

Madhya Pradesh High Court

United India Insurance Co. Ltd. vs Smt. Ashalata Dubey And Ors. on 3 December, 2004

Equivalent citations: 2005 (3) MPHT 66

Author: N Mody

Bench: N Mody

ORDER N.K. Mody, J.

1. Being aggrieved by the award dated 29-9-1998, passed in Claim Case No. 76/94, by M.A.C.T., Jabalpur, whereby a sum of Rs. 1,58,800/- alongwith interest @ 12% p.a., from the date of filing of claim petition till its realisation has been awarded in favour of respondent Nos. 1 to 5 and respondent Nos. 6 to 8 and the appellant has been directed to pay 50% of the amount awarded, the present appeal has been filed.

2. Short facts of the case are that on 14-9-1991 at about 11.30 A.M., deceased Lalit Mohan Dubey was going with respondent No. 9 on his Luna moped bearing registration No. MP 20/1701, as a pillion rider. At that time, respondent No. 7, who was driving scooter bearing registration No. MP 25/0780 rashly and negligently dashed the Luna from the back resulting into the deceased falling down to the ground and sustaining injuries. Deceased was shifted to the hospital where he was declared dead. Since both the vehicles were involved in the accident, therefore the driver, owner and the insurance company of both the vehicles were impleaded as party and the claimants who are respondent Nos. 1 to 5 herein, filed a claim for a sum of Rs. 4,92,000/-. The claim was denied by the respondents.

3. The learned Tribunal framed issues and recorded the evidence and vide award dated 29-9-98 awarded a sum of Rs. 1,58,800/- with interest with a direction that since there was a contributory negligence on the part of drivers of the scooter and luna, therefore, the liability of payment of 50% of the claim amount would be on respondent Nos. 6 to 8 who are driver, owner and insurer of the offending scooter and balance 50% of the award is payable by respondent No. 9 and appellant, who are driver of the offending luna and the Insurance Co.

4. Aggrieved by the award, the appellant has preferred this appeal. Learned Counsel for the appellant submits that appellant Co., is not liable for the death of the owner/insured. Shri Suresh Raj, learned Counsel for the appellant submits that since the luna bearing Registration No. MP 20/1701 was owned by the deceased Lalit Mohan Dubey and was insured with the appellant Co., therefore appellant Company has been wrongly held liable for payment of 50% of the awarded amount. It was submitted that the liability of the Insurance Co. is for the third party and not for the owner/insured. In support of his contention, learned Counsel has placed reliance on a decision in Kaliathal v. New India Assurance Co. Ltd., reported in 2004 ACJ Page 51, wherein, in a case of death of owner, insured driver of tractor hit its owner who sustained fatal injuries, Tribunal held that owner should be construed as a third party as he was walking along the road at the time of accident and allowed compensation. High Court of Madras held in appeal that insurance company is not liable for the death of the insured himself and owner can not take advantage of his own servant's fault, as the word "any person" would not cover the insured also. On the basis of aforesaid position of law, the submission of the learned Counsel is that since the claimants are the legal representatives of the deceased, who was the owner of the offending luna, therefore, the appellant Co., is not liable.

5. Learned Counsel for the appellant further submits that the learned Tribunal has committed error in holding that there was contributory negligence on the part of the driver of the luna, i.e., respondent No. 9. Learned Counsel submits that the luna was dashed by the scooter from the back, therefore, there was nothing on record to demonstrate that there was negligence on the part of the respondent No. 9 who was driving the luna at the relevant time. Learned Counsel has placed reliance on *Sarla Dixit v. Balwant Yadav*, reported in (1996) 3 SCC 179, wherein the Hon'ble Supreme Court applying the doctrine of *res ipsa liquitur* held that when the scooter was dashed by the truck from behind due to the truck driver's negligence, the case of contributory negligence of the scooterist is not made out. Further reliance is placed on a decision in *Ambika Charan Choudhary v. Divisional Manager, National Insurance Co. Ltd.*, reported in 2004 ACJ Page 1077, wherein, a Division Bench of Guwahati High Court in a case of alleged contributory negligence where a city bus hit a scooter going from behind and the scooterist and pillion rider sustained fatal injuries, held that bus driver was solely responsible for the accident relying upon the testimony of eye-witnesses and on the ground that there was neither pleading to the effect that scooterist was negligent nor the bus driver who was the best person to speak about the manner of occurrence did not appear. Learned Counsel submits that in view of this, the approach of the Court below in holding that there was a contributory negligence is not correct. Learned Counsel further submits that there was no evidence to prove that there was any negligence on the part of respondent No. 9 who was driving the offending luna at the relevant time.

6. Perused the record. Since no permission has been obtained by the appellant under Section 170 of the Act, to contest the claim on all the grounds that are available to the persons against whom the claim has been made, therefore, at this stage appellant can not be permitted to challenge the findings relating to contributory negligence as held by the learned Tribunal.

7. Since the appellant Company has insured the offending luna and not the insured who is deceased herein, therefore, the learned Tribunal committed error in holding the appellant for payment of 50% of the awarded amount. In view of this, the appeal is allowed and the award is modified to the extent whereby the appellant is held liable for the payment of 50% of awarded amount. No order as to costs.