
(2001) 10 MP CK 0054
In the Madhya Pradesh High Court
Case No : M.A. No. 286 of 1991

National Insurance Co. Ltd.	Vs	APPELLANT
Pillu and Another		RESPONDENT

Date of Decision : 04-10-2001

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A

Citation : (2003) ACJ 968 : (2002) 1 MPLJ 11

Hon'ble Judges : V.K. Agrawal, J

Bench : Single Bench

Advocate : Amrit Ruprah, for the Appellant; Shamim Khan, for the Respondent

Final Decision : Allowed

Judgement

V.K. Agrawal, J.

This appeal is directed against the award dated 27.2.1991 in Claim Case No. 101 of 1990 by the Motor Accidents Claims Tribunal, Seoni, awarding compensation of Rs. 45,000 to respondent No. 1, Pillu and Rs. 2,000 to respondent No. 2, Pankhi Bai, u/s 110-A of Motor Vehicles Act, 1939 (hereinafter referred to as "the Act" for short).

The petition for claim was filed by the claimant-respondent Nos. 1 and 2, in which it was averred that they were travelling on 28.8.1986 by Matador bearing registration No. CIK 9409 from village Bhauma to Seoni. It is not disputed that the said vehicle was driven by respondent No. 3, Manjoor Khan and was owned by respondent No. 4, Mohd. Arif. Appellant is admittedly the insurer of said vehicle.

The claimants further averred that, on account of rash and negligent driving of said vehicle by respondent No. 1, the same dashed against a tree and respondent Nos. 1 and 2 sustained injuries. They averred that they were travelling as passengers by Matador. Total claim of Rs. 1,70,500 was preferred.

The respondent Nos. 3 and 4, the owner and driver of the said vehicle in their joint written statement denied the averments as above. They denied that the claimant-respondent Nos. 1 and 2 were travelling by Matador as passengers. It was averred that on account of mechanical defect, the vehicle had gone out of control of driver respondent No. 3, Manjoor Khan and dashed against the tree. Therefore, they denied their liability to pay compensation. The appellant insurer generally resisted the claim petition and filed a reply of general denial to the averments of claim petition.

The learned Tribunal held that the accident took place on account of rash and negligent driving of the vehicle, in which the claimant-respondent No. 1, Pillu, suffered partial permanent disability, while claimant-respondent No. 2, Pankhi Bai, suffered simple injuries. After assessing damages, award of Rs. 45,000 in favour of respondent No. 1, Pillu and Rs. 2,000 in favour of respondent No. 2, Pankhi Bai, was granted, as against respondent Nos. 3 and 4, the driver and owner respectively and also against the appellant, insurer of the offending vehicle, who were made liable jointly and severally to pay the amount of award with interest at the rate of 12 per cent per annum.

Learned Counsel for appellant submitted that the claimant-respondent Nos. 1 and 2 were travelling in the offending vehicle as fare paying passengers, as is clear from their own evidence. It is further stated that the policy document, Exh. D-1 is placed on record, which indicates that the vehicle was a commercial goods vehicle and was being plied under "public carrier permit". The terms of policy specified that risk of passengers for hire or reward was not covered. It was therefore submitted that since the claimant-respondent Nos. 1 and 2 were travelling by the offending vehicle as fare paying passengers and their risk was not covered under the policy and, therefore, the insurer appellant could not be made liable for payment of amount of award. Learned Counsel for appellant relied upon *Smt. Mallawwa Etc. Vs. The Oriental Insurance Co. Ltd. and Others*, .

Learned Counsel for respondent Nos. 1 and 2 however submitted that the Act being beneficial legislation enacted for the benefit of the claimants, appellant insurer cannot be exonerated from liability as no specific plea in defence was raised by it before the Tribunal. Learned Counsel for respondent Nos. 1 and 2 relying upon the ratio of judgment in *Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan* 1987 ACJ 411 (SC), submitted that appellant insurer would be liable as there was no breach of terms of policy by the owner.

The questions which are required to be considered in the instant appeal are, as to whether there was breach of terms of policy and as to whether the appellant insurer is liable to pay compensation as saddled by the Tribunal?

It is clear from the insurance policy, Exh. D-1, that the offending vehicle was a commercial vehicle. It was a goods carrying Matador with licence carrying capacity of 3 tons. The driver and conductor alone were to be carried in the vehicle. The terms of policy further indicate that risk was not covered on the use

of said vehicle for conveyance of passengers for hire or reward.

From the evidence on record and statement of Pillu, AW 3, it is established that the claimants were travelling in the said vehicle after paying fare. In view of above, it is clear that claimant-respondent Nos. 1 and 2 were fare paying passengers. In view of the admitted position as above, there is no doubt that there was breach of terms of policy, inasmuch as, the vehicle was carrying fare paying passengers.

It is also noticed that the owner, respondent No. 4, in his joint written statement filed by him along with driver, respondent No. 3, had totally denied that claimant-respondent Nos. 1 and 2 were travelling by the offending vehicle. However, the denial as above is fully falsified by the evidence placed on record by the claimant-respondent Nos. 1 and 2. It may be noticed that the owner of the offending vehicle has not stepped into the witness box to state on oath in support of reply filed by him. Thus, the owner has neither properly averred nor proved that passengers were permitted to travel in the offending vehicle, despite his instructions to the contrary. In other words, the owner of the vehicle has neither specifically averred nor established that he was not guilty of any breach of terms of policy.

In the above circumstances of the case, it can only be presumed that there was a breach of terms of policy by respondent Nos. 3 and 4. In view of above, the ratio of Skandia Insurance Co, Ltd. 1987 ACJ 411 (SC), relied upon by learned Counsel for claimant-respondent Nos. 1 and 2 would not be of any assistance in the instant case. In the said case, the owner of the vehicle had handed over his vehicle to a licensed driver, who in turn handed it over to a person who was not having a driving licence. When the said person was driving the vehicle the accident occurred. In the foregoing circumstances of the said case, it was observed that there was no breach of terms of policy by the owner insured. As noticed above, the factual situation in the instant case however, is entirely different and, therefore, the contentions of the learned Counsel for respondent Nos. 1 and 2 that the owner did not commit any breach of the policy conditions, cannot be accepted.

As already noticed, since the fare paying passengers were travelling in the offending vehicle, there was breach of terms of policy and in view of the ratio in Smt. Mallawwa Etc. Vs. The Oriental Insurance Co. Ltd. and Others, , the insurer appellant could not be held liable for payment of amount of compensation.

Accordingly, the appeal is allowed. The impugned award as against the appellant shall stand set aside. If any amount has been deposited by the appellant towards the awarded amount it shall be entitled to recover the same from the owner, respondent No. 4. The claimant-respondent Nos. 1 and 2 shall be entitled to recover the awarded amount from respondent Nos. 3 and 4, as has been directed by the Tribunal. The parties shall bear their own costs of this appeal.