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Court : Rajasthan

Decided On : Nov-25-1987

Reported in : II(1989)ACC479

Judge : I.S. Israni, J.

Appellant : Ramesh

Respondent : Chotu and ors.

Advocate for Pet/Ap. : Mr. G.C. Mathur

Judgement :

I.S. Israni, J.

1. This is a Miscellaneous Appeal under Section 110-D of the Motor Vehicles Act, 1939 (hereinafter referred to as 'the Act') against the award dated July 30, 1984 passed by the Motor Accidents claims Tribunal, Jaipur in claim case No. 175 of 1977.

2. Respondent No. 1 Chotu filed a claim petition before the Motor Accidents claims Tribunal, Jaipur for an amount of Rs. 18,500/- against the appellant and respondent Nos. 2 to 6 alleging therein that while crossing the road near Collectorate in Bani Park, Jaipur on November 19, 1975, he was hit by scooter No. RRN 9094, which was driven by the appellant. It was also stated in the petition that the

respondent Nos. 2, 3 and 4 were the owners of the said scooter, which was insured with the respondent No. 5, the Oriental Fire and General Ins. Co. The claimant sustained serious injuries including fracture in the leg as alleged by him. The Tribunal awarded an amount of Rs. 10,000/- against the appellant alone who was-driving the scooter at the time when the accident took place.

3. The contention of Mr. G.C. Mathur, learned Counsel for the appellant, is that the trial court has seriously erred in giving a finding that it was not proved that the scooter involved in the accident was owned by late M.P. Sarthi and respondent No. 3, his son. It is also stated by the learned Counsel that the respondent No. 5, the insurance company, is also liable for payment of compensation and the trial court has erred in not holding it liable. It is pointed out by the learned Counsel that AW 1 Chotu in his statement has clearly stated that M.P. Sarthi was the owner of the scooter involved in the accident. NAW-1 Ramesh appellant has also stated in his statement that M P. Sarthi was the owner. He has further stated that he saw while passing that the scooter of Mr. Sarthi punctured. Mr. Sarthi gave him the scooter for repair and after repairs he was bringing the scooter when this accident took place. It is, therefore, contended by the learned Counsel that the appellant was driving the scooter under the permission and instructions of Mr. Sarthi, the owner of the scooter, who, therefore, is vicariously liable for the liability arising out of the said accident. It is further contended by the learned Counsel that the claimant had given particulars of insurance cover note, which also shows that the scooter was owned by Mr. Sarthi. It is pointed out that the insurance cover note, to which a reference was made by the claimant, shows that the scooter stood covered and insured from 7-4-1976 to 6-4-1977, i.e., the period after the date the accident took place. It is, however, contended that it is the duty of the insurance company to have come out with a clear statement whether the present policy was renewed from the insurance policy by which the scooter was insured in the previous year and whether the scooter was not insured with the insurance company. It is, therefore, urged that the insurance company has deliberately not given the required details and therefore, should be held responsible for liability of the amount of award given to the claimant.

4. Mr. S.C. Srivastava, learned Counsel appearing for respondent No. 5, the insurance company, contends that insurance company has come with clean hands and produced the policy to which a reference was made by the claimant. The policy has been produced in the trial court, which shows that the scooter was covered from April 7, 1976 to April 6, 1977. Since the accident took place on November 19, 1975, evidently the insurance company cannot be held liable for compensation regarding any award, which may be passed on account of accident which arose earlier than the policy was issued. His further contention is that no such plea was raised in the trial court as is now raised on behalf of the appellant against the insurance company of not disclosing any facts as alleged by the appellant during the course of arguments. It is contended that a vehicle can be insured anywhere in India and it becomes impossible for the insurance company to find out on its own whether a particular vehicle is insured with it on a particular date. It is further contended that even if such pleas were taken in the trial court, efforts might have been made to see whether the scooter was insured with the insurance company on the relevant date, but since no such point was raised, now at the appellate stage the Insurance company cannot be held guilty to have suppressed any facts, which it was not called upon to have stated before the Tribunal.

5. I have heard learned Counsel for both the parties and also perused the statements of the witnesses as also the record of the Tribunal. Learned Tribunal has observed that Exh. A-1, a document of Dena Bank with which the scooter involved in the accident was hypothecated, does not show the number of scooter 9094 correctly due to stamp of the bank having come on two of its letters. On examining this document with magnifying glass it could be seen that the number of scooter mentioned on the document is 9094 which shows that the scooter belonged to M.P. Sarthi. Therefore, there can be no doubt that the owner of the scooter was Mr. Sarthi, which has been also asserted by AW-I Chotu as also NAW-I Ramesh. It was for the respondent Nos. 2 and 3 to have come in the witness box and deny the allegation of ownership of the scooter, if they wanted to deny the same. As also from the document Exh. A-1. I am clearly of the opinion that M.P. Sarthi was the owner of the scooter and, therefore, the respondent Nos. 2 and 3 cannot escape the liability regarding compensation amount awarded by

the Tribunal.

6. As to the contention of liability of the insurance company, it is not a case in which no number of policy had been stated and the insurance company was not called upon to produce the policy or make a statement whether a particular vehicle was insured with the company or not. This is a case in which the claimant positively gave out number of insurance cover note and the relevant policy was produced by the insurance company, which shows that the scooter involved in the accident was covered by the company for a different period than the day on which the accident took place.

7. Learned Counsel for the appellant has placed reliance on G. Prabhakar v. Thummanapalli Brahmaiah 1986 ACJ 196 (AP). This is a case which came up before the High Court of Andhra Pradesh in which the claimant was not in position to give any details of the insurance of the vehicle involved in the accident. It was in these circumstances that it was observed that the insurance company cannot take advantage of so-called lack of particulars for pleading that they are not liable regarding payment of the compensation. This was a matter, which arose out of the proceedings under the provisions of Section 92-A of the Act. Learned court observed that in these days of computer, the insurance company should be able to give necessary information, which the claimant could not get in several circumstances. The facts of the present case are rather different, in as much as the claimant did give the specific particulars of insurance cover note of insurance policy, which was produced by the insurance company. This turned out to be for a period later than the date on which the accident took place. Moreover, the insurance company in the Tribunal was not called upon by any of the parties to give any further details as now argued by the learned Counsel for the appellant during the course of arguments. I, therefore, do not find any fault with the insurance company.

8. In these circumstances, I hold that the respondent Nos. 2 and 3 shall also be liable jointly and severally for payment of the amount of award as awarded by the Tribunal to be given to the claimant, respondent No. 1.

9. In the result, the appeal is partly allowed as indicated above.

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