

(2006) 07 AHC CK 0057
In the Allahabad High Court

New India Assurance Co. Ltd.

APPELLANT

Vs

Kusuma Devi and Others

RESPONDENT

Date of Decision : 26-07-2006

Acts Referred:

Citation : (2007) 2 ACC 265

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Judgement

Prakash Krishna, J.—This appeal is directed against the Award dated 7.12.1993 passed by Motor Accident Claims Tribunal, Allahabad in Claim Petition No. 231 of 1990. The deceased Mahranidin was traveling in a Mini Bus, Mahendra bearing registration No. U.R.S. 2702. The said Mini Bus overturned. Resultantly, Mahranidin one of the passenger and the driver ultimately expired in the said accident. The deceased Mahranidin was aged about 80 years. A claim petition was filed against the Insurance Company as well as against the owner of the vehicle and the Tribunal by order under appeal allowed the same and awarded a sum of Rs. 60,890 as compensation against the Insurance Company with 12% interest. Learned Counsel for the appellant in support of appeal has submitted that the findings of the Tribunal that Mini Bus was being driven rashly and negligently, is vitiated. He further submitted that the owner could not produce driving licence of the driver of the Mini Bus. Therefore, there was breach of conditions of the Insurance Policy and the Tribunal committed illegality in awarding compensation against the Insurance Company.

2. I have given careful consideration to the respective submission of learned Counsel for the parties. It is not in dispute that the vehicle in question was insured with the appellant's Insurance Company. It has come in evidence on record that the accident took place as the Mini Bus in question was overturned. In normal circumstances the motor vehicle is not supposed to overturn unless and until it is being driven rashly and negligently. The doctrine *res ipsa loquitur* shall apply in the present case. Therefore, the findings of the Tribunal, in the

facts and circumstances of the case that the bus was being driven rashly and negligently is perfectly justified.

3. The next argument is with regard to non-production of valid driving license of the driver of the Mini Bus. The Tribunal has examined this issue and has come to the conclusion that in the accident the driver of the vehicle also died. In this view of the matter an inference has been drawn by it that possibility that the driving licence has been lost, cannot be ruled out. A driver is supposed to carry the driving licence while driving the bus.

4. Learned Counsel for the appellant placed reliance upon the judgment in the case of Oriental Insurance Co. v. Sunit Rathi I (1998) ACC 193 (SC) : AIR 1998 SC 257, wherein it has been held that the liability of insurer arises only when the liability is held. There is no dispute on the above proposition of law. The bus in question overturned while the deceased was travelling therein as a passenger. The liability of insured person is well evident and established from the facts of the case.

5. In this view of the matter there is no error in order of the Tribunal. The appeal is dismissed accordingly.