

**(2016) 07 MP CK 0041**

**MADHYA PRADESH HIGH COURT (GWALIOR BENCH)**

**Case No:** M.A. No. 1145 of 2007.

New India Assurance Co. Ltd. -  
Appellant @HASH Rajendra  
Singh and Others

APPELLANT

Vs

RESPONDENT

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**Date of Decision:** July 25, 2016

**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 147, Section 173

**Citation:** (2016) 4 TAC 448

**Hon'ble Judges:** Vivek Agarwal, J.

**Bench:** Single Bench

**Advocate:** Shri Arvind Agrawal, Advocate, for the Appellant; Shri D.S. Raghuvanshi, Advocate, for the Respondent

**Final Decision:** Allowed

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**Judgement**

**Vivek Agarwal, J.** - This appeal has been filed by the Insurance Company against the award passed by 4th Additional Motor Claims Tribunal, Morena in Claim case No. 223/2006 on 20th September, 2007, wherein the said Tribunal has awarded a sum of Rs. 3,31,500/- in favour of the claimants and against the respondent Nos. 1 and 2 namely owner and driver of the vehicle. The Tribunal has directed to Insurance Company to pay the amount of compensation and cover it from respondent Nos. 7 and 8 namely owner and driver. Hence, this appeal has been filed.

2. Learned Counsel for the appellant has relied on the fact that the Claims Tribunal had decided the issue No. 4 in favour of the Insurance Company that the concerned offending vehicle namely truck was operated in violation of the insurance policy, inasmuch as the truck which as meant for transport of goods was used for transport of passengers. It is also submitted that the deceased was neither the owner of the

goods carried in the truck nor he was covered under the terms of the policy.

3. Counsel for the appellant has relied on the judgment of the Supreme Court in the case of **National Insurance Company v. Kaushalya Devi & Ors., as reported in 2009 (1) SCC 52**, wherein the deceased was not the owner of any goods which were being carried in the truck. Admitted position is that he had been travelling in the truck as a gratuitous passenger i.e., he was travelling in the truck for the purpose other than the one for which he was entitled to travel in a public carriage goods vehicle. It has been held by the Apex Court that the Insurance Company will not be liable to pay. In view of ratio of the judgment of Supreme Court, it has been submitted by the appellant/insurance Company that the order to pay and recover against the Insurance Company is illegal and needs to be set aside.

4. In view of the aforesaid legal position, the order of the Claims Tribunal passed in Claim Case No. 223/2006, decided on 2nd September, 2007 is modified to the extent that the order directing appellant to pay and recover from respondent Nos. 7 and 8 i.e. owner and driver shall stand quashed. Rest of the award needs no modification.

5. It is further observed that if the Insurance Company has paid some amount in the Tribunal and it has been withdrawn by the claimants, then Insurance Company will be entitled to recover the same from the owner and driver of the vehicle. If the same has not been withdrawn by the claimants then the deposited amount may be refunded to the Insurance Company and the proceedings for realisation of the amount may be initiated against the owner and driver of the vehicle.

6. This appeal is allowed.

7. There shall be no order as to cost.