

(1989) 09 MP CK 0040

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 84 of 1983

New India Assurance Co. Ltd., Gwalior

APPELLANT

Vs

Ratanlal and Others

RESPONDENT

Date of Decision : 21-09-1989

Acts Referred:

Motor Vehicles Act, 1939 — Section 96(1), 96(2)

Citation : AIR 1991 MP 125

Hon'ble Judges : R.C. Lahoti, J

Bench : Single Bench

Advocate : N.K. Modi, for the Appellant; S.P.P. Shrivastava and R.K. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

R.C. Lahoti, J.—The insurer has come up in appeal u/s 110-D of the Motor Vehicles Act, 1939 aggrieved by an award of the Tribunal whereby an amount of Rs. 6,000/-with interest has been awarded to the claimant/ respondents Nos. 1 to 3 on account of the death of one Sukhlal in a motor accident on 29-2-80.

2. The Tribunal has found that the truck was rashly and negligently driven by the driver, the respondent No. 1, and on the date of accident, the truck was owned by the respondent No. 5. A certificate of insurance dt. 19-2-83 issued by the appellant was produced before the Tribunal to show that the vehicle involved in the accident was insured with the appellant on the date of the accident.

3. The only contention raised by the insurance company is that the tribunal having found that the deceased was travelling in a motor truck which not being a passenger vehicle but a transport vehicle, the insurance company stood exonerated under Sub-clauses (a) and (c) of Clause (b)(i) of Sub-section (2) of Section 96 of the Act. A number of authorities have been cited on both the sides supporting their respective contentions on the issue. However, all this argument has been besides the point. Surprisingly enough, a perusal of the record of the

trial Court indicates that the insurance policy was not produced before the Tribunal. Section 96(2)(b) comes into play when there has been a breach of a specified condition of a policy, being one of the conditions contemplated therein. In other words, in order to avail statutory defence provided by Section 96(2)(b), the insurer shall have to prove two things:-- (i) that there has been a breach of a specified condition of the policy; (ii) that the condition is one contemplated by Sub-clauses (i), (ii), (iii) of Section 96(2)(b).

4. The factum of the accident has been found proved. It has also been found relying on the certificate issued by the appellant itself that the vehicle was insured on the date of the accident. If at all the appellant wanted to escape the liability arising from the award it was necessary for it to have produced the insurance policy so as to avail the benefit of the provision. In the absence of the policy being on record, the benefit of Section 96(2)(b) of the Act cannot be extended to the insurance company.

5. The appeal is dismissed. The interim stay granted on 27-7-83 also stands vacated. The appellant shall bear its own costs as also that of the respondents 1, 2 and 3 before this Court. Counsel's fee Rs. 100/-, if certified.