
(1995) 03 MP CK 0002
In the Madhya Pradesh High Court

New India Assurance Co. Ltd.

APPELLANT

Vs

Pushpa Devi and Others

RESPONDENT

Date of Decision : 13-03-1995

Acts Referred:

Motor Vehicles Act, 1988 — Section 178

Citation : (1995) 2 ACC 49

Hon'ble Judges : Tej Shankar, J;D.M. Dharmadhikari, J

Bench : Division Bench

Judgement

D.M. Dharmadhikari, J.—This appeal u/s 178 of the Motor Vehicles Act, 1988, has been preferred by the New India Assurance Company against the Award dated 7.5.1991 passed by the Motor Accident Claims Tribunal Gwalior.

2. Briefly, the facts are that Shri Krishna Agrawal who was riding on Luna Moped bearing registration No. URI 2193 collided with Fiat Car No. MBW 126 in which he lost his life. The claims Tribunal by the impugned award determined a sum of Rs. 1,08,000/-as compensation to be paid jointly by the appellant-Insurance Company and the owner of the Fiat Car, respondent No. 4.

3. The learned Counsel appearing for the Insurance Company has raised only one ground in support of his appeal. He contended that under the terms of the Insurance Policy which is on record the liability of the Insurance Company was limited to a sum of Rs.50,000/-in case of one accident.

4. We have looked into the terms of the Insurance Policy which is on record. The learned Counsel submits that the Insurance Policy refers to the provisions of Section 95(2)(b) of the Motor Vehicles Act, 1949 and it is clear that the liability of the Insurance Company was limited to an amount of Rs. 50,000/-. Section 95(2)(b)(i) on which reliance is placed reads as under:

95(2) subject to the proviso to Sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident upto the following limits, namely -

(b) where the vehicle is a vehicle in which passengers are carried for hire or reward, or by reason of or in pursuance of a contract of employment.?

(i) in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all.

Reliance is also placed on Geeta Devi and Others Vs. Amrik Singh and Others, . A bare perusal of the provisions quoted above would show that it is applicable only to a vehicle in which passengers are carried for hire or reward. The vehicle in question is Fiat car owned by respondent No. 4 and was not being used as a taxi for carrying passengers. The Insurance Company except tiling the insurance policy which is on record led no evidence and took no plea that third party risk was not covered. In the instant case the claim is against the insurer for third party. We do not find in the terms of the policy that a third party risk was not covered therein. The argument advanced by the Insurance Company in this appeal is, therefore, not available to it. Geeta Devi and Others Vs. Amrik Singh and Others, is distinguishable as in paragraph 27 on which reliance has been placed there is no discussion of the contents of the insurance policy therein.

5. For the reasons above said, we find no merit in this appeal. We dismiss it accordingly. The respondents Nos. 1 to 3 shall get costs of which appeal and the amount which has not been paid so far by the Insurance Company shall carry interest @ 12% per annum from the date of cheque till payment.

6. Shri R.P. Gupta, learned Counsel, stands up on behalf of respondents Nos. 1 to 3 and points out that the respondents have filed a cross-objection for enhancement of compensation. Since the appeal has been dismissed he does not press the cross-objection.