

Nilesh Kumar Vs. Bapulal and ors.

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Court : Madhya Pradesh

Decided On : May-05-2006

Reported in : III(2006)ACC844; 2008ACJ331

Judge : N.K. Mody, J.

Appellant : Nilesh Kumar

Respondent : Bapulal and ors.

Advocate for Def. : Mr. H.S. Rajpal

Advocate for Pet/Ap. : Mr. Manish Jain, Mr. M.R. Sheikh

Judgement :

ORDER

N.K. Mody, J.

1. This order shall also govern the disposal of M.A. Nos. 387/2003, 652/2003, 692/2003, 739/2003, 740/2003 and 741/2003.

2. Short facts of the case are that on 15.4.1998, the offending truck bearing Registration No. MP 04 K2938 met with an accident. Undisputedly, the offending truck was insured as goods vehicle with respondent No. 8, driven by respondent No. 7 and owned by the appellant on the relevant date. On account of the accident, three persons namely, Champalal, Raisingh and Prabhulal died on spot

and number of persons were injured. On account of accident, number of claim cases were filed. Two claim cases 90/98 and 92/98 were dismissed on account of no evidence. Case against respondent No. 7 who was the driver, proceeded ex pane. The claim cases were contested by the appellant and the respondent No. 8 who are owner and Insurance Company respectively. In all the claim cases Insurance Company has been exonerated holding that respondent No. 8 is not liable for payment of compensation as the offending vehicle was insured for carrying the goods and respondent No. 7 and appellant has been held liable being driver and owner. The details of claim cases in which appeals have been filed along with its corresponding appeal numbers and the amount awarded by the Claims Tribunal are as under:

No.	Amount	AppealCase	No.	S.N. Claim M.A. Awarded filed
by_____				1. 88/98
742/2003	Rs. 1,66,600	Owner	2. 86/98	739/2003 Rs. 1,50,000 Owner3. 87/98
740/2003	Rs. 1,57,000	Owner	4. 113/98	692/2003 Rs. 2,29,000 Owner5. 113/98
387/2003	Rs. 2,29,000	Claimant	6. 114/98	741/2003 Rs. 40,000 Owner7. 114/98
652/2003				Rs. 40,000
Claimant_____				

3. In claim case No. 113/98 which was filed on account of death of Champalal, a sum of Rs. 2,29,000 has been awarded along with interest @ 9% per annum, against which M.A. No. 387/2003 has been filed by the claimants who are represented by Mr. S.B. Shrungarpure and M.A. No, 692/2003 has been filed by the owner of the vehicle. Similarly, in Claim Case No. 114/98 wherein a sum of Rs. 40,000 has been awarded to claimant Bhaironsingh, an appeal has been filed by the claimant which has been numbered as 652/2003 and appeal filed by the owner has been numbered as 741/2003. Claimant Bhaironsingh is represented by Mr. M.R. Sheikh, Advocate.

4. So far as the owner-appellant is concerned, he has also filed appeals against the awards passed in claim case bearing numbers 86/98, 87/98 and 88/98 of which respective appeal numbers are M.A. Nos. 739/2003, 740/2003 and

742/2003 and the amounts of award in all three cases are Rs. 1,50,000, Rs. 1,57,000 and Rs. 1,66,000 respectively.

5. In all the appeals which have been filed by the owner appellant herein, learned Counsel Mr. Manish Jain submits that respondent No. 8, Insurance Company has wrongly been exonerated. It is submitted that in case No. 113/98, deceased Champalal was pedestrian and was not travelling in the offending vehicle. It is alleged that deceased Champalal was going with his nephew and was dashed by the offending vehicle. It is submitted that in evidence, the son of Champalal, Bhanwarlal, A.W. 1 has appeared who has stated that he was told by his brother that deceased Champalal was going on his foot. It is submitted that in the circumstances Champalal was not travelling in offending vehicle, respondent No. 8 has wrongly been exonerated.

