Gopal Vs. Vishav Warama

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SooperKanoon Citation : sooperkanoon.com/512645

Court : Madhya Pradesh

Decided On : May-20-2005

Reported in : I(2006)ACC328

Judge : N.K. Mody, J.

Appellant : Gopal

Respondent : Vishav Warama

Judgement :

N.K. Mody, J.

1. Being aggrieved by award dated 2.12.1999 passed by I Addl. MACT, Mandsaur, in Claim Case No. 130/98 whereby a sum of Rs. 64,000 along with interest has been awarded to the appellant and respondent No. 5 has been exonerated, the present appeal has been filed.

2. Short facts of the case are that on 9.4.1995, when appellant was going in a jeep bearing No. MP14/8472 which met with an accident with a Maruti car bearing No. MP09H/4968. Jeep was insured with respondent No. 5. Maruti car was owned by respondent No. 1, driven by respondent No. 2 and insured with respondent No. 3. After trial, learned Tribunal came to the conclusion that accident occurred due to contributory negligence on the part of drivers of both the vehicles. The liability of negligence was fixed in a ratio of 60% of jeep and 40% of Maruti car. Since

respondent No. 6 who was driver of the jeep was having the driving licence which was for use of private light motor vehicles, therefore, respondent No. 5 was exonerated.

3. Looking to the injuries sustained by the appellant, the amount awarded appears to be on the lower side. After taking into consideration the evidence on record, the amount awarded is enhanced to Rs. 30,000 totalling to Rs. 94,000. The enhanced amount shall carry interest @ 7% annum.

4. In the matter of National Insurance Co. v. Swaran Singh and Ors. reported in 1 (2004) ACC 1 (SC) : 2004 (1) ACJ page 1, the Hon'ble Apex Court has laid down the rules relating to the liability of Insurance Company in absence of valid driving licence, which reads as under:

(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third-party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) An insurer is entitled to raise a defence in a claim petition field under Section 163A or Section 166 of the Motor Vehicles Act, 1988, inter alia, in terms of Section 149(2)(a)(ii) of the said Act.

(iii) The breach of policy condition e.g., disqualification of the driver or invalid driving licence of the driver, as contained in Sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the mater of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was no disqualified to drive at the relevant time.

(iv) Insurance Companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherever would be on them.

(v) The Court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply 'the rule of main purpose' and the concept of 'fundamental breach' to allow defences available to the insurer under Section 149(2) of the Act.

(vii) The question, as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the Insurance Companies would be liable to satisfy the decree.

(ix) The Claims Tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accident involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the Tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between the insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and the insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x) Where on adjudication of the claim under the Act, the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with Sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by Sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal.

(xi) The provisions contained in Sub-section (4) with the proviso thereunder and Sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover the amount paid under the contract of insurance on behalf of the insured can be taken recourse to by the Tribunal and be extended to claims and defences of the insurer against the insured by relegating them to the remedy before regular Court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims.

5. Taking into consideration the law laid down by Hon'ble Supreme Court, the award whereby the respondent No. 5 has been exonerated, is modified to the extent that along with respondent 'Nos. 4 and 6, respondent No. 5 shall also be jointly liable to satisfy the award. The enhanced amount shall also be in the same proportion as directed by the learned Tribunal.

With the aforesaid direction, the appeal stands disposed of.