

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4745 OF 2017

(Arising out SLP (C) No. 23643 of 2016)

MATA RAM

Appellant(s)

VERSUS

M/S NATIONAL INSURANCE COMPANY LTD. AND ORS.

Respondent(s)

O R D E R

1) Leave granted.

2) This appeal is directed against the judgment dated 28.08.2015 passed by the High Court Himachal Pradesh at Shimla whereby the High Court disposed of the FAO and modified the order passed by the Tribunal holding the insurer liable and given the recovery rights to the Insurance Company against the appellant herein.

3) The facts, in brief, are as follows:-

i) The appellant herein got his Tractor and Trolley insured with the National Insurance Company Limited, Respondent No.1 herein and that extra premium was also paid for the insurance of the driver of the vehicle and three employees.

ii) The vehicle met with an accident. The Claimants/proforma respondents filed claim petition in lieu of death of one Mohammad Khatrudin alias Khabu before the Motor Accidents Claim Tribunal (in short 'the Tribunal').

iii) The Tribunal decided the claim petition on its merits in favour of the claimants and fastened the liability on the Respondent No.1-Insurance Company with a direction to the Insurance Company to indemnify the insured as Insurance Company has charged the premium for three persons excluding the driver of the tractor from the owner of the tractor at the time of issuance of the insurance policy.

iv) The Insurance Company, being aggrieved by the order of the Tribunal saddling it with the liability, filed FAO No. 106/2009 before the High Court of Himachal Pradesh.

v) The High Court, by impugned judgment, disposed of the FAO and modified the order passed by the Tribunal holding the insurer liable and given the recovery rights to the Insurance Company against the appellant herein.

vi) Being aggrieved, the appellant preferred this appeal, by way of special leave.

4) Heard the learned counsel appearing for the parties.

5) The only question which arises for our consideration is whether the Insurance Company can be absolved from its liability on the death of a person from indemnifying the insured when the Insurance Company has specifically charged a premium from the insured for carrying three persons excluding the driver.

6) Learned counsel appearing for the appellant contended that the High Court has committed grave error by reversing the

well-reasoned award of the Tribunal merely on the basis of finding on presumption in contrary to the evidence available on record and taken us through the evidence on record including the insurance policy.

7) Learned counsel for the appellant, in support of his case, drew our attention to a judgment passed by this Court in B.V. Nagaraju vs. M/s Oriental Insurance Co. Ltd., AIR 1996 SC 2054 wherein this Court held that the terms of the policy of insurance are not to be construed so strictly and are to be read down to advance the main purpose of the contract and that the exclusion clause of the insurance policy must be read down so as to serve the main purpose of the policy.

8) We have gone through the material available on record including the terms and conditions mentioned in the Insurance Policy and the judgment of this Court cited before us.

9) After carefully perusing the records of the case and having regard to the fact that the insurance policy clearly shows that the Insurance Company has charged a premium from the insured for three persons excluding the driver, we are of the opinion that the Insurance Company cannot be absolved from its liability on the death of a person.

10) Therefore, in our considered view, the High Court has failed to take note of the said facts in question and modified the order passed by the Tribunal. Furthermore, the judgment of this Court which was cited before us is applicable to the the matter in question.

11) In view of this, the order passed by the High Court is not sustainable in the eyes of law and the same is set aside.

12) The appeal is allowed.

..... J.
(PINAKI CHANDRA GHOSE)

..... J.
(ROHINTON FALI NARIMAN)

New Delhi;
March 29, 2017.

ITEM NO.7

COURT NO.6

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 23643/2016

(Arising out of impugned final judgment and order dated 28/08/2015 in FAO No. 106/2009 passed by the High Court Of Himachal Pradesh At Shimla)

MATA RAM

Petitioner(s)

VERSUS

M/S. NATIONAL INSURANCE COMPANY LTD. AND ORS.

Respondent(s)

(With interim relief and office report)

Date : 29/03/2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE PINAKI CHANDRA GHOSE
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Petitioner(s) Mr. Hari Om Verma, Adv.
Mr. P.S. Dhaliwal, Adv.
Ms. Manju Jetley, AOR

For Respondent(s) Mr. Parmanand Gaur, AOR
Mr. Ekansh Bansal, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed and order passed by the High Court is set aside in terms of the signed order.

(R. NATARAJAN)
Court Master

(SNEH LATA SHARMA)
Court Master

(Signed order is placed on the file)