6. Mr. Manish Jain, learned Counsel for appellant-owner of the offending vehicle further submits that the passengers were travelling in the offending vehicle along with their respective goods, therefore, in view of the amended proviso of Section 147(1)(b) of the Motor Vehicles Act, respondent No. 8, Insurance Company is liable for compensation and the Insurance Company has wrongly been exonerated.

7. It is submitted that except M.A. Nos. 692/2003 and 387/2003 which are arising out of Claim Case No. 113/1998, the claimants have alleged that claimants were travelling in the vehicle along with goods. In view of this, the Insurance Company is liable for payment of compensation.

8. Learned Counsel for appellant placed reliance on a decision reported in 2001 (II) MPWN 191, Indian R.C.C. Cement Pipe Industries v. Smt. Kalawatl, wherein in a case where the deceased was travelling along with his goods, the Insurance Company has been held liable for compensation by a Division Bench of this Court. Learned Counsel submits that in this case the deceased was travelling with two bags of fertilizer and Division Bench of this Court has observed that since he was travelling in the vehicle along with the goods, therefore, Insurance Company is liable for payment of compensation.

9. Further reliance was placed on a decision of this Court in the matter of Kandl v. Govind Singh Dhruve reported in 2004 (II) D.M.P. 328 wherein 20-24 persons were travelling along with their goods, Division Bench of this Court has held that since deceased persons were travelling with their goods in the capacity of owner of the goods at the time of accident, therefore, insurer cannot escape from the liability and his liability is statutorily covered under Section 147 of the Motor Vehicles Act and is jointly and severally liable to make payment of compensation.

10. Mr. Manish Jain further submits that claim case is not a plaint and strict rules of pleadings are not applicable. For this contention, reliance is placed on a decision of Division Bench of Bombay High Court in the case of Maharashtra Road Transport v. Ramchandra Ganpatrao Chincholkar , wherein it is held that claim petition is not a plaint governed by C.P.C.

11. Mr. M.R. Sheikh, learned Counsel for appellant appearing in M.A. No. 652/2003 submits the claim petition No. 114/98 was filed by claimant Bhairon Singh who was travelling in the offending vehicle along with seeds. It is submitted that specific pleading was made in the claim petition and evidence was also adduced. It is submitted that on account of accident, the appellant is suffering from paralysis. Right portion of the body is completely paralysed. Ex. P/9 is the certificate which has been issued by the Medical Board wherein it is found that disability is to the extent that he is not able to speak; therefore, he could not appear in witness box before the learned Tribunal. However, he was produced before the learned Tribunal by two persons and the statement of his wife was recorded as he was unable to speak. It is submitted that appellant has submitted the medical bills of Rs. 35,903 which is Ex. P/10 and which are 166 in number. Therefore, the awarded amount of Rs. 40,000 is on the lower side. It is also submitted that no reason has been given by the learned Tribunal for awarding Rs. 40,000. Since the appellant is a disabled person, therefore, he is entitled for compensation as per Second Schedule of Motor Vehicles Act.

12. Mr. H.S. Rajpal who is appearing for respondent Nos. 1 to 6 in M.A. No. 742/2003 submits that the amount of Rs. 1,66,000 which has been awarded is on the lower side. It is submitted that respondent Nos. 1 to 6 has filed the cross-

objections wherein adequacy of the amount of compensation has been challenged. Learned Counsel submits that income of the deceased has been assessed as Rs. 1,200 per month and after deducting one-third of the amount towards personal expenses, the loss of dependency has been assessed at Rs. 80 per month and after applying the multiplier of 16, Rs. 1,66,000 has been awarded which is on the lower side.

13. Mr. H.S. Rajpal, who is also appearing in M.A. No. 740/2003 for respondent-claimant submits that for the purpose of loss of dependency, the multiplier of 15 has been applied which is wrong because the age of deceased was 30 years, therefore, multiplier of 18 sought to have been applied.

