
(1994) 10 MP CK 0018

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1147 of 1994

New India Assurance Company Ltd.

APPELLANT

Vs

Raghuvir and Others

RESPONDENT

Date of Decision : 19-10-1994

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 144, 92A

Citation : (1996) 1 MPJR 75 : (1995) 40 MPLJ 814 : (1995) MPLJ 814

Hon'ble Judges : T.S. Doabia, J

Bench : Single Bench

Advocate : B.N. Malhotra, for the Appellant; N.D. Singhal, for the Respondent

Judgement

T.S. Doabia, J.

This is a petition under Article 227 of the Constitution of India. This arises out of the following facts. The petitioner is an Insurer. A tractor, bearing No. UP-75/2218, was involved in an accident on 16-10-1991. One Sonu, minor, aged four years, died in this accident. In para 3 of the claim petition, it is stated that the deceased Sonu and Maya Devi were waiting on the road-side for a lift. They made a request to the driver of the tractor to accept fare from them and permit them to travel on the tractor-trolley. It is further stated in para 3 of the claim petition that a sum of Rs. 6/- was given by way of fare. It is on these premises, the petitioner Company contends that ultimately, no liability can be fastened on them. The petitioner Company has also placed reliance on the insurance policy. As per the insurance policy, the tractor was meant to be used for agricultural purposes only.

The Motor Accidents Claims Tribunal has awarded interim compensation to the extent of Rs. 25,000/-. This is being challenged in this petition on the ground that ultimately the Insurance Company cannot be held liable and, as noticed above, reliance is being placed on the averments made by the claimant in para 3 of the claim petition.

This is one aspect of the matter. The other aspect which has been pointed out by the learned counsel, appearing for the owner of the tractor, is that his stand is entirely different. The fact as to whether Sonu and her mother were travelling as passengers or not is not admitted by his client. As such, this is a contentious issue and would ultimately be decided after the trial is over. According to him, the Insurance Company cannot escape liability created u/s 140 of the Motor Vehicles Act, 1988 (for short, the Act"). He has also pointed out that on account of the provisions contained in Section 144 of the Act, the provisions of Chapter X ought to have an overriding effect.

The learned counsel for the petitioner has placed reliance on a Single Bench decision of this Court, reported as *New India Assurance Co. v. Ajay* 1994 JLJ 515. The learned Single Judge has placed reliance on a Full Bench decision of the Karnataka High Court, reported as *United India Insurance Co. Ltd. v. Immam Aminsab Nadaf and Ors.* 1990 ACJ 757 . This decision does help the case pleaded by the petitioner. It may, however, be seen that this very Full Bench was noticed by a Division Bench of this Court in the case of *M/s. United India Insurance Company, Bangalore Vs. Imman Aminosab Nadaf and others*, The Division Bench, in express terms, disagreed with the view expressed by the Full Bench of Karnataka High Court. This matter is dealt with in para 15 of the judgment and this para reads as under :

"15. The Full Bench decision of the Karnataka High Court in arriving at the contrary conclusion, took into account the provisions of Sub-sections 95(5) and 96(2) of the Act and the fact that there is no provision rendering Section 96(2) of the Act. With great respect, we are unable to agree with this approach. The Court did not take into consideration the high legislative purpose sought to be served by these provisions. The Court also did not try to draw appropriate inferences from the requirement of deduction of the no-fault liability compensation in the final award. The Court was quite conscious of the fact that the Tribunal should not allow the claim to be frustrated by examination of complicated questions and evolved a formula that the Tribunal should prima facie examine if the risk was covered by the policy. We find no support in the statutory language for this conclusion. We also fail to comprehend why the Full Bench restricted the examination to prima facie examination. Either the defence can be raised or it cannot be raised. If it can be raised, it must be considered properly and not merely "prima facie." In our considered opinion, the view taken in the decisions of the other High Courts is the better view. This view is in accordance with the earlier Single Bench decisions of this Court."

The aforementioned Division Bench look note of the view expressed by other High Courts. These decisions are as under :

(i) *Oriental Fire and General Insurance Co. Ltd., v. Beasa Devi and others* 1985 ACJ 1, Division Bench of Punjab and Haryana High Court, (ii) *New India Insurance Co. Ltd. v. Minquel Lourence Correla and others* 1986 ACJ 646, High Court of Bombay, (iii) *Samati Deb Barma and Ors. v. State of Tripura and others*

1987 ACJ 1205, Division Bench of Guwahati High Court speaking through Dr. Justice T. N. Singh, (iv) Babban Tiwari and Anr. v. U. R. Chakraborty and others 1987 ACJ 863, Guwahati High Court, (v) New India Insurance Co. Ltd. v. M.A.C.T. and others 1988 ACJ II 612, Guwahati High Court, per Hansaria, J., (vi) United India Insurance Co. Ltd. v. Ghisi Devi and others 1989 ACJ II 782, High Court of Rajasthan, (vii) Satyadeo Singh v. Vidyawati Devi and Ors. 1989 ACJ 1110, Allahabad High Court, (viii) National Insurance Co. Ltd. v. Surjit Singh and others, 1988 ACJ 1122, Jammu and Kashmir High Court.

In view of the decision given by the Division Bench which decision was given on 3-3-1994, that is, after the decision given by the Single Judge in New India Assurance Co. v. Ajay (supra), and even otherwise, I am bound by the view expressed by the Division Bench, there is no merit in this petition and the same is dismissed. It is, however, directed that the owner of the vehicle shall furnish surety to the satisfaction of the Tribunal for the refund of the amount and in case it is ultimately found that the Insurance Company was not liable, the owner would also pay interest at the rate of 12 per cent, per annum to the Insurance Company. In case surety is not furnished, owner would equally be liable to make payment of interim compensation.