

M.A. No.578/1994

24.11.2016

Shri K.N. Fakhruddin, learned counsel for the appellants.

Shri S.K. Rao, learned Sr. Counsel with Shri Vineet Pandey, for respondent No.3/Insurance company.

Heard finally.

Claimants are the parents of the deceased Chaman Singh, who died in the motor accident on 19.07.1976, when bus bearing registration No.M.P.B/5925, driven rashly and negligently, owned by Shrichand, ran over motor cycle NO.BSR-6709, over which the deceased and his uncle Beer Singh (dead) were coming from opposite direction. Compensation of Rs. 3,00,000/- was claimed. The Tribunal rejected the claim holding that the claimants could not prove that the accident took place due to the negligence of bus No. M.P.B/5925, although it holds that the claimants are legal heirs of the deceased.

This appeal was allowed on 30.01.2003 and the award of the Claims Tribunal dated 30.04.1994 was set aside. The claimants were held entitled to compensation of Rs.1,85,000/-, with interest at the rate of 6% per annum from the date of application

till December, 1990, whereafter it shall be 12% per annum till December, 1999 and thereafter at the rate of 9% per annum till the date of payment payable by the Oriental Insurance Company Limited within two months.

A review application, MCC No.44/2004, for recalling/review of the order dated 30.01.2003 was filed. The only ground of which the review was sought for that once the Tribunal had exonerated the Insurance Company of its liability for payment of compensation, the appellate court without quashing the aforesaid finding and setting it aside could not impose joint and several liability on the Insurance Company with the owner and driver of the vehicle.

MCC No. 44/2004 was disposed of to consider the following limited question :-

“Accordingly, we allow this review application and reopen the question to the limited extent of considering the imposition of joint liability on the insurance company alongwith the owner and driver. The remaining part of the award for payment of compensation is not reopened and the same shall remain intact as ordered.”

In view of the aforesaid, the only issue

remains to be decided is whether the insurance company is jointly liable to pay the compensation amount alongwith the owner and driver.

Learned counsel for the appellants/claimants invited attention of this court to the statement of D.W.-1 Jai Singh, who is son of the original owner Shrichand. It is submitted by Shri Fakhruddin, learned counsel for the appellants that the bus was insured with the Oriental Insurance Company Limited for the year 1976-77 vide policy number 1520/4/81-M.P./4043E/422/1520/92/400/727.

As per the learned counsel, the accident happened on 19.07.1976, since the insurance company has not produced any document to rebut the statement or the policy number stated by defendant No.2, the Insurance company is liable to indemnify the claim of compensation.

He has relied on judgment passed by this Court in the case of **Rajkumar Agrawal @ Raju Vs. Sadhna (ku) and others [2010(1) MPLJ 184**, wherein it is held:

“Mere denial by the insurer that vehicle was not insured with it is not sufficient to exonerate the Insurer. The insurer did not produce documents to prove that the truck was not insured by it or did not cover the risk. Insurance

company is liable to pay the compensation to respondent No.1 claimant, as awarded by the Tribunal.”

Another judgment relied on by the learned counsel is **Bhaiyalal Vs. New Indian Insurance Co. Ltd. And others [2011(2) MPLJ 80]**, wherein it is held:-

“The insurance company has not examined any person to prove that there had been a breach of policy and there was no prescription in the policy, as such that if the same is to be used only by the owner of the tractor for agricultural use then only insurance company shall be responsible to pay the compensation and there is no liability if the same is used by other person. The burden to prove the breach of policy was on the Insurance Company. The Insurance company has not examined any witness to prove the breach of policy. The insurance company since has failed to prove the breach of policy the insurance company is also liable to indemnify the claim of compensation. The appellant-owner of the tractor as well as respondent No.1- Insurance Company liable to pay compensation.”

On the strength of the above stated legal position, it was argued that in absence of any evidence to the contrary, the insurance company is liable to pay the compensation.

Shri S.K. Rao, learned Sr. Counsel appearing for the respondent/Insurance Company on the other hand, submits that the offending bus was not insured with the insurance company, hence it is not liable to pay the compensation amount. Shri Rao invited the attention of this Court to the written statement filed by the respondent No.1 Shrichand on 06.07.1977. It is evident from the written statement that no pleading regarding the insurance of the offending bus was made by Shrichand. After the death of Shrichand, an amendment was sought in para 4 of the written statement by the son of late Shrichand, which was allowed vide order dated 18.04.1994. The amendment incorporated as para 4 of the written statement read as under :-

“4. यह कि मोटर व्हीकल नं० MPB-5925 का बीमा दि ओरियन्टल फायर एण्ड जनरल इन्सोरेंस कं० लि० भोपाल में दिनांक 08.12.76 को किया गया जिसका पॉलिसी क्रमांक 1520/4/81-M-B/4043-ई. /422/1520/12/400/727 है जो 09.12.76 से 08.12.77 तक के लिये दिया गया था यह फुल बीमा था।”

From the aforementioned, it is clear that the

vehicle was only insured from 09.12.1976 to 08.12.1977. Thus, it clear that prior to 09.12.1976, i.e., on the date of accident, the vehicle was not insured.

From the written statement filed by the insurance company, it is clear that the insurance company has specifically denied that the vehicle was insured with them at the time of the accident.

The contention of learned counsel for the appellants that the vehicle was insured for the year 1976-77 from January 1976-77, cannot be relied upon in absence of any pleading and evidence in that regard, in view of the specific amendment made by the son of the owner himself.

In the case of **Bhaiyalal** (supra), the insurance company was held liable, because the insurance company has not examined any person to prove that there had been a breach of policy and there was no prescription in the policy, as such that if the same is to be used only by the owner of the tractor for agricultural use then only insurance company shall be responsible to pay the compensation and there is no liability if the same is used by other person and in that case the burden to prove the breach of policy was on the Insurance Company and the Insurance company did not examine any

witness to prove the breach of policy.

In the case of **Rajkumar** (supra), the appellant/owner in his written statement has very categorically stated that on the date of accident, the vehicle was insured with the respondent No.3/Insurance Company. Alongwith the written statement, the appellant/owner has filed the photocopy of the policy by which the offending vehicle was insured with the insurance company for the period from 17.01.1991 to 16.01.1992, the accident in that case occurred on 25.03.1991, ie, during the period when the policy was in effect.

The aforementioned case laws are of no help to the appellants, as in the present case, the vehicle was not insured and in view of the specific amendment carried out by the son of the owner, it is clear that on the date of accident, the vehicle was not insured with the insurance company.

At this stage, learned counsel for the appellants submits that the Insurance company may be directed to pay and recover the amount from the owner. Since the vehicle was not insured on the date of accident, the insurance company cannot be directed to pay and recover from the owner.

In view of the aforesaid facts, the

Insurance company cannot be saddled with the liability of payment of the compensation amount alongwith the owner and the driver and hence exonerated from the same.

The limited question is accordingly decided in favour of the insurance company.

(Smt. Nandita Dubey)
Judge

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