

CASE NO.:
Appeal (civil) 4743-4744 of 2001

PETITIONER:
NEW INDIA ASSURANCE COMPANY LTD

RESPONDENT:
RAMILA & ORS

DATE OF JUDGMENT: 13/02/2008

BENCH:
A.K. MATHUR & AFTAB ALAM

JUDGMENT:
JUDGMENT

O R D E R
CIVIL APPEAL Nos.4743-4744 OF 2001

These appeals are directed against the order passed by the Division Bench of the Madhya Pradesh High Court whereby the learned Division Bench of the High Court vide order dated 4/1/2000 dismissed the appeals filed by the Insurance Company and allowed the cross objections filed by the claimants and awarded full compensation to the claimants.

Necessary facts for the disposal of these appeals are that on 15th July, 1989 Vimal Kumar was going on his scooter with Rameshchand as pillion rider. When they reached near village Tikdijogi, non-applicant/respondent came from opposite direction driving bus No. M.B.N.-1188 belonging to non-applicant No.2 Kanhaiyalal and insured with appellant New India Assurance Co. in a rash and negligent manner dashed against scooter, as a result of which Vimal Kumar and Rameshchand died. The LRS of Rameshchand claimed compensation of Rs.15,02,180/-, while LRS of deceased Vimal Kumar sought compensation to the extent of Rs.7,61,000/- in claim case Nos. 83/89 and 101/89 respectively. The appellant and non-applicants/respondents filed common written statements and resisted the claim. The plea taken was that Vimal Kumar had no valid driving licence. He was driving scooter in a rash and negligent manner which caused the accident. No plea of the limited liability was taken in the written statement by the insurance company. The tribunal after appreciation of evidence granted compensation of Rs.1,50,000/- to the LRS of deceased Rameshchand and Rs.3,75,000/- to the LRS of Vimal Kumar and directed the Insurance Company as well as the driver and owner to pay the same jointly and severally.

Aggrieved against the order, the Insurance Company filed the appeals against the award before the High Court. The claimants also filed cross-objections for enhancement of compensation amount. It was submitted before the High Court on behalf of the Insurance Company that the liability of the insurance company under Section 95 of the Act is limited to Rs.50,000/- in one accident. It was contended that the tribunal has wrongly granted the amount of compensation against the two claims and more than the permissible limit of Rs.50,000/-. The High Court considered the matter and after reviewing of the matter, it found that this plea was not taken in the written statement. It was also held that the entire policy was not filed and only first page of the policy was filed which too was blurred. The High Court further held that limit of Rs.50,000/- prescribed for damage to property and not for injury or death, which is covered under Section II-1(i). Non-mentioning of any amount in Section II-1(ii), in view of the facts of this case, gives impression that the liability of the appellant with respect to death or bodily injury was unlimited, and, accordingly, the High Court upheld the order of the tribunal, dismissed the appeal of Insurance Company. Thereafter, the High Court considered the cross-objections, the total amount worked out by

the High Court of compensation to LRS of Vimal Kumar Mehta to sum of Rs.5,40,000/- and Rs.3000/- for 5 members for loss of love and affection and consortium, Rs.2000/- for funeral expenses, the compensation worked out to Rs.5,57,000/-.

So far as Rameshchand is concerned, the amount was increased to Rs.1,67,600/-. Against this order the present appeals have been filed.

Learned counsel for the appellant submitted that the amount in question has already been paid to the claimants, therefore, no useful purpose would be served in going into the merits of the case. Learned counsel, however, submits that in view of the decision of this Court in Oriental Insurance Co. Ltd. Vs. Cheruvakkara Nafeessu and others [2001 ACJ 1], the appellant may be permitted to recover the amount of compensation from owner, this Court has held:

"In the facts and circumstances of this case we find that despite holding the liability under the policy limited to the extent of Rs.50,000/- the Claims Tribunal and the High Court were not unjustified in directing the appellant company to pay the whole of the awarded amount to the claimants on the basis of the contractual obligations contained in clauses relating to the liability of the third parties and avoidance clause. However, the Claims Tribunal and the High Court were not justified in rejecting the right of the appellant company to recover from the insured the excess amount paid in execution and discharge of the award of the Tribunal. The appeal is accordingly allowed holding that the appellant company is liable to pay the entire award amount to the claimants. Upon making such payment the appellant can recover the excess amount from the insured by executing this award against the insured to the extent of such excess as per Section 174 of the Motor Vehicles Act, 1988. No costs."

Therefore, we dispose of these appeals and give liberty to the appellants to recover the excess amount paid by the insurance company by executing this award against the owner to the extent of such excess amount as per Section 174 of the Motor Vehicles Act, consequently, the appeals are disposed of with the above observations.

There will be no orders as to costs.