

(2000) 08 MP CK 0023
In the Madhya Pradesh High Court
Case No : M.A. No. 1486 of 2000

Oriental Insurance Co. Ltd.	Vs	APPELLANT
Vidya Devi and Others		RESPONDENT

Date of Decision : 24-08-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 170

Citation : (2002) ACJ 1580

Hon'ble Judges : Bhawani Singh, C.J.; Arun Mishra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Arun Mishra, J.—Appellant Oriental Insurance Co. Ltd. has come up in the present appeal being aggrieved by the award dated 27.4.2000 passed by 2nd Additional Motor Accidents Claims Tribunal, Sarguja (Ambikapur), awarding the compensation of Rs. 1,10,000 to the claimants for the death of Ramesh Kumar Agrawal (21).

2. Ramesh Kumar Agrawal met with an accident on 7.3.1998 while he was driving motor cycle No. MP 27-D 1058 owned by respondent No. 3 Pradeep Kumar Agrawal. Vehicle was insured with Oriental Insurance Co. Ltd. Claimants contended that accident occurred due to mechanical failure. Owner of the vehicle remained ex parte before the Tribunal.

3. Appellant insurance company denied the liability to pay the compensation on the ground that the deceased himself was responsible for the alleged accident, therefore, it cannot be made liable for the payment of any compensation. Insurance company further took a plea that the driver of the vehicle was not having valid driving licence to drive the vehicle and it was the breach of terms and conditions of the policy and to the extent of negligence of the deceased himself claimants cannot claim any compensation.

4. The Tribunal has passed an award granting compensation of Rs. 1,10,000 with

interest at the rate of 12 per cent per annum from the date of application till realisation.

5. The learned counsel for the appellant has urged in the present appeal that the Tribunal has not given a categorical finding that deceased was driving the motor cycle in a rash and negligent manner. However, he submits that in view of the finding of the Tribunal that the vehicle did not have any mechanical failure, it obviously follows that deceased was negligent while driving the vehicle. His further submission is that the Tribunal has not given a finding that deceased was not negligent, hence insurer cannot be saddled with the liability to pay the compensation.

6. We are of the opinion that the plea advanced by the insurer is within the periphery of negligence. It is not open to the insurer to take such a defence about negligence as that is not a ground of defence u/s 149(2) of the Motor Vehicles Act, 1988, available to the insurer to urge. We are fortified with the view taken by the Supreme Court in the case of Shankarayya v. United India Insurance Co. Ltd. 1998 ACJ 513 (SC), where the Supreme Court has held as under:

It clearly shows that the insurance company when impleaded as a party by the court can be permitted to contest the proceedings on merits only if the conditions precedent mentioned in the section are found to be satisfied and for that purpose the insurance company has to obtain order in writing from the Tribunal and which should be a reasoned order by the Tribunal. Unless that procedure is followed, the insurance company cannot have a wider defence on merits than what is available to it by way of statutory defence. It is true that the claimants themselves had joined respondent No. 1, insurance company in the claim petition but that was done with a view to thrust the statutory liability on the insurance company on account of the contract of insurance. That was not an order of the court itself permitting the insurance company which was impleaded to avail of a larger defence on merits on being satisfied on the aforesaid two conditions mentioned in Section 170. Consequently, it must be held that on the facts of the present case, respondent No. 1, insurance company was not entitled to file an appeal on merits of the claim which was awarded by the Tribunal.

This decision of the Apex Court has been agreed to in the case of Rita Devi v. New India Assurance Co. Ltd. 2000 ACJ 801 (SC), wherein the Supreme Court has held as under:

We respectfully agree with the ratio laid down in the above case and in view of the fact admittedly, the insurance company had not obtained leave from the Tribunal before filing the above appeal. We are of the opinion that the appeal filed by the insurance company before the High Court was not maintainable.

Law to the same effect has been laid down by the Apex Court in the case of Chinnama George and Others Vs. N.K. Raju and Another, .

7. Thus we are of the view that the ground urged in the present appeal on behalf of the insurer is within the periphery of negligence and is not available to be urged by the insurer as it has not taken any permission u/s 170 of the Motor Vehicles Act, 1988.

8. Apart from the non-maintainability of the appeal on the ground of negligence, we find that there is uncontroverted plea taken in the claim petition that at the time when the deceased borrowed the vehicle from the owner it was having mechanical defect. The insurer has not led any evidence to show that vehicle was not having any mechanical defect. Otherwise also, there is nothing on record to infer that accident took place owing to the negligence of the deceased.

9. The plea of the insurance company that the deceased was not having a valid driving licence, has also been negatived and the finding has been recorded by the Tribunal that deceased was possessing the driving licence to drive the motor cycle. Quantum of compensation has not been assailed before us, nor it is open for the insurer to assail it in view of the provisions of Section 149 of the Motor Vehicles Act.

In the result, we find no merit in the present appeal and the same is accordingly dismissed.