Ramnarayan and ors. Vs. Dalpatsingh and ors.

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Court : Madhya Pradesh

Decided On : May-09-2005

Reported in : I(2006)ACC262; 2007ACJ212

Judge : A.K. Gohil, J.

Appellant : Ramnarayan and ors.

Respondent : Dalpatsingh and ors.

Judgement :

A.K. Gohil, J.

1. This is claimants' appeal under Section 173 of Motor Vehicles Act for enhancement of compensation as well as against the direction of Tribunal exonerating the insurance company on the ground of breach of terms and conditions of the insurance policy.

2. There is no dispute about the accident or about the negligence of the driver of mini truck bearing registration No. RJ 06-G 2139. The incident took place on 5.4.1998. One Fakirchand, father of the appellants, was going from Neemuch to Nayagaon on his bicycle. Respondent was driving laden mini truck rashly and negligently. Said mini truck dashed against Fakirchand resulting in death of Fakirchand on the spot. The truck is owned by respondent No. 2. It was a third party claim. Deceased Fakirchand was aged about 60 years and was working as a

labourer. Tribunal awarded compensation of Rs. 1,00,500 (rupees one lakh and five hundred).

3. Contention of the learned Counsel for the appellants is that Tribunal has wrongly exonerated the insurance company. Driver of the vehicle was having driving licence to drive light motor vehicle. He submitted that the weight of the vehicle was 6900 kg and, therefore, in the light of the decision in the case of National Insurance Co. Ltd. v. Swaran Singh : AIR 2004 SC1531 , it has to be held that he was a duly licensed driver and was entitled to drive the vehicle and the liability of the insurance company cannot be exonerated on the basis that he was not having the licence for driving a transport vehicle.

4. In reply Mr. Anil Goyal, the learned Counsel for insurance company, respondent No. 3, submitted that driver was not duly licensed and Tribunal has rightly exonerated the insurance company as the driver was not having licence to drive a transport vehicle. He further submitted that a person who is holding a licence to drive light motor vehicle is not entitled to drive transport vehicle and there must be specific endorsement over the licence for driving a transport vehicle.

5. Having heard the learned Counsel for the parties, I have perused the evidence on record as well as the findings recorded by the Tribunal.

6. There is no dispute that the driver was having a valid driving licence to drive light motor vehicle. Section 2(21) of the Motor Vehicles Act, 1988 defines light motor vehicle as under:

'light motor vehicle' means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7500 kilograms.

Similarly, Section 2(47) of the Motor Vehicles Act, 1988 defines transport vehicle as under:

'transport vehicle' means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle.

7. In the insurance policy, Exh. Dl, weight of the vehicle has been mentioned as 6900 kg. As per the definition of light motor vehicle as mentioned under Section 2(21) of the Motor Vehicles Act, even if a transport vehicle or omnibus or a motor car or tractor or road-roller has unladen weight which does not exceed 7500 kg, then it could be treated as light motor vehicle. Admittedly, from the document, Exh. Dl, insurance policy, the unladen weight of the disputed vehicle was 6900 kg which clearly falls within the definition of 'light motor vehicle'. Thus, it can be held that even if a vehicle is a transport vehicle having unladen weight of less than 7500 kg then the same will fall within the purview of light motor vehicle.

8. It is not in dispute that driver was having a valid driving licence on the date of incident to drive light motor vehicle. In the case of National Insurance Co. Ltd. v. Swaran Singh : AIR 2004 SC1531 , it has been held as under (para 86):

Motor Vehicles Act, 1988 provides for grant of learner's licence. [See Section 4(3), Section 7(2), Section 10(2) and Section 14]. A learner's licence is, thus, also a licence within the meaning of the provisions of the said Act. It cannot, therefore, be said that a vehicle when being driven by a learner subject to the conditions mentioned in the licence, he would not be a person who is not duly licensed resulting in conferring a right on the insurer to avoid the claim of the third party. It cannot be said that a person holding a learner's licence is not entitled to drive the vehicle. Even if there exists a condition in the contract of insurance that the vehicle cannot be driven by a person holding a learner's licence, the same would run counter to the provisions of Section 149(2) of the Act.

9. Thus, as quoted above, it is clear that in the case of Swaran Singh, : AIR 2004 SC1531 , the Apex Court has considered the case of learner's licence and has clearly held that a person holding learner's licence is entitled to drive a vehicle even if there exists a condition in the contract of the insurance company that the vehicle cannot be driven by a person holding a learner's licence as the same would be counter to the provisions of Section 149(2) of the Motor Vehicles Act.

10. In view of the aforesaid dictum of the Supreme Court, in this case when the driver was having a licence to drive light motor vehicle, he has to be considered as a duly licensed driver and if he was driving the transport vehicle which comes

under the light motor vehicle, insurance company cannot be exonerated from its liability. Thus, from this finding of the Tribunal that there is breach of condition of policy as the driver was not having valid licence to drive the transport vehicle and, therefore, there is breach of conditions of the policy, it appears that the Tribunal has not considered the definition of 'light motor vehicle' and has also not considered the document, Exh. Dl, in which weight of the vehicle has been mentioned, admittedly which is below 7500 kg would fall within the definition of 'light motor vehicle'. Therefore, the finding recorded by Tribunal of exonerating the insurance company from its liability is not a legal finding and the same is liable to be set aside and is hereby set aside. It is held that insurance company is liable for compensation.

11. I have also considered the question of enhancement of compensation. After considering the evidence on record, I find that the Claims Tribunal has rightly assessed the income of the deceased as well as the dependency and has rightly applied the multiplier. Therefore, there is no scope for enhancement of compensation.

12. Consequently, this appeal is partly allowed. The finding of Claims Tribunal exonerating the insurance company from its liability is set aside and it is directed that the insurance company shall pay the compensation to the claimants. So far as the question of enhancement of compensation is concerned, no case is made out for enhancement of compensation. Cross-objections filed by the owner of the vehicle are hereby dismissed being barred by time.

13. Parties are directed to bear their own costs.