
(1992) 10 BOM CK 0012
In the Bombay High Court
Case No : F.A. No. 70 of 1988

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Bhalchandra Vishnu Kelkar and Others

RESPONDENT

Date of Decision : 01-10-1992

Acts Referred:

Motor Vehicles Act, 1939 — Section 92A, 96

Citation : (1993) ACJ 1117

Hon'ble Judges : G.D. Kamat, J

Bench : Single Bench

Advocate : H.R. Bharne, for the Appellant; S.D. Lotlikar, P.A. Kholkar and Emerico Afonso, for the Respondent

Final Decision : Dismissed

Judgement

G.D. Kamat, J.—The appellant is the insurer of a bus for transporting passengers, bearing No. GDT 2157. On 11.8.1984, at about 18 hours at Sirsaim, the mother of respondent Nos. 1 to 4 by name Laxmi Vishnu Kelkar met with an accident. It appears that she was on the pillion seat of a scooter bearing No. GDG 4510 driven by her son, Ajit V. Kelkar, who is the respondent No. 2, which was involved in that accident. The basis of filing claim petition by respondent Nos. 1 to 4 was that on the relevant date the bus GDT 2157 was being driven in a rash and negligent manner and that way dashed the scooter, with the result Laxmi fell down resulting in her death. Respondent Nos. 1 to 4 sought compensation of Rs. 1,00,000/- in claim petition No. 96 of 1984. The learned Motor Accidents Claims Tribunal, however, by the impugned award dated 29.2.1988, awarded a compensation of Rs. 25,000/- accrued with interest at the rate of 8 per cent from the date of the filing of the petition till payment. A further order was made that the compensation amount of Rs. 7,500/- awarded to the original claimants u/s 92-A of Motor Vehicles Act, 1939, is liable to be adjusted against the compensation of Rs. 25,000/-; besides, a sum of Rs. 2,000/- was awarded by way of costs.

2. The appellant as insurer resisted the claim petition, firstly, on the ground that right from several years before the date of the accident the concerned bus was being insured by its owner, Pritabai Mahadev Dantye and despite her death on 16.9.1980, from time to time the insurance policy was renewed, with the result that on the date of the accident, viz., 11.8.1984, the policy was in the name of the deceased Pritabai. The second defence was that there could not be any valid contract between an insurer and a deceased insured and, therefore, whatever policy obtained in the name of the deceased Pritabai was on the misrepresentation that Pritabai was living and, therefore, on both these defences it was urged that no liability can be foisted on the insurer under the provisions of Section 96 of the Motor Vehicles Act, 1939.

3. Despite the fact that a large amount was sought by way of compensation finally the Tribunal has awarded a very reasonable sum of Rs. 25,000/- in the impugned award. While meeting the defence of the insurer the Tribunal held that undoubtedly the bus was covered by the insurance policy until Pritabai was alive and from time to time thereafter it was renewed although at some point of time Pritabai expired. It was observed that there could not have been any misrepresentation and the Tribunal further accepted the explanation given by the present respondent Nos. 1 to 4 how the bus had come to be transferred from the name of their father to the mother and that the renewal of the policy came after the death of Pritabai, as a result of one Salunke collecting the premia and doing the renewal, bringing to them the renewal certificates. Otherwise, it was their case that their mother Pritabai also was an illiterate person. I have gone through the reasons given by the Tribunal in paras 14, 15, 16 and 17 of the award. The view taken by the Tribunal on the facts of this case, in my view, can hardly be controverted by the appellant, more particularly the Tribunal also found that the appellant insurer was, in fact, receiving cheques signed by some other person and not Pritabai. Regard being had to the facts and circumstances of this case and more particularly to the compensation awarded on the lower side, I do not think that an award in a welfare legislation should compel me to take the view in the present appeal which will negate the benefit in favour of persons who have lost a near and dear one in an accident. On the facts, therefore, I do not think that any useful purpose would be served in answering the highly technical legal defence raised by the insurance company. In this view of the matter, the appeal must fail and is dismissed. Parties are, however, left to bear their own costs. The Registry is directed to pay the amount to respondent Nos. 1 to 4 along with whatever interest accrued thereon in satisfaction of the award, if the amount deposited by the insurance company has been invested.