PETITIONER:
CHIMAJITAO KANHOJIRAO SHIRKE & ANR.

Vs.

RESPONDENT:
ORIENTAL FIRE & GENERA INSURANCE CO. LTD

DATE OF JUDGMENT: 26/07/2000

BENCH:
A.P.Misra, Ruma Pal

JUDGMENT:

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The short question raised in this appeal 1s whether the words "unlimied personal Injury and property damage" upto Rs. 10 lakhs for which premium of Rs. 134/- was paid as recorded In the Insurance policy itself covers the dearth and bodily lnjury of the "insured or not. According to the statement on behalf of the appellants, who are the claimants before us, the language used therein clearly Indicates that the insured would also be covered under It, while submission on behalf of the Insurance company is, this only co-relates to the damage of the property and has no correlation with the personal injury or death of the insured.

The short facts are that the apoellant filed a suit for recovery of Rs, 6,03;000/- from the defendant-respondent, insurance company. The appellants are the parents of the rjeceased Mahendra Shirke, who died in the accident on 8th

January, 1980. The said deceased obtained loan from Maharashtra Finance Corporation and Bank of Baroda under "educated Unemployment Scheme" for purchasing goods truck In the year 1977. He obtained the said loan under the condition that. he will drive personally the said truck. According to the appellants" case, the deceased Mahendra insured his truck with the respondents to the tune of Rs. 10 lakhs, which 1s a cornorehensive Insurance covering risks for unlimited personal injury and property. ’ The said truck was also Insured as per the policy to the tune of Rs. 1,27,000/- for the damage to the property. It 1s not In dispute that on the date of the accident the said truck was covered with the said Insurance policy. In fact; the question which we have to decide 1s the Interpretation.of the policy Itself.

On these facts, the trial court decreed the suit in favour of the appellants for the aforesaid amount alongwith interest @ 12% per annum. The Trial Court while considering Issues No. 1 and 9 after considaring the submissions of both the parties concludes that the payment of Rs. 134/- as premium was for the unlimited personal Injury to the life of the insured as well as to the property to the tune of Rs. 10 lakhs and finally recorded its finding to the fol lowing effect: -

"Moreover, there 1s no iota of evidence to prove that the contents as against premium at Rs. 134/- as unlimited personal Injury and

damages to be Rs, 10 lakhs has been wrongly or misakenly shown in that. policy,"

This finding is recorded in view of the stand taken by the insurance company before the TriaJ Court, namely, the recording of the words "unlimited personal injury' was wrongly recorded therein. Tn support of this, reference is made by learned counsel for the appellants to the written statement tiPed by the insurance company, which 1s to the foTiowina ef feet:-

"The noting of 'Unlimited personal Tn.jury is redundant; the premium is accepted either to cover property damage or personal injury. It is due to oversight/mistake, the wording "Unlimited personal Injury' is typed against the additional premium of Rs. 134/- ..,.." Being aggrieved by the order of the Trial Court, the insurance company fi^ed an appear before the High Court and by means of the impugned order the High Court set aside the judgment of the TriaJ Court and avowed the appeal,

The High Court holds that insurance company is not liable to pay any compensation to the plaintiffs (appellants herein) on account of death of insured Mahendra under the terms of the said policy. This conclusion is drawn in view