Ajay Deshmukh : 1999 ACJ 1556 (MP).

12. His next submission is that burden of proof that driver had no licence was upon the insurance company and insurance company must prove that the driver of the vehicle was having valid licence and was within the knowledge of the owner of the vehicle and placed reliance on the decision of the Apex Court in the case of Punam Devi v. Divisional Manager, New India Assurance Co. Ltd. : 2004 ACJ 785 (SC), wherein it was held that the insurer has to prove that the insured was guilty of negligence or failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicle by duly licensed driver or one who was not disqualified to drive at the relevant time.

13. The next contention of the learned Counsel for the appellant is that in absence of the evidence that the insured did not take adequate care and caution to verify genuineness or otherwise of licence held by the driver. In the absence of such plea and proof, insurance company is liable to indemnify the award. In support of the said contention, he drew my attention to the following decisions:

- (1) Sunia Bai v. Rammu Patel : 2007 ACJ 2640 (MP);
- (2) Lal Chand v. Oriental Insurance Co. Ltd. : 2006 ACJ 2161 (SC);
- (3) Radhabai v. H.K. Siddiqui 2007 ACJ 991 (MP);
- (4) Patiraj Singh v. National Insurance Co. Ltd. : 2007 ACJ 944 (MP);
- (5) Dr. Pramodchandra v. Ashwani Arora : 2007 ACJ 959 (MP);
- (6) New India Assurance Co. Ltd. v. Kusumbai : 2007 ACJ 2047 (MP); and
- (7) Prahalad Rai v. Shashi Kori : 2007 ACJ 2575 (MP).

14. Mr. B.D. Verma, learned Counsel for respondent No. 2-owner has submitted that owner was not having knowledge of the fake licence and there is no evidence on record to indicate that owner had the knowledge that licence held by the driver was forged, thus, liability has to be saddled on the insurer.

15. Mr. R.V. Sharma, learned Counsel for the insurer has submitted that as the licence was forged, the insurer has rightly been exonerated and no case for interference is made out. He further submits that there is a specific finding by the learned Tribunal that the respondent No. 1 was not holding a valid driving licence. Licensing Authority, Kota, who issued a certificate, has stated that no such licence was issued in favour of respondent No. 1. Tribunal has not committed any error in exonerating the insurance company. In support of the said contention, he drew my attention to the decision of the Apex Court in the case of United India Insurance Co. Ltd. v. Gian Chand : 1997 ACJ 1065 (SC) and submitted that the Supreme Court in para 10 has observed that once the owner did not step in the witness-box to prove his case, an adverse inference had necessarily to be drawn against him to the effect that the vehicle had been handed over by him for being driven by an unlicensed driver and the insurance company is liable to be exonerated from its obligation as the statutory defence became available to it. Learned Counsel further submitted that in view of the decision in the case of National Insurance Co. Ltd. v. Swaran Singh : 2004 ACJ 1 (SC), the liability of the insurance company is to satisfy the award in favour of the third party at the first instance and then to recover the awarded amount from the owner and driver thereof. He further drew my attention to the decision in Oriental Insurance Co. Ltd. v. Syed Ibrahim 2007 ACJ 2816 (SC). In the case of Oriental Insurance Co. Ltd. v. Syed Ibrahim, the insured was the father of the driver and it is hard to believe that he did not know as to what type of vehicle the driver was authorised to drive. The Apex Court relying on the decision of National Insurance Co. Ltd. v. Swaran Singh (supra) has held that insurer was not liable to indemnify the award. He also placed reliance on the case of Vishambhar Dayal Singhal v. Najma Bee M.A. No. 61 of 2000; decided on 1.3.2006 by the single Bench of this Court.

16. It is lastly submitted by the learned Counsel for insurance company that when Exh. D1 and Exh. D2 are taken on record before the Claims Tribunal, no objection was raised by the appellant and respondent No. 2 and drew my attention to the decision in the case of Oriental Insurance Co. Ltd. v. Mulayam Bai : 1999 ACJ 727 (MP) and submitted that certificate issued by the licensing authority is a public document as per Section 74 (1) (iii) and Sections 76 and 77 of the Evidence Act.

17. Heard the learned Counsel for the parties, perused the material placed before me and the record of the case.

18. Para 28 of reply to the claim petition filed by the insurer reads as under:

(Omitted as in vernacular)

19. Para 24 of reply to claim petition filed by the insured reads as under:

(Omitted as in vernacular)

20. The Division Bench of this Court in the case of Sunia Bai v. Rammu Patel : 2007 ACJ 2640 (MP), has held that there is no evidence on record to show that the owner had the knowledge that the licence held by the driver was forged. The licence was renewed is not in dispute. In absence of such evidence, it cannot be said that there was breach of condition of the policy on the part of the owner. The owner is not supposed to make inquiry with respect to genuineness and validity of licence held by the driver in various R.T.Os. in India from where the licence could have been issued to the driver. Hence, it cannot be said to be substantial breach on the part of the owner, as such, the insurer cannot escape from the liability to make payment of compensation and held that the driver, owner and insurer are liable jointly and severally to make the payment of compensation.

