
(1996) 07 MP CK 0020
In the Madhya Pradesh High Court
Case No : M.A. No. 265 of 1993

Oriental Insurance Company Ltd.

APPELLANT

Vs

Smt. Chamarin and Others

RESPONDENT

Date of Decision : 31-07-1996

Acts Referred:

Motor Vehicles Act, 1988 — Section 149

Citation : AIR 1997 MP 194 : (1997) J LJ 160 : (1997) 2 MPLJ 107

Hon'ble Judges : Usha Shukla, J; S.K. Dubey, J

Bench : Division Bench

Advocate : Sanjay Agarwal, for the Appellant; Waman Nagrath and Prashant Mishra, for the Respondent

Final Decision : Dismissed

Judgement

Usha Shukla, J.

This appeal is by the insurer of dumper truck No. NP26 AO-459 which caused an accident on 29-11-1990 resulting in fatal injuries to Raja Ram Kunwar who died in consequence thereof the following day in District Hospital, Raigarh. By an award dated 15th April, 1993, the Claims Tribunal awarded compensation of Rs. 1,18,800/- to the respondents No. 1 and 2, being the widow and son of the deceased. This award has been challenged in this appeal on the ground that the insurer was absolved from liability on account of breach of conditions of policy in so far as the dumper was being used for carrying passengers for hire.

The facts of the case which are not in dispute may be briefly stated. The dumper belonged to Respondent No. 3 and was being driven by respondent No. 4 at the time of the accident. Raja Ram had boarded the dumper at Gharghode and had paid Rs. 5/- as fare. About 3 kms from Gharghoda, the dumper fell down into a field from a height of 20 ft. The accident was as a result of rash and negligent driving of the dumper.

The Tribunal made the award recording a finding of rashness and negligence. The

dependency of the claimant was taken to be of Rs. 470/- p.m. and taking the multiplier to be 20, the compensation was calculated to be Rs. 1,12,800/-. To this a sum of Rs. 5,000/- as consortium to the widow and a lump sum of Rs. 1000/- towards the loss of protection of the father was also added, bringing the total sum of Rs. 1,18,800/-.

This award has been challenged only by the insurer. The ground of attack is that insurance policy specifically imposes restriction that the vehicle shall not be used for carrying passengers except employees. And since the deceased was travelling in the vehicle for hire, it amounted to a breach of condition of policy thereby absolving the Insurance Company.

We have heard counsel for both sides and we are of the view that the appeal has no force and must be dismissed. It must be stated at the outset that in the written statement the insurer did not specifically plead the breach of any particular term of the policy. Nor adduced any evidence. However, the Tribunal considered the plea that there was a term prohibiting carrying passengers for hire and held that the evidence shows that the owner had specifically asked the driver not to carry passengers for hire. Therefore relying on *Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan and Others*, it cannot be said that the insured had committed any breach of condition of policy.

True, Clause 3 of limitation as to use, carrying of passenger was prohibited under the exclusion term of Insurance Policy that would not affect the respondents to claim compensation as increase of one passenger beyond the limit of carrying six workmen excluding the driver without the knowledge of owner, cannot be said to be such a fundamental breach that the owner should, in all events, be denied indemnification. Recently the Supreme Court in case of *B.V. Nagaraju v. Oriental Insurance Co. Ltd. Divisional Office, Hassan* 1996 AIR SCW 2466 : AIR 1996 SC 2034, referring to its earlier decision in case of *Skandia Insurance Co. Ltd.* (supra) observed in paras 7 and 8 thus :--

"7. It is plain from the terms of the Insurance Policy that the insured vehicle was entitled to carry 6 workmen, excluding the driver. If those 6 workmen when travelling in the vehicle, are assumed not to have increased any risk from the point of view of the Insurance Company on occurring of an accident, how could those added persons be said to have contributed to the causing of it is poser, keeping apart the load it was carrying. Here, it is nobody's case that the driver of the insured vehicle was responsible for the accident. In fact, it was not disputed that the on coming vehicle had collided head-on against the insured vehicle, which resulted in the damage. Merely by lifting a person or two, or even three, by the driver or the cleaner of the vehicle, without the knowledge of owner, cannot be said to be such a fundamental breach that the owner should, in all events, be denied indemnification. The misuse of the vehicle was somewhat irregular though, but not so fundamental in nature so as to put an end to the contract, unless some factors existed which, by themselves, had gone to contribute to the causing of the accident. In the instant case, however, we find

no such contributory factor. In *Skandia's* case (supra) this Court paved the way towards reading down the Contractual Clause by observing as follows (at pp. 1191 and 1192 of AIR):

"..... When the option is between opting for a view which will relieve the distress and misery of the victims of accidents or their dependents on the one hand and the equally plausible view which will reduce the profitability of the insurer in regard to the occupational hazard undertaken by him by way of business activity, there is hardly any choice. The Court cannot but opt for the former view. Even if one were to make a strictly doctrinaire approach, the very same conclusion would emerge in obedience to the doctrine of "reading down" the exclusion clause in the light of the "main purpose" of the provision so that the "exclusion clause" highlighted earlier. The effort must be to harmonize the two instead of allowing the exclusion clause to snipe successfully at the main purpose. The theory which needs no support is supported by *Carter's "Breach of Contract"* vide paragraph 251, To quote :

Notwithstanding the general ability of contracting parties to agree to exclusion clauses which operate to define obligations there exists a rule, usually referred to as the "main purpose rule", which may limit the application of wide exclusion clauses defining a promisor's contractual obligations. For example, in *Glyn v. Margetson & Co. (1893) AC 351 (357)*, Lord Halsbury L.C. stated : It seems to me that in construing this document, which is a contract of carriage between the parties, one must in the first instance look at the whole instrument and not at one part of it only. Looking at the whole instrument, and seeing what one must regard as its main purpose, one must reject words, indeed whole provisions; if they are inconsistent with what one assumes to be the main purpose of the contract.

Although this rule played a role in the development of the doctrine of fundamental breach, the continued validity of the rule was acknowledged when the doctrine was rejected by the House of Lords in *Suisse Atlantique Societe d'Armement Maritime S.A. v. N. V. Rottardamach Kolan Centrale (1967) 1 AC 361*, Accordingly, wide exclusion clauses will be read down to the extent to which they are inconsistent with the main purpose, or object of the contract."

"The National Commission went for the strict construction of the exclusion clause. The reasoning that the extra passengers being carried in the goods vehicle could not have contributed, in any manner, to the occurring of the accident, was barely noticed and rejected sans any plausible, account; even when the claim confining the damage to the vehicle only was limited in nature. We thus, are of the view that in accord with the *Skandia's* case (supra), the aforesaid exclusion term of the insurance policy must be read down so as to serve the main purpose of the policy that is indemnify the damage caused to the vehicle, which we hereby do."

In view of the above we find no force in the contention advanced by the

appellant Insurance Company.

In the result the appeal has no merit and is dismissed with costs. Counsel's fee Rs. 1000/- if pre-certified.