14. In M.A. No. 387/2003, learned Counsel for appellant submits that on account of death of the deceased, a sum of Rs. 2,29,000 has been awarded, breakup of which is as under:

Rs. 2,16,000 towards loss of dependencyRs. 3,000 towards funeral expensesRs. 2,000 towards loss of love and affectionRs. 2,000 towards expenditure incurred on attenderRs. 3,000 towards loss of consortiumRs. 3,000 towards loss of expectancy of life.

15. Learned Counsel for appellants submit that there are 7 appellants and only a sum of Rs. 2,000 has been awarded towards loss of love and affection and Rs. 3,000 has been awarded towards loss of consortium, which is on the lower side.

16. Mr. H.S. Rajpal, learned Counsel for respondent Nos. 1 to 6 submits that Insurance Company has wrongly been exonerated as burden to prove that passengers who were travelling along with their goods were gratuitous passengers was on the Insurance Company and no evidence has been adduced by the Insurance Company. It is further submitted that since the claimants are third party, therefore, Insurance Company is liable to make payment of amount of compensation and the same can be recovered by the Insurance Company from the owner and driver of the vehicle.

17. In this regard, reliance was placed on a decision reported in I (2004) ACC 353 (FB) : 2003 (II) MPJR 471 Jugal Kishore v. Ramlesh Devi, wherein after placing reliance on a decision of Apex Court in the case of New India Assurance Co. Ltd. v. Kamla : [2001]2SCR797 , Apex Court has held that insurer and insured are bound by the conditions enumerated in the policy and the insurer is not liable to indemnify the insured if there is violation of any policy condition. But the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third party.

18. Mr. S.V. Dandwate, learned Counsel for Insurance Company submits that the Insurance Company has rightly been exonerated by the learned Tribunal. It is submitted that the claimants who have sustained injuries and the persons who have died in the accident were not travelling in the vehicle along with goods. It is submitted that offending vehicle was seized by the police authorities and the best evidence could have been the seizure memo to prove that the goods which the claimants were possessing at the relevant time were seized by the police. Claimants failed to produce that piece of evidence which was in their possession and/or power. It is submitted that in view of this, since admittedly the offending vehicle was a goods vehicle, therefore, Insurance Company is not liable for payment of compensation. Further, reliance was placed on the definition of goods and goods carriage as defined under Sections 2 (13) and (14) of the Motor Vehicles Act, which reads as under:

(13) 'goods' includes live-stock and anything (other than equipment ordinarily used with the vehicle) carried by a vehicle except living persons, but does not include luggage or personal effects carried in a motor car or in a trailer attached to a motor car or the personal luggage of passengers travelling in the vehicle;

(14) 'goods carriage' means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods.

Further reliance was placed on Section 147 of the Motor Vehicles Act, wherein amendment has been made in Section 147(1)(b)(i) of the Act whereby the word

'including owner of the goods or his authorised representative carried in the vehicle has been inserted'. Reliance was also placed on Rule 97 of M.P. Motor Vehicles Rules, 1994 which reads as under:

Rule 97. (I) No person shall be carried in a goods carriage other than a bona fide employee or the owner or the hirer and except in accordance with this rule.

19. Learned Counsel submits that intention of the Legislature is clear that risk of the hirer is covered and not the passengers who were gratuitous. It is submitted that the owner should be the hirer of the vehicle. In the matter of *New India Assurance Co. Ltd. v. Asha Rani* reported in III (2002) ACC 753 (SC) : 2003 (1) ACJ 1, wherein Hon'ble Mr. Justice S.B. Sinha has observed that Section 2(35) of Motor Vehicles Act, 1988, does not include passengers in goods carriage whereas Section 2(25) of 1939 Act did, as even passengers could be carried in a goods vehicles. The difference in the definitions of the goods vehicle' in 1939 Act and 'goods carriage' in 1988 Act is significant. By reason of the change in the definitions of the terminology, the Legislature intended that a goods vehicle could not carry any passenger, as the words 'in addition to passengers' occurring in the definition of goods vehicle in 1939 Act were omitted. Furthermore, it categorically states that 'goods carriage' would mean a motor vehicle constructed or adapted for use 'solely for the carriage of goods'.

