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(1991) 12 MP CK 0023

In the Madhya Pradesh High Court

Case No : M.A. No. 214 of 1991

Bhagwandas and Another APPELLANT

Vs

New India Assurance Co. Ltd. and Others RESPONDENT

Date of Decision : 02-12-1991

Acts Referred:
Motor Vehicles Act, 1988 — Section 140, 147

Citation : (1993) ACJ 257

Hon'ble Judges : R.K. Verma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.K. Verma, J.—This is an appeal filed by the owner and driver of the tractor bearing registration No. MFS 400 against the interim award dated 15.4.1991 made by the 1st Addl. Motor Accidents Claims Tribunal, Barwani, in Claim Case No. 15 of 1990 whereby the learned Tribunal has awarded Rs. 25,000/- to the claimants, Runibai and Bindu, respondent Nos. 2 and 3, on the principle of ''no fault liability'' u/s 140 of the Motor Vehicles Act, 1988 hereinafter referred to as ''the Act'') in respect of the death of the deceased Shantiram who being a passenger in the tractor died in the accident involving overturning of the tractor on Bijasan Road on 25.11.1989.

2. The only question raised in this appeal by the appellants, owner and driver of the tractor, is that the amount of interim award had been directed to be paid by the appellants, owner and driver and not by the insurance company, respondent No. 1, with whom the tractor in question stood insured on the date of the accident. According to the contention of the learned Counsel for the appellants, once it is admitted that the deceased died as a result of the accident with the tractor in question, which admittedly stood insured with the insurance company, respondent No. 1, the learned Tribunal ought to have made an interim award u/s 140 of the Act jointly against the owner and the insurance company. The learned Counsel in support of his submission has placed reliance on a decision of this

Court in National Insurance Co. Ltd. Vs. Savitri Bai alias Vaishakhia Bai and Others,

3. The learned Counsel appearing for the respondent insurance company has submitted that the policy of insurance relating to the tractor in question does not cover the liability in respect of a passenger travelling in a tractor. The learned Counsel has submitted that the statutory requirement for policy of insurance u/s 147 of the Act to cover the liability of insured in respect of a passenger extends to only a passenger travelling in a public service vehicle as per Section 147(1)(b)(ii) of the Act and not to a passenger travelling in a tractor.

4. According to the learned Counsel for the appellants, the policy is required to insure the owner of the vehicle against any liability which may be incurred by him in respect of the death of any person caused by use of the vehicle in a public place as per Section 147(1)(b)(i) of the Act.

5. It has also been pointed out that the limited liability required to be covered by the policy u/s 147(2) is the amount of liability incurred in respect of any accident. It has also been pointed out that the other change in the new Motor Vehicles Act of 1988 has been the deletion of the second proviso to Section 95(1) of the old Motor Vehicles Act of 1939, which requires the coverage of liability under the policy in respect of death or bodily injury arising out of an accident involving the vehicle in which the passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment.

6. The arguments of the learned Counsel for the parties require closer examination of the statutory changes made in the Act in order to determine whether the liability of the insured stands covered by the policy of insurance and this can appropriately be done at the stage of final arguments in the claim case before the Tribunal.

7. Prima facie the statutory requirement of a policy of insurance under the provisions of Section 147 of the Act is that a policy should insure against any liability which may be incurred by the owner of the vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. In the instant case, the liability has arisen on account of the use of the tractor in a public place. As such, without going into the discussion in depth on the question of fixing any definite liability on the insurance company, I prima facie deem it fit at this stage to hold that the respondent insurance company is jointly and severally liable along with the owner to pay the amount of the impugned interim award to the claimant-respondents.

8. Accordingly, this appeal is allowed and the impugned interim award is modified inasmuch as the insurance company, respondent No. 1, is held jointly and severally liable with the vehicle owner to pay the amount of interim award to the claimants. There shall, however, be no order as to costs.

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