

(2005) 01 MP CK 0042

Madhya Pradesh High Court

Case No: M.A. No's. 35 to 39, 41 and 42 of 2001

National Insurance Co. Ltd.

APPELLANT

Vs

Mannibai and Others

RESPONDENT

Date of Decision: Jan. 12, 2005

Acts Referred:

- Central Motor Vehicles Rules, 1989 - Rule 111
- Motor Vehicles Act, 1988 - Section 95

Citation: (2006) ACJ 115 : (2005) 1 MPJR 486

Hon'ble Judges: N.K. Mody, J

Bench: Single Bench

Advocate: S.K. Rao and Varun Kumar, for the Appellant; Anil Lala, Mukesh Agrawal and Shripal Jain, for the Respondent

Final Decision: Dismissed

Judgement

N.K. Mody, J.

This order will also govern M.A. Nos. 36, 37, 38, 39, 41 and 42 of 2001. Being aggrieved by the award dated 31.7.2000 passed in Claim Case No. 6 of 1991 by 1st M.A.C.T., Katni, whereby the award has been granted in favour of the claimants, the present appeal has been filed by appellant insurance company.

Short facts of the case are that the appellant filed this appeal on the ground that on the date of accident, i.e., 14.12.1990, 12 passengers were travelling in the offending truck which was in violation of Rule 111 of the Motor Vehicles Rules, 1974 (which shall be referred hereinafter as "the Rules"). It was further challenged on the ground that driver, respondent No. 3, was having a fake driving licence.

Learned counsel for the appellant Mr. S.K. Rao submits that while holding the appellant responsible for the awarded amount, learned Tribunal has committed error in holding that the documentary evidence produced by the appellant

insurance company to prove the licence fake is not admissible in evidence. Learned counsel further submits that since the passengers were travelling in a goods vehicle, therefore, insurance company has been wrongly held liable.

Learned counsel for the appellant placed reliance on a decision in [Oriental Insurance Company Ltd. Vs. Devireddy Konda Reddy and Others etc. etc. and Jogi Subbamma and Others etc. etc.](#), wherein the Hon'ble Apex Court has held that carrying of passengers in a goods carriage is not contemplated in the Act. There is no provision similar to Clause (ii) of the proviso appended to Section 95 of the old Act prescribing requirement of insurance policy. It was observed that the inevitable conclusion, therefore, is that provisions of the Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefor.

Learned counsel for the claimantrespondent No. 1 submits that claimants were the labourers and there is a finding of the learned Tribunal in para 101 of the award, wherein the learned Tribunal has held that the claimants were the labourers who were working on the truck.

So far as fake licence is concerned, learned counsel for the appellant insurance company, submits that learned Tribunal has committed error in holding that the evidence is not admissible in evidence.

Learned counsel for the claimantrespondent No. 1 submits that evidence which has been produced is not sufficient and is also not admissible in evidence. Apart from this, the learned counsel for the claimant-respondent No. 1 has placed reliance on [National Insurance Co. Ltd. Vs. Swaran Singh and Others](#), wherein the Hon'ble Supreme Court has observed that mere absence, fake or invalid driving licence or disqualification of 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 matter of fulfilling the condition of the policy regarding use of vehicle by a duly licensed driver or one who was not disqualified to drive at the relevant time.

Learned counsel for the appellant submits that respondent No. 3 was not having a valid driving licence and since the vehicle was insured in the name of respondent No. 2, therefore, there was no necessity for the appellant to prove that respondent No. 3 was having a fake licence within the knowledge of respondent No. 2. By examining the witness Shushil Kumar Tiwari, it was proved by appellant that the licence of respondent No. 3 was forged.

Learned counsel for respondent Nos. 2 and 3 submit that this aspect of the case has been considered by learned Tribunal in paras 59 and 61 and there is a clear cut finding that no employee of the R.T.O. was examined by the appellant to prove that the licence is forged. Apart from this, there was no pleading in this regard in the

written statement filed by the appellant.

Learned counsel for respondent No. 3 Mr. Anil Lala further placed reliance on a decision of this court in [United India Insurance Co. Ltd. Vs. Mohd. Ashique and Others](#), wherein a Division Bench of this court has held that appellant company has failed to establish the plea, by not examining the R.T.O. or any officer of the R.T.O., therefore, was rightly held responsible to indemnify the insured and to pay compensation.

After perusal of the record and the findings, this court is of the view that no illegality has been committed by the learned Tribunal in holding that the claimants who were travelling in the offending truck were the labourers and similarly there is no error in holding that the evidence adduced before learned Tribunal is not sufficient to hold that the driving licence was fake.

With the aforesaid observations, these appeals stand dismissed. No order as to costs.