

(2000) 09 RAJ CK 0003

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No's. 555, 556, 557 and 558 of 1998

New India Assurance Co. Ltd.

APPELLANT

Vs

Shikha Bhaumik and Others

RESPONDENT

Date of Decision : 14-09-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 149

Citation : (2002) ACJ 1605 : (2000) 4 RLW 558 : (2001) 4 WLC 437 : (2001) 1 WLN 469

Hon'ble Judges : J.C. Verma, J

Bench : Single Bench

Advocate : Virendra Agrawal, for the Appellant; J.P. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

J.C. Verma, J.—All these misc. appeals filed by insurance company have been filed against the same award dated 11.3.1998 passed by Motor Accidents Claims Tribunal, Beawar, District Ajmer whereby the Tribunal has awarded amounts as under:

No.	Claimant	M.A.C.T.	Case	No.	Appeal Amount
555 of 1998	Shikha Bhaumik	28 of 1996	Rs. 4,52,000	556 of 1998	Vishvajeet
556 of 1998	Sanot	Hajra	27 of 1996	557 of 1998	Nirmal Mandhi
558 of 1998				558 of 1998	Mirnal Kanti Bhaumik and Abhayjit Hajra
					Rs. 5,19,000

2. The injured and the deceased persons were travelling in the jeep No. RJ 01-2148 on 1.10.1995 when the jeep met with accident due to which Devdutt Dhorai, Viman Majoomdar, Vishvajeet and Nirmal Mandhi sustained injuries and Mirnal Kanti Bhaumik and Abhayjit Hajra had died. All these persons filed claim applications. As the claim applications were filed regarding an accident,

therefore, the Claims Tribunal consolidated all the claim applications. It was stated in claim applications that the accident was caused because of rash and negligent driving of the driver of the jeep.

3. The required issues were framed in regard to negligence of the driver and entitlement of compensation to parties. On the issue of negligence the Tribunal had held that the jeep was being driven negligently. The Tribunal has also held that the driver was possessing a valid licence. On the issue Nos. 4 and 5 the insurance company submitted that the passengers had hired the jeep, therefore, there is violation of statutory condition as mentioned in Section 149 of Motor Vehicles Act. In view of the decision in case of National Insurance Co. Ltd. v. Shanta Devi 1996 DNJ 663, the Tribunal held that the passengers travelling in the vehicle are to be treated as third party and, therefore, the insurance company was liable to pay compensation.

4. The only point which is being argued in this misc. appeal is that persons travelling in the vehicle were gratuitous passengers and were not covered by the policy issued by insurance company. The matter is now fully covered by the judgment of Apex Court in case of Amrit Lal Sood and Another Vs. Smt. Kaushalya Devi Thapar and Others, and New India Assurance Co. Ltd. v. Satpal Singh, 2000 ACJ 1 (SC).

5. In Amrit Lal Sood and Another Vs. Smt. Kaushalya Devi Thapar and Others, it was held that it does not prevent an insurer from entering into a contract of insurance covering a risk wider than the minimum requirement of the statute whereby the risk to gratuitous passengers could also be covered and the Hon''ble Supreme Court in the said case had set aside the judgment of Punjab and Haryana High Court which judgment had exonerated the insurance company from the liability. The claimant was travelling in the private car as a gratuitous passenger and was injured in the accident. The Apex Court had upheld the claim of such passengers against the insurance company.

6. In the judgment of New India Assurance Company Vs. Shri Satpal Singh and Others, it was held that under the new Act, the insurance policy covering third party risk is not required to exclude gratuitous passengers in a vehicle, no matter that the vehicle is of any type or class.

7. It is admitted case of parties that except the statement of Shikha Bhaumik in M.A.C.T. Case No. 28 of 1996 (Misc. Appeal No. 555 of 1998) the other claimants had denied the fact that they had paid any hire charge or reward for travelling in the jeep. The case of the claimants in Appeal Nos. 556, 557 and 558 of 1998 was that they had not paid any hire charges. Rather they had borrowed the said jeep from the authorised person, therefore, so far these three appeals are concerned, they are to be dismissed straightaway being covered by the judgment of Supreme Court in case of Amrit Lal Sood and Another Vs. Smt. Kaushalya Devi Thapar and Others,

8. In Appeal No. 555 of 1998, even though there is vague statement of Shikha

Bhaumik, widow of Mirnal Kanti Bhaumik to the effect that the jeep was being driven on hire basis, but the counsel for respondents states that such vague statement cannot be accepted as Shikha Bhaumik was not passenger in the jeep. She had filed the claim application as widow of deceased who died in the accident and as such could not have knowledge of making any payment.

9. I fully agree with the contention of learned counsel for the respondents. Admittedly, Shikha Bhaumik had appeared as dependant claimant of deceased and she was not the passenger of the jeep. Her statement that the jeep was hired cannot be believed for the reason that she had never hired the jeep, nor was she travelling in the jeep and she could not have any knowledge of hiring of the jeep. The contention of the appellant cannot be accepted in this regard. There is no other evidence on record that the passengers were not travelling in the jeep as gratuitous passengers. Other passengers who were travelling in the jeep and sustained injuries have stated that they had borrowed the jeep from the jeep owner.

10. For the reasons mentioned above, I fully agree with the finding of the Tribunal that the passengers were travelling as gratuitous passengers and the insurance company is liable to pay the compensation as awarded by the Claims Tribunal. I do not feel it necessary to interfere in the impugned award. There is no merit in the misc. appeals.

11. With the above observations, the misc. appeals are dismissed.