
(1997) 08 MP CK 0021

In the Madhya Pradesh High Court

Case No : M.A. No's. 90, 95, 96, 91, 93 and 94 of 1996

National Insurance Co. Ltd.

APPELLANT

Vs

Mohar Singh and Others

RESPONDENT

Date of Decision : 14-08-1997

Acts Referred:

Citation : (1998) 2 ACC 466 : (1999) ACJ 172 : (1997) 2 MPLJ 608

Hon'ble Judges : T.S. Doabia, J

Bench : Single Bench

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

Final Decision : Dismissed

Judgement

T.S. Doabia, J.

Heard counsel. This order shall dispose of the following miscellaneous appeals:

- (a) M.A. No. 90 of 1996 (National Insurance Co. Ltd. v. Moharsingh);
- (b) M.A. No. 95 of 1996 (National Insurance Co. Ltd. v. Mangilal);
- (c) M.A. No. 96 of 1996 (National Insurance Co. Ltd. v. Kalibai);
- (d) M.A. No. 91 of 1996 (National Insurance Co. Ltd. v. Shanti Bai);
- (e) M.A. No. 93 of 1996 (National Insurance Co. Ltd. v. Karansingh); and
- (f) M.A. No. 94 of 1996 (National Insurance Co. Ltd. v. Bansilal through LRs.).

First three claims have been lodged by the heirs of the deceased and the last three claims have been lodged by the injured. The injured in M.A. No. 94 of 1996 died during the pendency of the appeal and the claim was pursued by his legal heirs.

The facts which are not in dispute are as under:

The injured and the deceased were travelling in a Matador bearing No. MP

08-5128. This vehicle was not meant for carrying passengers. It is stated that about 40 to 50 persons were sitting in the vehicle in question when the accident took place on 1.4.1991. On account of rash and negligent driving when the vehicle was reaching a diversion near Beenagan in the district of Guna, the vehicle turned turtle. This led to death of three persons and injuries being caused to other three persons.

The Motor Accidents Claims Tribunal (hereinafter referred to as "the Tribunal") came to the conclusion that the heirs of the deceased are entitled to claim compensation. Similarly, it was concluded that the injured were also entitled to claim compensation. So far as the injured are concerned, the total award which was given to them comes to Rs. 15,000 and whereas in the case of claimants whose bread-earners had died, different amounts were fixed depending upon their income.

So far as the claimants are concerned, they have not sought enhancement.

So far as the appellant insurance company is concerned, the only argument raised is that the persons travelling in a goods vehicle were not covered under the insurance policy and therefore, no liability could be fastened. It is argued that the vehicle in question is meant to be used for carrying only goods and not for carrying passengers. As the persons who died in the accident were travelling as passengers, therefore, the insurance company seeks to get out of the liability which has been fastened on the company by the Tribunal.

The insurance policy has been placed on the record. It indicates that a sum of Rs. 100 was paid extra. According to the learned Counsel for the insurance company, the policy would cover only two persons who had paid for the goods and were travelling with the goods with a view to safeguard their interest in the goods which were being carried.

The evidence which has come on the record indicates that the injured as well as the persons who had died were carrying their wheat and were sitting in the vehicle in question. They have paid fare also. If this be the situation, it can safely be presumed that the insurance policy meant for carrying goods (wheat) and the persons who were sitting in the vehicle were sitting in the interest of goods (wheat) being carried. If this be the situation, then the insurance company cannot escape the liability.

The learned Counsel for the appellant has placed reliance on a decision given in M.A. No. 949 of 1996; decided by a Division Bench of this Court (at Jabalpur) on 11.1.97. In the above case, the finding recorded was that the passengers were not safeguarding their goods. This decision would not be attracted to the facts of this case. As indicated above, it has come on the record that the fare which was paid was for the goods. In this regard, it would be relevant to refer to the statement of the driver, who has appeared as DW2 (Munna) in para 12. This driver, namely, Munna has stated in categorical terms that what was charged was for the fare of the goods and not for the persons who were travelling in the

vehicle in question.

In view of the above, what was said by a Full Bench of this Court in Harishankar Tiwari v. Jagru 1987 ACJ 1 (MP), would be attracted to the facts of this case. It was held that the insurance company is bound to cover risk of hirer/agent or his employee travelling with goods in goods vehicle as passenger carried for reward or by reason of or in pursuance of contract of employment. Apart from this, the Supreme Court in B.V. Nagaraju Vs. M/s. Oriental Insurance Co. Ltd., Divisional Officer, Hassan, , observed that breach of carrying humans in a goods vehicle more than the number permitted in terms of the insurance policy cannot be said to be such fundamental breach so as to afford ground to the insurer to deny indemnification.

I am of the view that what was said by the Supreme Court of B.V. Nagaraju Vs. M/s. Oriental Insurance Co. Ltd., Divisional Officer, Hassan, , would be fully applicable to the facts of this case. As indicated above, in the present case, the evidence has come on the record:

- (i) that fare was charged for the goods;
- (ii) that the insurance policy covered extra risk also as an amount of Rs. 100 was paid in addition to the normal charges; and
- (iii) that according to the counsel appearing for the insurance company this extra amount would cover two persons only.

I am of the opinion that it is precisely with regard to part (iii) of para 10 of this order, the observations made by the Supreme Court of B.V. Nagaraju Vs. M/s. Oriental Insurance Co. Ltd., Divisional Officer, Hassan, , would be attracted. According to the learned Counsel for the appellant two persons could be carried and the breach was carrying more than two persons. Nothing has been brought on record that on account of carrying two extra persons, some additional events happened which led to the accident taking place. If above is the situation, then the observations made by a Division Bench of this Court in M.A. No. 949 of 1996 (at Jabalpur) on 11.1.97 would not be attracted. This case is squarely covered by the Full Bench of this Court in Harishankar Tiwari's case 1987 ACJ 1 (MP) and B.V. Nagaraju's case (supra) decided by the Supreme Court.

In view of the above discussion these appeals are found to be without merit and the same are dismissed.