21. The Apex Court in the case of Lal Chand v. Oriental Insurance Co. Ltd. : 2006 ACJ 2161 (SC), no evidence led by insurance company to show that due and adequate care was not taken by owner or, owner had knowledge that driver was not holding a valid driving licence and held that the insurance company is liable to pay compensation.

22. In the case of Radhabai v. H.K. Siddiqui 2007 ACJ 991 (MP), the Tribunal on the basis of evidence of R.T.O. held that driving licence produced by the driver was fake and exonerated the insurance company. The Division Bench of this Court has held that there was violation of the conditions of policy due to fake licence. It was also held that the insurance company would be liable to pay the amount, but it would be able to recover from the insured as per the law laid down by the Apex Court in the case of United India Insurance Co. Ltd. v. Lehu : 2003

ACJ 611 (SC); National Insurance Co. Ltd. v. Swaran Singh : 2004 ACJ 1 (SC) and National Insurance Co. Ltd. v. Baljit Kaur : 2004 ACJ 428 (SC).

23. In the case of Patiraj Singh v. National Insurance Co. Ltd. : 2007 ACJ 944 (MP), the Division Bench of this Court has held that in the absence of the finding recorded by the Claims Tribunal that the licence held by the driver was forged to the knowledge of the owner, the insurer cannot escape from the liability to pay compensation. Similar view is taken by the Division Bench of Indore Bench in the case of Dr. Pramodchandra v. Ashwani Arora : 2007 ACJ 959 (MP). The Division Bench of this Court further in the case of Prahalad Rai v. Shashi Kori : 2007 ACJ 2575 (MP), has held that the owner had verified the licence and on prima facie scrutiny found it to be correct and there was nothing to show that it was interpolated and not a genuine one and held that the insurance company is liable to pay the amount of compensation.

24. In the case of National Insurance Co. Ltd. v. Swaran Singh : 2004 ACJ 1 (SC), it is held that the insurance company is liable to indemnify the insured and in the event of finding breach of policy only, recover the amount of compensation from the owner of the vehicle. It is further held that the driver of the vehicle was having valid licence was within the knowledge of the owner of the vehicle. In the case of National Insurance Co. Ltd. v. Kanti Devi : 2005 ACJ 1544 (SC), it is held that once defence is taken by the insurance company that the licence was fake or the driver did not have requisite driving licence to drive particular type of vehicle then it will be for insurer to prove that the insured did not take adequate care and caution to verify the genuineness or otherwise of licence held by the driver. The effect of evidence in this regard has to be considered by the concerned Tribunal. However, in this case, there is no evidence led by the insurance company that the insured did not take adequate care and caution to verify genuineness or otherwise of licence held by the driver. Even in the written statement filed before the Claims Tribunal, the insurance company has not raised the objection that the insured has not taken steps to verify genuineness or otherwise of the driving licence. Insurance company has pleaded that the driver of the vehicle was not having valid licence, therefore, insurance company is not liable to indemnify insured. Mere finding that driver of the vehicle was not having valid licence will not absolve the insurance

company from its liability and insurance company is liable to indemnify the insured.

25. In view of the aforesaid various decisions of the Division Bench of this High Court as well as the dictum of the Apex Court, I hold that even if driver was having forged licence, then also insurance company is liable to indemnify the insured. Hence, the exoneration of the insurer by the Tribunal is neither presentable or invulnerable. Thus, it is held that the owner, driver and insurer are liable jointly and severally to make the payment of compensation.

26. Now, I shall proceed to decide the question of the quantum of compensation. Ramesh Singh, AW 1, in paras 2, 4 and 6 has deposed that on the date of accident, he was working as cleaner and his income was Rs. 1,000 + Rs. 30 daily allowance (bhatta). Looking to the amount of salary, it can be safely held that the appellant was also getting daily allowance at the rate of Rs. 15 per day, i.e., Rs. 450 per month. The income is determined at Rs. 1,450 per month and yearly income at Rs. 17,450 (Rs. 1,450 x 12). At the time of accident, the appellant was 30 years of age, multiplier of 17 will be proper in this case. On applying multiplier of 17, compensation is determined at Rs. 2,96,650 (Rs. 17,450 x 17). Claimant will also be entitled for a sum of Rs. 13,100 for medical expenses. The amount of compensation is enhanced to Rs. 3,09,750.

27. Consequently, both the appeals are allowed in part. In M.A. No. 768 of 2000, the amount of compensation is enhanced from Rs. 50,100 to Rs. 3,09,750. The-enhanced amount of compensation shall carry interest at the rate of 7 per cent per annum from the date of filing of the appeal till its realization. The liability of the respondents is held to be joint and several. No order as to costs.