
(2000) 01 MP CK 0066

In the Madhya Pradesh High Court

Case No : M.A. No's. 48, 49 and 56 of 1998

National Insurance Co. Ltd.

APPELLANT

Vs

Jayawanti Bai and Others

RESPONDENT

Date of Decision : 27-01-2000

Acts Referred:

Citation : (2002) ACJ 649

Hon'ble Judges : D.P.S. Chauhan, Acting C.J.; A.K. Mishra, J

Bench : Division Bench

Advocate : S.K. Rao, for the Appellant; D.K. Dixit, for the Respondent

Final Decision : Dismissed

Judgement

D.P.S. Chauhan, Actg. C.J.

1. The order in this appeal shall govern the disposal of Misc. Appeal No. 49 of 1998 (National Insurance Co. Ltd. v. Maganlal Sonkar) and Misc. Appeal No. 56 of 1998 (National Insurance Co. Ltd. v. Phagni Bai), which are decided by this composite order. Insurance company has come up in appeal challenging the awards dated 29.9.1997 passed in Claim Case Nos. 123, 124 and 125 of 1991.

2. On 30.9.1990 near about 20-25 persons were going in truck No. MPS 6389, which was duly insured with the appellant company, for immersion of idol of Goddess Durga from Thagranahar towards Padampur in Durg. The truck was owned by J.J. Jaiswal and was being driven by Manbodh. At about 6 p.m. when the truck reached near Uthai unmanned railway crossing, the driver of the truck in spite of being given advice not to cross the railway crossing, drove the vehicle as a result of which, while the vehicle was crossing railway gate, the speedy passenger train dashed it at the rear portion resulting in the accident wherein Raju, aged about 18 years, Ballu, aged about 15 years and Radhe, aged about 45 years had sustained severe injuries and died. Their heirs and legal representatives filed three separate claim petitions. Mother of Raju, viz., Jayawanti Bai filed Claim Case No. 124 of 1991, father and mother of Ballu alias

Rajkumar filed Claim Case No. 123 of 1991 and the widow and minor sons of Radhe filed Claim Case No. 125 of 1991, which were decided by composite award.

3. The appellant has come to this Court raising the only question in all the three appeals that the insurance company is not liable for payment of the compensation as the vehicle was covering third party risk and the persons travelling in the truck were gratuitous passengers and were thus not covered by the policy. The Supreme Court in the case of New India Assurance Company Vs. Shri Satpal Singh and Others, , had the occasion to deal with the matter and the controversy as in the present case is squarely covered. It was held in para 10 of the judgment that under the new Act an insurance policy covering third party risk is not required to exclude gratuitous passengers in a vehicle, no matter that the vehicle is of any type or class and this declaration of law related to Motor Vehicles Act, 1988 and not to the accident which has taken place under the old Act. Admittedly, in the present case the accident took place when the new Act was in force.

4. In view of above, we do not find any merit in the appeals. All the three appeals are dismissed. No order as to costs.