20. Further reliance was placed on a decision reported in *Deddula Padmavathi v. Maddala Srinivasa Rao* : 2004(5)ALD228 , wherein the High Court of Andhra Pradesh has held that one or two bags of vegetables being carried by a passenger who boarded the lorry in the midway would not become 'goods' within the meaning of Section 2(13) of the Motor Vehicles Act, 1988 because luggage being carried by passengers is not covered by the said definition. The volume and the weight of the bags being carried would have relevance to find out if they are 'luggage' or 'goods' within the meaning of Section 2(13) of the Act. Words employed in Section 147(1)(b)(i) of the Act reads 'including owner of the goods or his authorized representative carried in the vehicle' show that intention of Parliament was to cover the risk of the owner of the goods or his authorized representative, who actually engaged the goods vehicle to transport his 'goods' from one destination to

another destination and are not intended to cover the persons who board the goods vehicle carrying 'goods' of some others in the midway with some luggage being carried with them.

21. A Division Bench of this Court in M.A. No. 380/2003, Smt. Bhani Bai v. Sajju, vide order dated 31.8.2005, in a case where passengers were boarded along with luggage and goods in a goods vehicle, held that vehicle was not hired for carrying his own goods and it is for the safety of his goods, he was travelling in the truck along with the goods. In the absence of any evidence being led by the claimants to prove these facts we have no hesitation in confirming the findings recorded by the Tribunal that the deceased was in fact a gratis and was accordingly travelling as gratuitous passenger in the goods vehicle thereby, disentitling the claimants of the awarded sum from the Insurance Company.

22. So far as Claim Case No. 133/98 is concerned against which claimant has filed this appeal a sum of Rs. 2,20,000 has been awarded, breakup of which is as under:

Rs. 2,16,000 Towards dependencyRs. 3,000 Towards funeral expensesRs. 2,000 Towards loss of stateRs. 3,000 Towards expectancy of loss of lifeRs. 2,000 Towards attendersRs. 3,000 Towards loss of consortium

23. From perusal of the aforesaid breakup it is evident that only Rs. 3,000 has been awarded towards consortium while appellants are seven in number and no amount has been awarded towards loss of love and affection. On account of loss of estate also the amount awarded is on lower side. Therefore, appellants are further entitled for a sum of Rs. 35,000.

24. In Claim Case No. 114/98 against which M.A. No. 652/2003 has been filed by the claimant, amount awarded by the learned Tribunal appears to be on lower side. Medical bills are of Rs. 35,903 while Tribunal awarded only 40,000. From perusal of record it is evident that appellant was produced before the Court with the support of two persons and was not in a position to sit as he was completely paralytic. At the time of accident the age of the appellant in M.A. No. 387/2003 was 40 years. Looking to the injuries it is a case of 100% disability, therefore, the

appellant is entitled for compensation as per second schedule prescribed under Motor Vehicles Act. Looking to the age of appellant and after taking into consideration the notional income @ 15,000 per year and after applying multiplier 15, a sum of Rs. 2,50,000 is just and proper which the appellant is entitled in addition of the amount awarded by the learned Tribunal.

