
(1985) 02 MP CK 0015

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 133 of 1982

New India Assurance Co. Ltd.

APPELLANT

Vs

Chhagan

RESPONDENT

Date of Decision : 27-02-1985

Acts Referred:

Motor Vehicles Act, 1939 — Section 110D, 96(2)

Citation : (1985) 1 ACC 518 : (1987) ACJ 103

Hon'ble Judges : V.D. Gyani, J

Bench : Single Bench

Advocate : M.L. Dhupar, for the Appellant; P.N. Wailwadekar, for the Respondent

Final Decision : Dismissed

Judgement

V.D. Gyani, J.—This miscellaneous appeal u/s 110D of the Motor Vehicles Act, 1939, has been preferred by the insurance company against the award dated November 26, 1981, passed by the Motor Accidents Claims Tribunal, Mandleshwar, in Claim Case No. 47 of 1979.

2. The brief facts are that respondent No. 1 filed a claim petition claiming Rs. 30,000 by way of compensation on account of injuries sustained by him in an accident which occurred on May 9, 1979. The claimant's case was that on May 9, 1979, while he was travelling from Sendhwa to Khandwa by a Matador-bus bearing registration No. MHZ-2344, the bus collided with a road-side drum and the driver fell into a nullah as a result of which the claimant sustained serious injuries including the fracture of right hand, right mandible, left femur and left ribs for which he was treated at the Primary Health Centre, Khandwa, and thereafter at the Gupta Nursing Home, Indore.

3. The present appellant resisted the claim on the ground that the vehicle in question was not registered for carrying any passenger for hire or reward and that the policy of insurance did not cover any such risk. It was contended that the vehicle was being driven in contravention of the permit and the policy

conditions, and as such the insurer was not liable to pay the compensation.

4. The Tribunal negated this contention of the insurance company and awarded a sum of Rs. 15,600 by way of compensation. Hence this appeal.

5. Shri Dhupar, learned counsel for the appellant, has raised the aforesaid point and has argued at length thereon. It is contended by him that in view of the insurance policy, exhibit P-81, and the conditions imposed therein, the insurer was not liable to pay any compensation. The seal which is superimposed on exhibit P-81 reads as follows:

"Use only for social, domestic and pleasure purposes or the insured's business. The policy does not cover use for hire or reward or for organised racing, pace making, reliability trial, speed testing carriage of goods (other than samples) in connection with any trade or business or use for any purpose in connection with the motor trade."

This document has been admitted by the claimant applicant. It was produced by non-applicant No. 3. Before proceeding further it would be pertinent to probe the circumstances in which and the stage at which this document, exhibit P-81, was produced by the present appellant. As the proceedings indicate, the insurance company was ordered to be proceeded against ex parte on January 8, 1980. This order was cancelled in view of an application made by the present appellant and it was on March 6, 1980, that the present appellant filed its written statement, unaccompanied by any document. On March 15, 1980, the issues were framed and the case was fixed for evidence on May 2, 1980. The other non-applicants had already filed their written statements on January 8, 1980, and copies of which had been furnished to counsel for the insurance company. It is significant to note that the insurance company came out with a categorical denial about the vehicle having been insured with them as can be seen from the reply to paragraph 6 of the claim petition. Although the original insurance policy has been marked as exhibit P-81, it does not bear any endorsement of the court to that effect. It is the only document which does not have any such endorsement, whereas all other documents, numbering 80 do bear such endorsement. Paragraph 12 of the award dated November 26, 1981, contains a recital to the effect that "insurance policy has been filed by non-applicant No. 3, which has been marked as exhibit P-81"; whereas the order sheet dated May 2, 1980, shows that it was non-applicant No. 1, who had filed the insurance policy as per the list. Going through the list of documents, it is clear that it was Madanlal who had filed this insurance policy, exhibit P-81. It is also not clear from this policy as to who admitted it. The corner portion of the policy is torn and the writing which can be read is to the following: "yeh dastavej swi purave me". Perusal of the order sheet does not indicate as to who out of the contesting parties admitted the insurance policy.

6. Even in the face of production of this insurance policy, the present appellant did not choose to amend its pleadings and the denial of having insured the

vehicle in question remained as it was on the date of filing of the written statement of the present appellant. The plea which is now sought to be raised, was not raised before the Tribunal. In such circumstances, it cannot now be allowed to be raised for the first time by the appellant as the scope is limited u/s 96(2) of the Motor Vehicles Act and that too if any such plea was taken before the Tribunal. In view of what has been held above, the plea raised by the appellant at the appellate stage cannot be entertained. Where an insurance company fails to take a plea which is available at the trial stage, it cannot be allowed to raise such a plea at the appellate stage.

7. In this view of the matter, this appeal fails and is accordingly dismissed. However, there shall be no order as to costs.