(2003) 01 MP CK 0168

In the Madhya Pradesh High Court

National Insurance Co. Ltd. APPELLANT

Vs

Sudha Verma and Others RESPONDENT

Date of Decision : 30-01-2003

Acts Referred:

Citation : (2003) 01 MP CK 0168

Hon'ble Judges : Bhawani Singh, C.J.;S.L. Jain, J.

Bench : Division Bench

Judgement

Bhawani Singh, C.J.—This appeal is directed against the award of Motor Accident Claims Tribunal, Shahdol in Claim Case No. 3 of 199C dated 30.12.1993.

2. Shortly stated, accident took place on 14.6.1987 when bus No. MBA 9393 driven rashly and negligently by respondent No. 6 Chhotelal, owned by Shriram Khanna and insured with National Insurance Co. Ltd., dashed against tree resulting in the death of Suresh Prasad Verma (28), husband of Sudha Verma and father of three children, claimants in this case. He was peon in Central Bank of India, Shahdol, receiving monthly salary of Rs. 1,187. The defence of Insurance Company is that the driver did not possess valid driving licence to drive the vehicle and that its liability is limited to Rs. 15,000 per passenger in terms of Section 95 of Motor Vehicles Act, 1939. The Claims Tribunal holds that accident took place, as alleged. With regard to driving licence, finding is that this issue is not proved. Compensation of Rs. 2,10,300 is awarded carrying interest at the rate of 12 per cent per annum. The present appeal is at the instance of National Insurance Co. Ltd. Two submissions are raised, namely, the driver did not possess valid driving licence for driving the vehicle and that the award is liable to be modified since liability of the Insurance Company is limited to Rs. 15,000.

3. So far as the first submission is concerned, there is no substance in the same for reasons recorded by the Claims Tribunal. The burden to prove this issue is on the appellant. It failed to discharge the same satisfactorily, therefore, contention is rejected. The next submission relates to the extent of liability of the appellant

with regard to payment of compensation. Mrs. Amrit Ruprah, learned Counsel for the appellant, urges that in terms of Section 95(2)(b)(ii) of the Motor Vehicles Act, 1939, the liability of the appellant is limited to Rs. 15,000 since no extra premium for accepting higher liability has been received. Learned Counsel places reliance on New India Assurance Co. Ltd. Vs. Smt. Shanti Bai and others, and the New India Assurance Co. Ltd. Vs. C.M. Jaya and Others, . These decisions squarely cover the present case. The liability of the Insurance Company under Section 95(2) of the Motor Vehicles Act, 1939, is limited to Rs. 15,000 in this case unless policy provides for payment of higher premium thereby covering higher risks. We have been taken through the insurance policy in the present case. The premium has been paid at the rate of Rs. 12 per passenger, Rs. 600 in all for fifty passengers. Therefore, contention that Insurance Company is liable to pay the award amount cannot be accepted. As per Shanti Bai''s (supra), unlimited liability of the Insurance Company could arise on payment of Rs. 50 per passenger as per the tariff existing at the relevant time.

4. Consequently, the appeal is allowed. Award of Claims Tribunal is modified. Liability of appellant (National Insurance Co. Ltd.) is restricted to Rs. 15,000 per passenger. Rest of the amount of compensation shall be paid by the owner and driver of the vehicle, jointly and severally.

Costs on parties.

