

The New India Assurance Co. Ltd. Vs. Sanju and others

HIGH COURT OF MADHYA PRADESH

BENCH GWALIOR

SINGLE BENCH:

HON. SHRI JUSTICE G.S. AHLUWALIA

M.A. No.625/2009

.....Appellant: The New India Assurance Co. Ltd.

Versus

.....Respondents: Sanju and others

Shri Arvind Kumar Agarwal, counsel for the appellant.

Shri R.P. Gupta, counsel for the respondent No.3.

Date of hearing : 28/02/2019

Date of Judgment : 07/03/2019

Whether approved for reporting : Yes

Law laid down:

Significant paragraphs:

J U D G M E N T
(07/03/2019)

This Misc. Appeal under Section 173 of Motor Vehicles Act, 1988 has been filed challenging the award dated 2-3-2009 passed by Vith Additional Motor Accident Claims Tribunal (Fast Track Court), Lahar, Distt. Bhind in Claim Case No.32/2008, by which the appellant/Insurance Company has also been held jointly and severally liable to pay compensation.

The only question which arises for consideration is that whether

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the Insurance Policy was an Act Policy or was a comprehensive Policy.

The necessary facts for the disposal of the present appeal in short are that the deceased Mani was travelling in the offending jeep bearing registration No.M.P. 32 T 0005 as a gratuitous passenger. The jeep collided with a tree as a result of which the deceased Mani died.

The Claims Tribunal, has awarded Rs.87,000/- by way of compensation and also held that the owner of the offending vehicle and the insurance company are jointly and severally liable to pay the compensation amount.

Challenging the liability fixed by the Claims Tribunal, it is submitted by the Counsel for the appellant, that since, additional premium for the passenger was not paid and the policy in question was an "Act" policy, therefore, the Insurance Company is not liable to pay compensation. To buttress his contentions, the Counsel for the appellant has relied upon the judgments passed by the Supreme Court in the case of **United India Insurance Co. Ltd. Vs. Tilak Singh and others** reported in **2006 ACJ 1441**, **Oriental Insurance Company Vs. Meena Variyal** reported in **2007(2) TAC 417**, **General Manager United India Insurance Company Limited Vs. M. Laxmi and others** reported in **2009(1) TAC 6**, **New India Assurance Co. Ltd. Vs. Sadenand Mukhi and others** reported in **2009 ACC 432**, **National Insurance Co. Ltd. Vs. Balakrishanand and others** reported in **2013 ACJ 199**, **Oriental Insurance Co. Ltd. Vs. Surandra Nath Loomla** reported in **2013 ACJ 321**.

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Per contra, it is fairly conceded by the Counsel for the Claimants that the Insurance Policy in question was an “Act” Policy, therefore, the Insurance Company is not liable to pay compensation, however, submitted that still the Insurance Company is liable to pay the compensation with a right to recover the same from the owner. To buttress his contentions, the Counsel for the claimants has relied upon the judgments passed by the Supreme Court in the case of **Shamanna and another Vs. Divisional Manager, Oriental Insurance Company Limited and others** reported in (2018)9 SCC 650 and **Manuara Khatun and others Vs. Rajesh Kumar Singh and others** reported in 2017 ACJ 1031.

Considered the submissions made by the Counsel for the parties.

As already conceded by the Counsel for the claimants that the Insurance Policy in question is an “Act” policy, therefore, the Insurance Company is not liable to pay compensation for the death of a gratuitous passenger. Accordingly, it is held that the Insurance Company is not jointly and severally liable to pay compensation.

However, in the light of the judgment passed by the Supreme Court in the case of **Manuara Khatun (Supra)** and **Shamanna (Supra)**, it is held that the Insurance Company/appellant shall be liable to pay the compensation amount to the claimants and shall have the right to recover the same from the owner.

With aforesaid modification, the award dated 2-3-2009 passed by VIth Additional Motor Accident Claims Tribunal (Fast Track Court),

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Lahar, Distt. Bhind in Claim Cae No.32/2008 is hereby affirmed.

The appeal succeeds and is hereby **Allowed** to the extent mentioned above.

(G.S. Ahluwalia)
Judge
07/03/2019

Arun*