

SUPREME COURT OF INDIA

Oriental Insurance Co. Ltd.

Vs.

Vimla Devi

C.A.Nos. of 2009

(Dr. Arijit Pasayat JJ.)

09.02.2009

JUDGEMENT

Dr.Arijit Pasayat, J.

1. Leave granted.

2. Challenge in these appeals is to the order passed by a Division Bench of the Uttaranchal High Court. Three appeals filed by the appellant against the common judgment and award dated 10.10.2003 passed by Motor Accidents Claims Tribunal, District Judge, Tehri Garhwal (in short the `MACT') were dismissed. It is the case of the claimants who filed a Claim Petition under Section 166 of the *Motor Vehicles Act, 1988* (in short the `Act') that because of rash and negligent driving of the driver of the vehicle i.e. UP.07-F-4885 the vehicle fell into a ditch resulting in the death of three persons namely, Sohan Singh, Uttam Singh and a boy Rakesh Singh aged about 12 years. The dependants of the deceased filed three Claim Petitions for compensation. The appellant-Oriental Insurance Company took the stand the accident occurred due to mechanical failure of the vehicle and in any event the insurance company had no liability as the offending vehicle was being driven in violation of the terms and conditions of the policy and the driver of the offending vehicle did not have a valid driving license. The MACT took the view that the policy was operative for a period from 5.7.1999 to 4.7.2000 and since the accident occurred on 13.4.2000 it was within the validity period. The MACT also noticed that the driver's license was valid during the period of time when the accident occurred. The MACT and the High Court held that the vehicle was the subject matter of insurance for goods as well as for passengers, though it was a goods commercial vehicle. MACT did not accept the stand of the appellant-Insurance company holding that no premium was paid for any passenger. The High Court also accepted the said view.

3. In support of the appeals, learned counsel for the appellant submitted that the original records produced by the insurance company clearly show that no premium was received in respect of any non fare paying non employees. It was the stand of learned counsel for the appellant that both the MACT and the High Court erroneously held that the premiums were

paid for the goods as well as for the passengers. In fact no premium was paid for passengers as admittedly the vehicle was a goods commercial vehicle. The appeal survives in respect of respondent No.9. The details of premium paid by the owner have been indicated in the policy that the following amounts were paid:

Third party liability Rs.2,779.00 Third Party Property Damage Rs. 75.00 NFPE Rs. 50.00 Driver Rs. 15.00 Coolie Rs. 15.00

4. The MACT and the High Court appear to have proceeded on erroneous premises that the premium was also paid in respect of goods and passengers. In the aforesaid circumstances we think it appropriate to remit the matter to the MACT to consider the original documents relating to payment of premium which have been summarized in the paper book the amount of premium paid, and determine the person from whom the recovery is to be made. Without expressing any opinion on the merits, we remit the matter to MACT for taking a decision. It shall permit the appellant to produce such material or evidence which according to it has relevance.

5. The appeals are allowed to the aforesaid extent.