Ram Swaroop Sharma and anr. Vs. Ram Murthi and ors.

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Court : Madhya Pradesh

Decided On : Oct-01-2002

Reported in : 2004ACJ1697

Judge : Subhash Samvatsar, J.

Acts : Motor Vehicles Act, 1988 - Sections 149(2) and 169

Appeal No. : M.A. No. 372 of 1995

Appellant : Ram Swaroop Sharma and anr.

Respondent : Ram Murthi and ors.

Advocate for Def. : R.P. Gupta, Adv.

Advocate for Pet/Ap. : N.M. Haswani, Adv.

Disposition : Appeal allowed

Judgement :

S. Samvatsar, J.

1. This appeal is filed by the owner and driver of the vehicle involved in the accident challenging award dated 28.9.1995 passed by First Additional Motor Accidents Claims Tribunal, Bhind in Claim Case No. 25 of 1991.

2. Facts of the case are that on 14.6.90 the deceased Ram Mahesh was travelling in a tractor-trolley. Tractor was registered as MP 06-7663. As per the allegations in the claim petition the deceased was going in the tractor to cut wood. The said tractor tumbled and the deceased was crushed under the trolley. The claimants, therefore, filed a claim petition against the present appellants and the insurance company, respondent No. 5, for compensation of the deceased Ram Mahesh.

3. The Tribunal awarded a compensation of Rs. 74,000 with 12 per cent interest. However, the insurance company was exonerated from payment of compensation on the ground that the driver of the vehicle had no valid licence at the time of accident.

4. The main contention of the appellant is that the alleged driver Satyadev Sharma, appellant No. 2, was not driving the vehicle at the time of accident and it was the deceased himself who was driving the vehicle. According to him the claimant has examined three witnesses to prove the accident. The said witnesses are PW 1 Gandharv Sharma, PW 2 Ram Murthi (claimant herself) and PW 3 Sukhlal. From perusal of the statements of all the three witnesses it appears that none of them was present at the time of accident and they are not the eyewitnesses, therefore, their statements cannot be relied upon about the driver of the vehicle at the time of accident. On the other hand, respondents have examined Satyadev Sharma, the alleged driver as witness No. 2 who has denied that he was driving the vehicle. The other witnesses examined by the respondents and Satyadev have stated that at the time of accident Ram Mahesh was driving the vehicle. All these witnesses claim to be eyewitnesses and were present at the time of accident.

5. Trial court disbelieved these witnesses and held that Ram Mahesh was not driving the vehicle and it was Satyadev Sharma who was driving the vehicle. The basis for this conclusion is the position of the dead body which was found on the spot. The said dead body was crushed under the trolley and not under the tractor which shows that the deceased himself must have been travelling in the trolley and was not sitting on the driving seat otherwise his body should have been found below the tractor. This approach of Claims Tribunal seems to be correct. It is

pertinent to point out that Claims Tribunals are not the civil courts and the strict rule of evidence is not applicable to the claim cases. Claims Tribunal has wider powers than the civil courts for ascertaining the facts and controversies. In such circumstances even if other view is possible from the evidence, First Appellate Court should not interfere in the same as has been laid down by the Supreme Court in the case of Madhusudan Das v. Narayani Bai, AIR 1983 SC 114.

6. The court below has, thus rightly concluded that Satyadev was driving the vehicle at the time of the accident. Now most important question is whether the driver has any valid licence or not? The burden of proving the fact that the driver was driving the vehicle without valid licence is on the insurance company as has been laid down by the Apex Court in large number of cases like Narcinva V. Kamat v. Alfredo Antonio Doe Martins, 1985 ACJ 397 (SC); Kashiram Yadav v. Oriental Fire and Genl. Ins. Co. Ltd., 1989 ACJ 1078 (SC) and Sohan Lal Passi v. P. Sesh Reddy, 1996 ACJ 1044 (SC). In view of the aforesaid judgments it is clear that it is for the insurance company to plead and prove that the driver of the vehicle had no valid licence at the time of accident. In para 11 of written statement the insurance company has made plea to that effect. For proving the said plea insurance company has examined one Satish Bansal as witness No. 1 for N.A. 3. The said witness has not uttered a single word about the licence.

7. As per the various judgments of the Supreme Court the insurance company has to prove the said fact from summoning the record of R.T.O. which has not been done in the present case. The suggestions given by the driver in the cross-examination are not sufficient to discharge the burden cast upon the insurance company. Moreover, any admission made by the driver cannot bind the claimant. In the present case a question was asked to the driver Satyadev Sharma whether he had driving licence or not and he replied that he does not have any valid licence.

8. This evidence is not sufficient to discharge the burden cast upon the insurance company in the light of the judgment of the Apex Court in the case of Narcinva V. Kamat, 1985 ACJ 397 (SC). In that case also a similar question was asked in the cross-examination and the Supreme Court has held that the answer in the cross-

examination is not to discharge the burden placed upon the insurance company and held that insurance company has failed to establish the fact that the driver was driving the vehicle without any valid licence and ultimately award was passed against the insurance company.

9. In view of the said judgment the insurance company in the present case has also failed to discharge the burden cast upon it to prove that the driver has no valid licence at the time of accident. Thus, the insurance company is liable to pay amount of compensation awarded by the Claims Tribunal.

10. In view of the aforesaid, this appeal is allowed. Award passed by the court below is partly modified to the effect that insurance company is liable to pay the amount awarded by the Claims Tribunal.

11. Appeal thus partly succeeds and is allowed with no orders as to costs.