

(2001) 08 MP CK 0041

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 75/96

New India Assurance Co. Ltd.

APPELLANT

Vs

Azeem Khan and Others

RESPONDENT

Date of Decision : 18-08-2001

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2), 157, 170, 50

Citation : (2003) ACJ 982 : (2002) 2 MPHT 173 : (2002) 3 MPLJ 171

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

Bench : Single Bench

Advocate : H.S. Ruprah, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Agrawal, J.

This Miscellaneous Appeal is directed against the award dated 12-10-95, in Claim Case No. 114/92.

The claimant/respondent No. 1 filed an application for award of compensation as he suffered injuries in a motor accident. The averments of the claimant/respondent No. 1 in the claim petition were that on 26-3-90 at about 10.00 P.M. he was driving mini bus No. CIC 9501. He had stopped the said mini bus on the left side of the road Near Apsara Talkies, Bhopal, when truck No. CIR 8412 which was being driven rashly and negligently by respondent No. 2, dashed against the said mini bus, resulting in grievous injuries to the claimant/respondent No. 1. Admittedly the respondent No. 3 Jabbar Khan is the owner of the said truck while the appellant is the insurer of the said vehicle. The claimant/respondent No. 1 claimed compensation of Rs. 2,98,019.45 paise on account of injuries sustained by him in the accident.

The claim petition was resisted by the appellant as well as respondent Nos. 2 and 3.

The learned Tribunal held that the accident occurred on account of rash and negligent driving of the said truck by respondent No. 2 and that the claimant/respondent No. 1 suffered serious injuries. It was also held that the owner as well as the insurer i.e., the appellant are liable to pay the amount of award of Rs.1,00,000/-.

Learned counsel for the appellant raised two main submissions : Firstly that the amount of compensation as granted by the learned Tribunal was excessive. Secondly it was urged that the offending vehicle truck No. CIR 8412 was insured in the name of one Ashok Deep Association Private Limited, and that intimation of transfer of ownership in favour of respondent No. 3 Jabbar Khan was not given to the appellant. Hence, the appellant/insurer could not be held liable to pay the amount of compensation on account of accident with the said vehicle.

So far as the first contention as above, regarding quantum of compensation is concerned, it may be noted that the same could not be raised by the appellant in view of the limited defences available to it u/s 149(2) of the Motor Vehicles Act, 1988, (hereinafter referred to as "Act" for short) as the insurer/appellant has admittedly not obtained permission to defend the case on the grounds available to the owner u/s 170 of the "Act".

In *Chinnama George and Others Vs. N.K. Raju and Another*,], it has been observed by the Supreme Court that if none of the defences as mentioned in Sub-section (2) of Section 149 exist then the insurer is legally bound to satisfy the award. It has been held therein that in case a ground u/s 149(2) of the "Act" is not available to the insurer, it can neither defend the claim petition nor can it file an appeal.

Similar view was reiterated by the Apex Court in *British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others*,). It was a case under the old Motor Vehicles Act, 1939. Provision of Section 96 of the old Act, are similar to the provisions u/s 149 of the "Act". It was observed therein that by virtue of Section 96 (2) of the said Act, the insurer was entitled to be made a party in an action by the injured person against the insured. Interpreting the provision of Section 96(2) of the Act, it was further observed that an insurer to whom notice of the claim petition has been given, shall be entitled to be made party thereto and to defend the action on any of the grounds enumerated therein. It was further observed that from the language of section it is clear that an insurer is entitled to defend only on the grounds enumerated in Section % (2) of the Act. It was also observed that Sub-section (2) of Section 96 of the Act clearly provides that an insurer made a defendant to the action, is not entitled to take any defence which is not specified in the said provision.

A Full Bench of this Court in *New India Insurance Co. Ltd. Vs. Smt. Rfeeka Sultan and Others*, has observed that unless permission u/s 170 of the "Act" is obtained by the Insurance Company during enquiry before the Claims Tribunal, it cannot avail defences other than those mentioned in Sub-section (2) of Section 149 of

the "Act".

It is, therefore, clear that in the absence of the requisite permission, the appellant cannot question and challenge the quantum of compensation. Therefore, the first contention of the learned counsel for the appellant that the amount of compensation was excessive, cannot be permitted to be raised in this appeal.

Now the next contention raised on behalf of the appellant that the appellant was not liable to pay the amount of compensation as transfer of ownership of the vehicle in favour of respondent No. 3 Jabbar Khan was not intimated to it, will have to be considered.

Undisputably the appellant is the insurer of the offending vehicle truck No. CIR 8412, and that the policy of insurance was effective at the time of the accident. It appears that intimation of transfer of ownership by the insured namely Ashok Deep Association Private Limited in favour of the respondent No. 3, was not given to the insurer the appellant. However, it would not make any difference so far as the rights of third party i.e., the claimant/ respondent No. 1 are concerned.

Reference in the above connection may be made to G. Govindan Vs. New India Assurance Co. Ltd. and Others,], wherein it was held that both under the old Act as well as under the new Act, the intent of the legislature was to protect third party interest. It was further observed that the heading of Chapter VIII of the 1939 Act read as "Insurance of Motor Vehicles against Third-Party Risks", and that its provisions clearly indicate that the legislature made insurance of motor vehicles compulsory against third-party (victims) risk. Since insurance against third party risk is compulsory, once the insurer Company had undertaken liability of third parties incurred by the persons specified in the policy, the third parties' right to recover any amount under or by virtue of the provisions of the Act is not affected by any condition in the policy. It was further held that a victim or the Legal Representatives of the victim cannot be denied the compensation by the insurer on the ground that the policy was not transferred in the name of transferee. Reference in the above context may also be made to The New India Assurance Co. Ltd. Vs. Smt. Sheela Rani and Others,].

Accordingly, it is clear that the contention of the learned counsel for the appellant that since the insured did not intimate the transfer of the vehicle in favour of respondent No. 3, to the insurer-appellant, the latter is not liable to pay compensation, cannot be accepted.

In view of the above, this appeal has no merit. Accordingly, it is dismissed. Parties shall however, bear their own costs of this appeal.