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**(1987) 09 MP CK 0043**

**In the Madhya Pradesh High Court**

**Case No : Miscellaneous Civil Appeal No. 231 of 1987**

National Insurance Co.

APPELLANT

Vs

Chitrakalabai and Another

RESPONDENT

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**Date of Decision : 23-09-1987**

**Acts Referred:**

Motor Vehicles Act, 1939 — Section 110A, 95(2)

**Citation :** (1988) ACJ 731 : (1989) ILR (MP) 231 : (1993) 2 MPJR 240 : (1993) MPLJ 567

**Hon'ble Judges :** B.M. Lal, J

**Bench :** Single Bench

**Advocate :** P.V. Pandit, for the Appellant; None, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

B.M. Lal, J.

The Order passed in this appeal shall also govern the disposal of the connected Miscellaneous Appeal No. 225 of 1987, National Insurance Co. v. Mumtaz Khan, No. 226 of 1987, National Insurance Co. v. Ramesh Kumar and Anr., No. 227 of 1987, National Insurance Co. v. Lakhani Lal and Anr., No. 228 of 1987, National Insurance Co. v. Bhagwati Bai and Anr., No. 229 of 1987, National Insurance Co. v. Anand Singh and Anr., No. 230 of 1987, National Insurance Co. v. Smt. Sikilwati Bai and Anr., No. 233 of 1987, National Insurance Co. v. Rami Bai and Anr., No. 232 of 1987, National Insurance Co. v. Ramsantibai and Anr..

These appeals are directed by the National Insurance Company against the awards dated 29-4-1987 passed by the Claims Tribunal, Seoni, whereby rejecting the claim of Ramji and awarding Rs. 4,000/- to Ramsanti Bai, -awarded Rs. 2,000/- to each of the claimants.

The short facts leading to this appeal are as under: The respondent No. 1 in each appeal is the employee of the respondent No. 2, Liyakat Ali Khan who is the owner of Truck No. MHR-7024 and at the relevant time was driving the truck. The

respondent No. 1 was working as a labourer for loading and unloading bricks.

It is alleged that on 23-3-1985 in all ten labourers were in the truck for loading and unloading bricks, in pursuance of the contract of employment. While the truck was going to Umri Katangi, it was being driven rashly and negligently by the respondent No. 2 Liyakat Ali Khan. It went out of control and turned turtle with the result all the labourers received multiple injuries on their person. As such they had to suffer physical and mental pain. On these grounds claim petitions u/s 110A of the Act have been filed individually by each of the labourers.

The appellant National Insurance Company and the respondent No. 2 Liyakat Ali Khan filed their respective written statements in the claim petitions before the Tribunal, denying the liability. However, the learned Claims Tribunal having found that on the day of the incident i.e. on 23-3-1985, the truck was being driven rashly and negligently, with the result the claimants/labourers except Ramji received injuries and the Tribunal awarded compensation as stated above, hence the appeals have been filed.

Shri P.V. Pandit, learned counsel appearing for the National Insurance Company contended that the owner of the vehicle insured, has committed breach of the conditions of the insurance policy by carrying labourers more than six in the truck. He also referred the provisions of Sub-section (2) of Section 95 of the Act which run as under:--

"95. Requirements of policies and limits of liability. -

(1) ... .. (2) Subject to the proviso to Sub-section -

(1) a policy of insurance shall cover any liability incurred in respect of any one accident upto the following limits, namely:--

(a) Where the vehicle is a goods vehicle, a limit of one lakh and fifty thousand rupees in all, including the liabilities, if any arising under the Workmen's Compensation Act, 1923, in respect of the death of, or bodily injury to, employees (other than the driver), not exceeding six in number, being carried in the vehicle;

(b).....etc....."

As such it is submitted that the Insurance Company is not liable to reimburse the liability of the owner who alone is liable to pay compensation, if he is found to have committed breach of the insurance policy.

In Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan and Others, , Their Lordships of the Supreme Court dealing with a case of breach of condition where the insured vehicle was found to be driven by a person having no licence, have held that the owner of the vehicle was not liable for the accident caused In an unlicensed person and the owner is absolved from the liability, once it is proved by him that he has done everything in his power to keep, honour and fulfil the promise and he himself is not guilty of deliberate breach.

In this context it is necessary to state that respondent No. 2 Liyakat Ali, the owner of the vehicle has specifically stated in his written statement (para 3) that at the time of the accident the truck was going for loading bricks and the labourers (claimants) were in the truck. Therefore, Shri Pandit contended that the owner Liyakat Ali has failed in his duties in attempting to see that not more than six labourers should board the truck. Hence, it is submitted by the learned counsel that under such circumstances, the Insurance Company is not liable to the owner of the vehicle Liyakat Ali who is alone liable to pay compensation.

