

(2007) 09 MP CK 0027
In the Madhya Pradesh High Court

United India Insurance Co. Ltd.

APPELLANT

Vs

Shamshad Bee and Others

RESPONDENT

Date of Decision : 11-09-2007

Acts Referred:

Citation : (2008) ACJ 2777

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N.K. Mody, J.—Being aggrieved by the award dated 29.8.2002 passed by M.A.C.T., Agar, District Shajapur, in Claim Case No. 36 of 2000, whereby in a claim petition filed by the respondent Nos. 1 to 4, on account of death of one Shokat Ali, learned Tribunal awarded a sum of Rs. 2,13,500, along with interest at the rate of 9 per cent per annum, the present appeal has been filed.

2. Short facts of the case are that the respondent Nos. 1 to 4 filed a claim petition alleging that the deceased Shokat Ali was father of respondent Nos. 2 to 4 and husband of the respondent No. 1. It was alleged that on 24.4.2000 deceased was travelling in a tractor bearing registration No. MP 13-K 7058, as he was a member of a band party.

3. It was alleged that the offending tractor was owned by respondent No. 6, driven by respondent No. 5 and insured with appellant. It was alleged that because of the rash and negligent driving of respondent No. 5 deceased Shokat Ali sustained injuries and was brought to Primary Health Centre, Agar and thereafter District Hospital, Ujjain, from where he was referred to Indore but in the meantime he died. The claim petition was contested by respondent No. 6 and also by the appellant. The defence of the appellant was that since the deceased was travelling in the trolley bearing registration No. MKU 710 which was attached with the offending tractor and the trolley was not insured and also the tractor was insured for agricultural purposes while the tractor and trolley was being used

for non-agricultural purposes, therefore, the appellant insurance company is not liable for payment of compensation.

4. After framing of issues and recording of evidence learned Tribunal allowed the claim petition filed by respondent Nos. 1 to 4 and awarded a sum of Rs. 2,13,500, against which the present appeal has been filed.

5. The learned Counsel for the appellant submits that learned Tribunal committed error in allowing the claim petition against the appellant. The learned Counsel submits that the offending tractor was insured for agriculture purposes, while undoubtedly the vehicle was in use for non-agricultural purposes.

6. It is submitted that it was not statutory liability of the appellant to insure the vehicle for travelling of passenger.

7. It is further submitted that learned Tribunal has allowed the claim petition against the appellant by placing reliance on a decision of the Hon''ble Apex Court in the matter of New India Assurance Company Vs. Shri Satpal Singh and Others, . Learned Counsel submits that position of law is changed and the law laid down by Hon''ble Apex Court in the matter of Satpal Singh (supra) was overruled by the Hon''ble Apex Court in the matter of New India Assurance Co. Ltd. Vs. Asha Rani and Others, . Further reliance was placed by the counsel for the appellant in the matter of National Insurance Co. Ltd. Vs. Bommithi Subbhayamma and Others, , wherein it was held that in a case of death of gratuitous passenger in a truck, insurance company is not liable for payment of compensation. Reliance was also placed on a decision of this Court in the matter of Mithlesh v. Brijendra Singh Baghel 2007 ACJ 10 , wherein in a case of death of a person travelling on mudguard of the tractor attached to trolley, it was held by a Division Bench of this Court that there was breach of policy and insurance company exempted from liability. The learned Counsel further submits that in view of the aforesaid position of law the learned Tribunal committed error in allowing the claim petition against the appellant.

8. Mr. V.K. Dubey, learned Counsel for the respondent Nos. 1 to 4 submits that undoubtedly the deceased was travelling in the trolley attached with the tractor but the deceased fell down and because of the rash and negligent driving of respondent No. 5 deceased came below the wheel of the tractor and died. It is submitted that in the facts and circumstances of the case no illegalities has been committed by the learned Tribunal in holding the appellant insurance company liable for payment of compensation.

9. Mr. H. Gilke, counsel for respondent No. 5 supports the award.

10. From perusal of the record it is evident that no evidence was adduced to the effect that in what circumstances the accident occurred. Undoubtedly, the deceased was travelling in the offending trolley, which was attached to the tractor which was insured with the appellant. Since the deceased was travelling in a trolley and which was neither insured nor meant for carrying passengers,

therefore, keeping in view the aforesaid position of law laid down by the Hon''ble Apex Court and also by this Court, learned Tribunal committed error in holding that insurance company is liable for payment of compensation. In view of this appeal filed by the insurance company is allowed. The impugned award so far as it relates to payment of compensation is concerned is set aside. Respondent Nos. 1 to 4 shall be entitled to recover the amount from the respondent Nos. 5 and 6. Appellant shall be entitled to recover the amount which has already been paid by the appellant in compliance of the award to respondent Nos. 1 to 4 from respondent Nos. 5 and 6 by moving an appropriate application before executing court.

11. With the aforesaid observations, this appeal stands disposed of. No order as to costs.