

(2009) 11 RAJ CK 0009

Rajasthan High Court (Jaipur Bench)

Case No: None

United India Insurance
Company Ltd.

APPELLANT

Vs

Smt. Garol Bai and
Others

RESPONDENT

Date of Decision: Nov. 26, 2009

Citation: (2010) 1 WLN 203

Hon'ble Judges: Vineet Kothari, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Vineet Kothari, J.

This appeal has been filed by the Insurance Company being aggrieved by the award of MACT, Bhilwara dated 14.07.1998 deciding the Claim Case No. 199/1993 Mst. Garol Bai and Ors. v. Ved Prakash and Ors. in accident which took place on 11.8.1991 when the deceased Suresh was travelling in a jeep No. R.J. 26/C-67 met with an accident when the said jeep turned turtle on account of rash and negligent driving by the driver of the said jeep and died.

2. The learned Tribunal after discussing the evidence has awarded compensation of Rs. 72,0Q0/- in favour of the claimant for the said death.

3. Learned Counsel for the appellant-insurance Company Mr. R.K. Mehta has urged that the policy in question was "ACT ONLY POLICY" for private vehicle namely the jeep and, therefore, since admittedly the deceased passenger was travelling by paying hire charges to the owner of the said jeep, the insurance company would not be liable to pay the compensation as there was a violation of the condition of the policy and such a private vehicle could not be plied on a hire and reward. He submitted that the witnesses, who have come on behalf of the claimants before the learned Tribunal have themselves admitted that they were travelling in the said jeep by paying hire charges.

4. On the other hand, learned Counsel for the claimant Mr. Dhanesh Sarswat submits that the insurance Company had charged Rs. 350/- besides Rs. 250/- for the insurance of the said vehicle for covering the risk of the occupant and, therefore, the insurance company is liable to pay the compensation. He also submitted that against the award of Rs. 72,000/-, the appellant insurance company has also paid Rs. 50,000/- as no fault liability and Rs. 10,000/- under the interim order of this Court.

5. The learned Counsel for the owner of the said jeep while not disputing the legal position supports the contention raised by the learned Counsel for the claimants.

6. Having heard learned Counsels and after going through the record of the case, this Court finds that the insurance cover in question Exhibit A/1 was for the period from 15.6.1991 to 14.6.1992 and the date of accident is 11.8.1991 which is covered by the said insurance cover. However, the premium charged total Rs. 605/- includes Rs. 240/- as basic premium for the said act only policy of Rs. 15/- for covering the risk of driver and Rs. 350/- to cover the risk under the Workmen Compensation Act of driver and cleaner. The said premium of Rs. 350/- charged by the insurance company is towards the liability of the owner of the vehicle under the Workmen Compensation Act and not for covering the risk of passengers travelling on payment of hire charges to the said vehicle. The words WLL in the said cover note as explained by Mr. R.K. Mehta appearing for the Insurance company stands for "Workmen Compensation Legal Liability".

7. In view of this, obviously the said premium could not cover the risk of passengers travelling in the said jeep in the present Act only policy on payment of hire charges and, therefore, the liability to pay compensation for the deceased passenger Suresh cannot be fixed on the insurance company.

8. Accordingly, this appeal of the insurance company deserves to be allowed on this ground and the same is accordingly allowed. The amount already deposited / paid by the appellant insurance company shall be recoverable from the owner of the said vehicle insured with the insurance company. The claimants shall also be free to recover their amount from owner and not from the insurance company. The appellant-insurance company may take appropriate proceedings before the learned Tribunal for recovery of the amount already paid or deposited by it from the owner of the vehicle.

9. The appeal is accordingly allowed. No order as to costs.