

(2008) 07 JH CK 0029
Jharkhand High Court
Case No: None

National Insurance Company
Ltd., Lohardaga Branch

APPELLANT

Vs

Anita Singh and Others

RESPONDENT

Date of Decision: July 14, 2008

Acts Referred:

- Motor Vehicles Act, 1988 - Section 146

Citation: (2009) ACJ 2814 : (2008) 3 JCR 533

Hon'ble Judges: Gyan Sudha Mishra, C.J; M.Y. Eqbal, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. This appeal has been preferred by the appellant, National Insurance Company Ltd., against the award dated 6.12.2004 passed by the Motor Vehicle Accident Claims Tribunal-cum Additional District Judge, 1st, Lohardaga in Compensation Case No. 118 of 1996, by which a sum of Rs. 2,49,120/- alongwith interest of Rs. 24,912/-, which comes to a total sum of Rs. 2,74,032/-, was awarded to the claimants.

2. Learned Counsel appearing for the appellant, National Insurance Company Ltd., while assailing the aforesaid award passed by the Tribunal, submitted that the appellant-Insurance Company is not liable to pay any compensation to the claimants as the accident was not caused by the vehicle in a public area but within a private area, which was in possession and occupation of M/s Aluminum Corporation Ltd. Substantiating this part of the argument, reliance was placed by the learned Counsel on Section 146(1) of the Motor Vehicles Act, 1988, which reads as follows:

146. Necessity for insurance against third party risk.- (1) No person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying

with the requirements of this Chapter:

[Provided that in the case of a vehicle carrying, or meant to carry, dangerous or hazardous goods, there shall also be a policy of insurance under the Public Liability Insurance Act, 1991 (6 of 1991).]

3. Relying upon the aforesaid Section, it was submitted that in view of the expression "in a public place", used in Section 146(1) of the Act, the appellant-Insurance Company was not liable to compensate the legal representatives of the deceased driver.

4. We, however, do not find any substance in this plea as, in our view, the policy of insurance is used by the Insurance Company to cover the risk which might take place on account of any eventuality caused by the vehicle and the policy of insurance taken by the insured is issued by the Insurance Company, obviously to cover the risk of any accident which might take place on account of plying of vehicle. The legal provision is clear that the Insurance Company pays the amount of compensation out of a contractual liability which emerges from the policy of insurance issued in favour of the insured and the terms and conditions to pay the compensation are clearly incorporated in the policy of insurance.

5. Therefore, it is the policy of insurance from which the conditions of the insurance policy can be gathered and unless the specific terms and conditions of the policy of insurance envisages that it will not indemnify the insured for any accident which took place in a private area, such an argument cannot be allowed to be raised.

6. Insofar as reliance placed on the expression "In a public place" is concerned, we are of the view that if Section 146(1) of the Motor Vehicles Act is read as a whole, it cannot be construed so as to infer that the risk will be covered only if the accident takes place in an area, which can be construed as a public place. Moreover, if the manner of the accident indicates which is reflected from the evidence led by the parties that the accident was caused on account of any fault on the part of the owner of a private area, perhaps this defence would be held to be available in favour of the Insurance Company. But in a situation, which is existing in the instant matter wherein there is no evidence to connect that the owner of the area, even though private, contributed in any manner in causing the accident, then the argument that it is the owner of the private area, who will pay the compensation, is clearly not justified. To convey what we mean by this observation can be explained by citing an illustration to the effect that in an area, belonging to National Aluminum Corporation Ltd., if any divider on the road or a ditch had been existing in the private area or there was any other cause which had been instrumental in causing the accident, the Insurance Company perhaps could take this defence. But, in the instant matter, no such evidence is on record and hence the argument advanced by the Counsel for the Insurance Company, in support of its case, has no substance and hence we dismiss this appeal, at the admission stage itself.