A perusal of the cross-examination of respondent No. 2 Liyakat Ali, vide para 6, reveals that he made all possible endeavour to allow only five labourers, but all the labourers boarded the truck without his consent defiantly. This statement absolves the liability of the owner. In *Skandia Insurance Co. Ltd. case* (supra) vide para 14 of the judgment, Their Lordships have discussed the term breach of conditions" as under:--

"The expression "breach" is of great significance. The dictionary meaning of "breach" is "infringement or violation of a promise or obligation". It is, therefore, abundantly clear that the insurer will have to establish that the insured is guilty of an infringement or violation of a promise that a person who is duly licensed will have to be in charge of the vehicle. The very concept of infringement or violation of the promise that the expression "breach" carries within itself induces an inference that the violation or infringement on the part of the promisors must be a wilful infringement or violation. If the insured is not at all at fault and has not done anything he should not have done or is not amiss in any respect how can it be conscientiously posited that he has committed a breach? It is only when the insured himself places the vehicle in charge of a person who does not hold a driving licence, that it can be said that he is "guilty" of the breach of the promise that the vehicle will be driven by a licensed driver. It must be established by the Insurance Company that the breach was on the part of the insured and that it was the insured who was guilty of violating the promise or infringement of the contract. Unless the insured is at fault and is guilty of a breach the insurer cannot escape from the obligation to indemnify the insured and successfully contend that he is exonerated having regard to the fact that the promisor (the insured) committed a breach of his promise. Not when some mishap occurs by some mischance. When the insured has done everything within his power inasmuch as he has engaged a licensed driver and has placed the vehicle in charge of a licensed driver, with the express or implied mandate to drive himself it cannot be said that the insured is guilty of any breach".

Therefore, as per dictum referred to above, it is for the insurer to be plead and prove that the insured is guilty of the breach of the conditions of the policy. Applying this ratio, the statement made by the owner in para 8 of his statement completely absolves him from the liability.

It is next contended that the admissions made in the pleadings cannot be ignored. No doubt, the facts stated in the pleadings, would be regarded as

admission until successfully explained by the maker of the admission. In *Basant Singh Vs. Janki Singh and Others*, , it has been held that admissions may be used as evidence against the maker. However, such admissions cannot be regarded as conclusive and the maker can show that they are not true. In the instant case, as stated above, in para 8 of his cross-examination respondent No. 2 Liyakat Ali has successfully explained that he allowed only five labourers to board the truck, but rest of them boarded the truck defiantly without his consent. As such he has explained the averments made in para 3 of the written statement in his cross-examination and therefore, the admission made in para 3 of the written statement cannot be regarded as conclusive. Therefore, if the insurer fails to establish that the insured was guilty for committing breach of any of the conditions of the insurance policy or the statutory provisions, the insurer cannot escape from the obligation to indemnify the insured.

Shri Pandit, learned counsel for the appellant next contended that *Skandia Insurance Co. case (supra)* only deals with the breach of the provisions of Section 96(2)(b)(ii) of the Act and it does not deal with the provisions of Section 95(2) of the Act and as such the ratio laid down therein has no application to the instant case. This contention of Shri Pandit has no force. The words used "any breach" in *Skandia Insurance Company case (supra)* have got a wide connotation and relate to the conditions of the insurance policy or any statutory provisions and for each breach it is for the Insurance Company to plead and prove that the insured is at fault and is guilty of the breach, without which the insurer cannot escape from the liability to indemnify the insured.

In the instant case the appellant Insurance Company has made no endeavour to prove that the respondent No. 2 Liyakat Ali was at fault and had committed breach of the conditions of the policy and that of the provisions of Section 95(2) of the Act. Therefore, the trial Court has rightly awarded compensation to the claimants.

This fact cannot be lost sight of that the risk to body or life of a person who is not found travelling as a gratuitous passenger, but found travelling in the insured vehicle in pursuance of a contract of employment is covered under the insurance, particularly where the insured was not found guilty for contravening the provisions of Section 95(2)(a) of the Act in allowing to board more than six labourers, as are the facts appearing in the instant case. This view is supported by the view taken by the Apex Court of the land in *Skandia Insurance Company case (supra)* and also in consonance with the changing trend of cases of compensation where the risk to life of accident is involved and thereby promoting social justice.

From the discussion aforesaid all the appeals fail and are hereby dismissed summarily.