
(1999) 05 MP CK 0014
In the Madhya Pradesh High Court
Case No : M.A. No. 564 of 1993

Oriental Insurance Co. Ltd.	Vs	APPELLANT
Kunti and Others		RESPONDENT

Date of Decision : 01-05-1999

Acts Referred:

Motor Vehicles Act, 1988 — Section 110, 96

Citation : (2001) ACJ 504

Hon'ble Judges : Sreesh Chandra Pandey, J

Bench : Single Bench

Advocate : Sanjay Agarwal, for the Appellant; D.K. Pawha, for P.D. Tiwari, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Pandey, J.—This is an appeal u/s 110D of the Motor Vehicles Act, 1939, against the award dated 14.8.1993, whereby the respondent Nos. 1 to 3 have been awarded Rs. 1,00,000 by way of damages in all. The Claims Tribunal has made a direction that out of the amount of Rs. 1,00,000, 73rd shall be paid to respondent Nos. 1 and 2 immediately and the rest of the amount shall be deposited in the fixed deposit till the respondent No. 3 attains majority. It was also stated that in case Rs. 15,000 had already been paid by way of no fault liability, that amount shall be adjusted out of Rs. 1,00,000. It was further stated that an interest at the rate of 15 per cent on the balance of amount from 1.5.1989 shall be paid.

2. In this appeal, the only argument advanced by learned counsel for the appellant is that admittedly nine persons were travelling in the truck and for this reason, learned counsel for the appellant relied on para 1 of the application for making claim. According to learned counsel for the appellant, the truck was insured for driver, cleaner plus five coolies, i.e., for seven persons. In the truck, nine persons were travelling. However, the appellant did not deny all the allegations made in para 1. The appellant did not take any defence to the effect

that there was any breach of policy condition. The evidence on record also does not specifically fix the number of persons being carried in the truck. Only Pattiram, AW 1, says that eight to nine persons were being carried, but he does not know that more than six persons were carried. Similarly, Nemuram, AW 2, names only five persons. These are the two witnesses, who were travelling along with the deceased Garib Gond, who died in the truck accident on 9.4.1989 belonging to the respondent No. 5. This truck was being driven by the respondent No. 4. In absence of any specific defence, u/s 96 of the Motor Vehicles Act, 1939, the appellant cannot say that the number of coolies was more than five and at the appellate stage, it is not possible to give liberty to the appellant to raise new ground, which was not raised by the appellant before the Claims Tribunal. This will not only prejudice the case of the respondent Nos. 1 to 3 but also of the respondent Nos. 4 and 5, who have been served but have not been represented. It is well established that the questions of fact have to be raised at the trial stage and, therefore, also, this point cannot be raised before this court. That apart, this court is further of the view that there was no fundamental breach in the terms of the contract relieving the appellant insurance company of its duty to pay damages. It is well established that in such cases, it was the duty of the insurance company to plead and prove that the breach in the terms of the policy was committed with the full knowledge of the owner of the vehicle. There was not any evidence on record to support the claim of the appellant that the breach of the terms of the policy was committed with full knowledge or the owner of the vehicle authorised the driver and conductor to carry more than five persons in the truck.

3. Consequently, there is no merit in this appeal. The appeal, therefore, fails and is hereby dismissed.