25. There are cross objection in M.A. No. 742/2003 wherein amount awarded is 1,66,600 after assessing the income of deceased @ 12,000 and after deducting the personal expenses, the dependency is assessed @ 800 per month. The breakup of the amount awarded is as under:

Rs. 1,53,600 : Towards dependencyRs, 3,000 : Towards loss of expectancyRs. 3,000 : Towards funeral expensesRs. 2,000 : Towards loss of esstateRs. 2,000 : Towards attenders charges,Rs. 3,000 : Towards loss of consortium

Since notional income is to be assessed @ Rs. 15,000 per year, therefore, the amount awarded is on lower side. On account of consortium and loss of estate also the amount awarded is on lower side. The appellant is entitled for the following amount:

Rs. 1,60,000 : Loss of dependencyRs. 3,000 : Towards loss of expectancy of lifeRs. 3,000 : Towards funeral expensesRs. 5,000 : Towards loss of stateRs. 2,000 : Towards expenses incurred on attendersRs. 5,000 : Towards loss of consortiumRs. 25,000 : Towards loss of love and affection-----Total Rs. 2,03,000

26. So far as M.A. No. 740/2003 is concerned the breakup of amount awarded by learned Tribunal is as under:

Rs. 14,400 : Towards dependencyRs. 3,000 : Towards expectancy of lifeRs. 3,000 : Towards funeral expensesRs. 2,000 : Towards loss of esstateRs. 2,000 : Towards attenders chargesRs. 3,000 : Towards consortium

In this case also, respondent and claimant shall be entitled for enhancement of Rs. 63,000 because no amount has been awarded towards loss of love and affection and the amount awarded towards loss of consortium, loss of estate and loss of

dependency is on lower side.

27. Coming to the question of liability of respondent No. 8 is concerned, the law is well settled after the amendment under Section 147 of Motor Vehicles Act, 1988.

28. So far as the liability of Insurance Company is concerned, in the matter of National Insurance Company Ltd. v. V. Chinnamma reported in III : AIR 2004 SC4338 , in a case where deceased who purchased vegetables and was transporting them to the market for sale, died while he was travelling in a tractor, trailer along with his goods when he fell down due to jerk, the Hon'ble Apex Court held that carrying of vegetables in a tractor and transporting them to the market for sale cannot be said that the tractor was used for agricultural purposes. It was observed that use of tractor was for agricultural purposes, would not be construed to mean that tractor-trailer can be used for carriage of goods by another person for his business activities. It was further held that vehicle was not being used for agricultural purposes.

29. In the matter of National Insurance Company Ltd. v. Bommithi Subbhayama reported in III (2005) ACC 423 (SC) : 2005 (II) TAC page 1 the Hon'ble Apex Court has held that there is no statutory liability on the owner of the vehicle to get his vehicle insured for any passengers. It was further held that Insurance Company was not liable for payment of compensation of gratuitous passengers travelling in goods vehicles.

30. In the present case offending vehicle was undisputedly a goods vehicle. As per Rule 97 of the M.P. Motor Vehicles Rules, 1994 no person can be carried in goods carriage other than a bona fide employee or the owner of the hirer except in accordance with rules. The word goods has been defined under Section 2(13) of the Motor Vehicles Act which does not include luggage or personal effects. The volume and the weight of the bags were relevant to determine whether the articles which were being transported were luggage or goods. It is also evident from the record that the vehicle was not engaged for transportation of goods from one destination to another destination. In view of this except in the case of M.A. Nos. 692/2003 and 387/2003 the learned Tribunal has committed no error in exonerating the Insurance Company.

31. So far as M.A. Nos. 692/2003 and 387/2003 which are arising out of claim case No. 114/98 are concerned, the case of the appellants was that the deceased Champalal was pedestrian and was not travelling in the offending vehicle.

32. From perusal of award it is evident that learned Tribunal has nowhere dealt whether deceased Champalal was travelling in the offending vehicle or was a pedestrian. In the circumstances, so far as M.A. Nos. 692/2003 and 387/2003 are concerned, the appeal stands allowed and the impugned award, so far as it relates to claim Case No. 113/98 is concerned relating to liability of the Insurance Company is set aside with a direction to the learned Tribunal to decide the liability of respondent No. 8 afresh after giving an opportunity to adduce further evidence to the parties if any. So far as other appeals are concerned, same stand disposed of with the aforesaid modification.

Parties are directed to remain present before the learned Tribunal on 30.6.2006. Record be sent back to the learned Tribunal immediately.

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