

**(1990) 06 MP CK 0004**

**Madhya Pradesh High Court**

**Case No:** None

United India Insurance Co. Ltd.

APPELLANT

Vs

Mst. Subano Bai and Another

RESPONDENT

**Date of Decision:** June 27, 1990

**Acts Referred:**

- Motor Vehicles Act, 1939 - Section 110D, 92A, 96

**Citation:** (1992) 2 ACC 317

**Hon'ble Judges:** K.M. Agrawal, J

**Bench:** Single Bench

### **Judgement**

K.M. Agarwal, J.

This Miscellaneous appeal u/s 110-D of the Motor Vehicles Act, 1939, (in short, the "Act"), by the Insurance Company is directed against an interim award made by the Claims Tribunal in exercise of its powers u/s 92-A of the Act.

2. The claimants being the widow and the daughter of deceased Ramdas preferred a claim for compensation u/s 110 of the Act alleging that Ramdas met with an accident on 28.5.1988 with a dumper truck No. CPL 6204, driven by one Tejnarain, owned by the South Eastern Coal Fields Ltd and the Sub Area Manager of South Eastern Coal Fields Ltd. and insured with the appellant. After the accident, Ramdas was removed in the hospital where he died on 12.8.1988 as a result of the injuries sustained in the accident dated 28.5.1988. They also made an application for interim award u/s 92-A of the Act. It was resisted by the appellant as also by the driver and the owners of the ill-fates vehicle. After herein the learned Counsel for the parties, the Claims Tribunal was pleased to make an interim award of Rs.15,000/- in favour of the claimants. Being aggrieved, the insurer has preferred this miscellaneous appeal without joining the driver and the owners of the vehicle as parties to this appeal.

3. Having heard the learned Counsel for the appellant, I am of the view that his appeal has no substance and deserves to be dismissed. In the light of the provisions of Section 96 of the Act general defences open to the owner or driver of the vehicle are not available to the insurer. The appellant cannot, therefore, be allowed to urge that because no report of the accident dated 28.5.1988 was lodged with the police immediately after the accident, Ramdas could not be said to have died as a result of the accident dated 28.5.1988 with the said vehicle. It may be mentioned that in his affidavit, the driver of the ill-fated vehicle did not dispute the alleged accident. According to him, there was no negligence or rashness on his part in driving the vehicle. Ramdas died because he was driving his bicycle rashly and fell down after seeing the truck coming behind him. Accordingly, it cannot be said that the allegations made in the claim petition were without any basis or absolutely false. Section 92-A makes a provision for no fault liability .The liability fastened on the driver and owners of the vehicle by the impugned order has not been challenged. Under the circumstances, the liability flowing on the insurer under the policy of insurance cannot be challenged in this appeal by the insurer.

4. Accordingly, this miscellaneous appeal fails and it is hereby dismissed. No order as to costs as no one has appeared on behalf of the respondents to oppose the appeal.