

HIGH COURT OF MADHYA PRADESH JABALPUR

M.A. No.3618/2005

Smt. Savitri Devi Tiwari and others

Vs.

Abdul Jabbar and others

Present : Hon'ble Smt. Justice Anjali Palo

Shri Vikram Singh, learned counsel for the appellants.

None for the respondents no.1 & 2.

Shri Rakesh Jain, learned counsel for the respondent no.3.

O R D E R

(Delivered on 19th day of December, 2016)

This appeal has been filed by the appellants under Section 173 of the Motor Vehicles Act 1988, assailing the award dated 02.09.2005 passed by the M.A.C.T., Panna in M.C.C. No.82/2004, whereby the claim preferred by the appellants in respect of compensation for damage of truck no. MP-A/8201 has been rejected.

2. It is admitted that truck bearing registration No. MP-35/H-0011 was insured with the respondent no.3.

3. None appeared for the respondents no.1 and 2 despite notice. Learned Tribunal proceeded *ex-parte* against the respondents no.1 and 2. No written statement has been filed on behalf of them.

4. The appellants' case, in short is that, deceased Rajkumar was owner of the truck no. MP-A/8201. The present appellants are the L.Rs. of deceased Rajkumar. The respondent no.1 was the driver of the offending

truck bearing registration no. MP-35 H/0011 and respondent no.2 is the registered owner of the same at the relevant time. On 23rd May 2004 at Panna-Chhatarpur Road, accident occurred between truck no. MP-A/8201 and truck no. MP-35/H-0011 due to the rash and negligent driving by respondent no.1. The front side of truck No. MP-A/8201 damaged completely in the accident. Driver Putti Lal sustained grievous injuries. FIR was lodged against respondent no.1 at Police Station Madla, District Panna. The appellants claimed damage of that truck bearing registration No. MP-A/8201 to the tune of Rs.1,31,564/- against the respondents jointly and severally.

5. Respondent no.3 New India Assurance Company has denied the claim with contention that the case of the appellants is not covered under third party risk. Appellants have filed the case with collusion of the respondent no.2, hence the Insurance Company is not liable to pay compensation.

6. The learned Tribunal has not found that Rajkumar (deceased) was the registered owner of truck bearing registration no. MP A 8201. It is proved that truck was damaged due to rash and negligent driving of respondent no.1. The claim has been filed for compensation with regard to the damages caused to truck no. MP A 8201. Hence, claimants/appellants were held, not entitled to receive any compensation as owner of the truck. On the above ground, the claim petition originally filed by owner Rajkumar, who died later, was rejected by the learned Tribunal.

7. The appellants have filed this appeal on the grounds that learned Tribunal rejected their claim in arbitrary manner. Even it came to

the conclusion that truck no. MP-35-H- 0011 was being driven by the respondent no.1, dashed the truck no. MP-A-8201 owned by Late Rajkumar. As in the capacity of legal representatives, appellants are entitled for compensation of damages caused to truck owned by Rajkumar. Learned Tribunal has also committed error by not calling for the evidence of respondent no.3 to the effect that premium of the damaged truck has not been paid by the original claimant. Hence, the appellants are entitled to receive compensation from respondents jointly and severally for the damages of the truck bearing registration no. MP-A/8201.

8. The appellants claimed compensation to the tune of Rs.1,31,564/- as owner of truck bearing registration no. MP-A/8201. Therefore, burden lies on the appellants to prove that they are the owners of the damaged vehicle or their ancestor deceased Rajkumar was the owner of the said vehicle. Learned Tribunal found that registration certificate has not produced by the appellants. Nor they produced any evidence to prove their ownership. Appellants could have examined the RT Authority or could have produced their record to prove the ownership of the deceased. But no evidence was produced in this regard.

9. Section 2 sub Section (30) of Motor Vehicles Act, 1988 define the word "owner" as follows:-

"Owner means a person in whose name a motor vehicle stands registered and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement by hypothecation, the person in possession of the vehicle under the agreement."

10. In the case of **Brijlal Khilwani Vs. Sohan 2008 (2) TAC**

287 M.P. AIR 1997 SC 3444. It is held that:-

“The expression owner includes person who has the actual possession and control of the vehicle and under whose directions and commands the driver is obliged to operate the vehicle.”

It is clear that the expression “owner” has to be used in ordinary parlance and not in technical sense defined in Section 2(30) of the Act.

Regarding the possession of the vehicle, no agreement or no witness has been produced by the appellant. Neither Puttilal driver of the said vehicle was examined in this respect.

11. Hence, it is not proved that the deceased Rajkumar was the owner of truck bearing registration no. MP-A/8201 as claimed by the appellants and after death of Rajkumar, they became owner of the aforesaid truck.

“Section 50 (2) of the Motor Vehicles Act, 1988 prescribed that where the person in whose name the motor vehicle stands registered dies, the person succeeding to the possession of the vehicle or, as the case may be, who has purchased or acquired the motor vehicle, shall make an application for the purpose of transferring ownership of the vehicle in his name, to the registering authority in such a manner, accompanied with such fee and within such period as may be prescribed by the Central Government.”

“Rule 56 of the Central Motor Vehicle Rules, 1989 provides that where the owner of a motor vehicle dies, the person succeeding to the possession of the vehicle may for a period of three months, use the vehicle as if it has been transferred to him where such person has, within thirty days of the death of the owner informs the registering authority of the occurrence of the death of the owner and of his own intention to use the vehicle.”

As per the above Rules, no step has been taken by the appellants nor registration certificate in the name of deceased Rajkumar has been filed by the appellants. Thus, they failed to prove that the deceased was the registered owner of truck no. MP-A/8201 or after his death, they became owner of the said truck. As per Section 166 of the Motor Vehicles Act, 1988 only the owner of the vehicle is entitled to receive the compensation for damage to his property in an accident.

12. There is no illegality found in the findings of learned Tribunal. Hence, appeal stands dismissed.

(Smt. Anjali Palo)
JUDGE