(1994) 04 MP CK 0005

In the Madhya Pradesh High Court

Case No : M.A. No. 65 of 1991

National Insurance Co. Ltd. APPELLANT

Vs

Kamla Devi and Others RESPONDENT

Date of Decision : 19-04-1994

Acts Referred:
Motor Vehicles Act, 1939 — Section 95(2)(b)(ii)

Citation : (1995) ACJ 546

Hon'ble Judges : T.S. Doabia, J;S.K. Chawla, J

Bench : Division Bench

Advocate : B.N. Malhotra, for the Appellant; R.D. Goyal, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Chawla, J.—This appeal, being heard by single Bench, was heard by us, analogously with Division Bench appeal, M.A. Nos. Hand 18 of 1991.

2. The only question canvassed in this appeal was that in the award of Rs. 33,500 granted as compensation by First Additional Motor Accidents Claims Tribunal, Gwalior, in Claim Case No. 52 of 1986 for the death of a passenger named Rakesh in bus No. CPH 8232 which met with an accident, the liability of the appellant insurance company was not joint and several to the extent of full amount of the award along with owner and driver of the bus, but was limited to the payment of Rs. 15,000/-, being the extent of statutory liability required to be covered u/s 95 (2) (b) (ii) of the old Motor Vehicles Act, 1939, which was then in force. Mr. B.N. Malhotra, learned Counsel for the insurance company, relied on the decisions in M/s/ Economic Roadways Corporation and another Vs. K.S. Murali and others, M.K. Kunhi-mohammed v. PA. Ahmedkutty 1987 ACJ 872 (SC); National Insurance Co. Ltd. v. Jugal Kishore 1988 ACJ 270 (SC) and Oriental Fire & Genl. Ins. Co. Ltd. v. Veena Pruthi 1989 ACJ 1163 (Delhi). Suffice to say that these are decisions which turned on the interpretation of the terms of insurance policies involved in those cases. They are not authority for the interpretation of the terms of the insurance policy which was taken out in the

present case.

3. A look at the policy in the present case (copy Exh. D-I-C) would show that the insurance company, inter alia, undertook to indemnify the insured against all sums including claimant''s costs and expenses, which the insured shall become legally liable to pay in respect of death of or bodily injury to any person caused by or arising out of the use of the motor vehicle to the extent of ''such sum as is necessary to meet the requirements of the Motor Vehicles Act, 1939'', (see Section II-1 (i) and last but one column of the Schedule stating the limits of liability contained in the policy). The expression ''such sum as is necessary to meet the requirements of the Motor Vehicles Act, 1939'' in the policy cannot be read as requirements of Section 95 only but that expression would cover the entire liability of the owner, when incurred under the provisions of the Motor Vehicles Act, 1939. Had there been an intention to limit the liability of the insurance company to limits given in Section 95, there was nothing to prevent the use of the words ''section 95'' or to mention the sum of Rs. 15,000/- per passenger as liability, in the above term. The award for the entire sum of compensation having been given under the provisions of the Motor Vehicles Act, 1939, the above expression would mean that the insurance company agreed to indemnify for the entire sum, as the liability therefore was incurred by the owner under the provisions of the Motor Vehicles Act, 1939. Decisions in New India Assurance Co. Ltd. v. Nanak Chand Ben 1989 ACJ 169 (MP), New India Assurance Co. Ltd. v. Ram Kumar Tamarakar 1990 ACJ 958 (MP) and New India Assurance Co. Ltd. Vs. Ram Kumar Tamarakar and Others, are in point.

4. Secondly, it will further appear from the policy, copy Exh. D-I-C, that the insurance company, besides the basic premium for liability to public risk, charged extra premium of Rs. 636/- towards legal liability to 53 passengers. There is no warrant for reading the words ''legal liability'' as liability of the insurance company u/s 95 of the Act. The legal liability should mean whatever legal liability that is incurred on account of accident caused to the passengers. Endorsement I.M.T. 13 stating legal liability to passengers contained in the policy does not also mention any limit. If the liability was limited to any amount, it is usual to refer that limit in endorsement I.M.T. 13.

5. Thirdly, the insurance company in the present case charged Rs. 50/- as extra payment for unlimited liability to third party. A passenger in the bus whose owner is insured may also be taken to be a third party qua the insurer [See Kishori v. Chairman, Tribal Service Co-operative Society Ltd. 1988 ACJ 636 (MP) and Nanak Chand Ben''s case 1989 ACJ 169 (MP).

6. For the foregoing reasons, interpreting the terms of the policy, copy Exh. D-I-C, we hold that the insurance company in the present case undertook liability for indemnification of the owner to unlimited extent. The liability of the insurance company was not limited to only Rs. 15.000A per passenger, as was then provided in Section 95 (2) (b) (ii) of the Motor Vehicles Act, 1939.

7. In the result, the appeal is dismissed. No interference in the award granted by the Claims Tribunal is warranted. The appellant shall pay the costs of respondent No. 2 in this appeal. Counsel''s fee Rs. 300/- (Rupees three hundred), if certified.

