
(1997) 06 RAJ CK 0003

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No's. 659, 660, 661 and 666 of 1995

New Janta Stone Co. and Another

APPELLANT

Vs

United India Insurance Co. Ltd.

RESPONDENT

Date of Decision : 26-06-1997

Acts Referred:

Motor Vehicles Act, 1988 — Section 147

Citation : (1999) ACJ 273

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Advocate : S.C. Gupta, for the Appellant; P.S. Shukla, for the Respondent

Final Decision : Allowed

Judgement

Shiv Kumar Sharma, J.—The question of importance that arises in all these four appeals is, whether the insurance company is liable to pay compensation in respect of death of or bodily injury to any passenger travelling in a "goods carriage" whether as a hirer or otherwise?

2. The appellant herein was the registered owner of truck No. RSL 9917 duly insured with the United India Insurance Co. Ltd., the respondent No. 1 herein. The appellant herein was covered by the insurance policy for a period from 19.7.1989 until 18.7.1990. The policy was comprehensive in nature covering third party risk. During the subsistence of the policy, the vehicle of the appellant met with an accident on 16.6.1990 resulting in the death of Pappu alias Lala, Raghuvir, Kamla and Dhuri. Four claim petitions were filed by the dependants of the aforesaid four deceased persons. Motor Accidents Claims Tribunal, Karauli allowed the claim petitions and awarded compensation mention-id in the judgment to the claimants. The learned Tribunal exonerated the insurance company and fixed the liability upon the appellant to pay the aforesaid compensation. Hence these appeals.

3. The only contention raised by the learned Counsel for the appellants is that

vehicle in question was insured against the third party risk and the insurance company was liable to pay compensation jointly with the appellants.

4. Mr. P.S. Shukla, the learned Counsel for the insurance company supported the judgment of the Tribunal and contended that under a motor vehicle insurance policy issued by an insurance company in conformity with Section 147 of the Motor Vehicles Act, 1988 the insurance company is not liable to pay compensation in respect of death of or bodily injury to any person travelling in a goods carriage as passenger whether as hirer or otherwise. Mr. Shukla, learned Counsel placed reliance on *Oriental Insurance Co. Ltd. Vs. Smt. Irawwa and others*,

5. I have given my anxious consideration to the rival contentions and carefully perused the record.

6. Full Bench of Gujarat High Court in *New India Assurance Co. Ltd. Vs. Kamlaben Sultansinh Jadav and Others*, observed that if the passengers were carried in the goods vehicle by the driver without the knowledge of the insured the insurer would be liable to indemnify the insured.

7. *Sohan Lal Passi Vs. P. Sesh Reddy and others*, was the case where their Lordships of the Supreme Court propounded that unless it is established on the materials on record that it was the insured who had wilfully violated the condition of the policy, the insurer would be liable to indemnify the insured.

8. In the case on hand the driver of the truck carried the passengers in the said truck which was goods vehicle, without the knowledge of the appellant. Insurance company could not prove from the material on record that the insurance policy was violated wilfully by the appellant therefore respondent No. 1 insurance company could not have been exonerated from the liability to pay compensation to the claimants-respondents. In the light of *Sohan Lal Passi Vs. P. Sesh Reddy and others*, and *New India Assurance Co. Ltd. Vs. Kamlaben Sultansinh Jadav and Others*, the view expressed by the *Oriental Insurance Co. Ltd. Vs. Smt. Irawwa and others*, cannot be accepted.

9. Consequently, all the four appeals are allowed and the impugned judgment is modified and it is directed that the *United India Insurance Co. Ltd.*, respondent No. 1, is jointly liable with the appellant to pay the compensation awarded to the claimants-respondents. Costs easy. Record of the case be sent back forthwith.