

Rukmani And Ors. vs New India Assurance Co. And Ors. on 14 August, 1997

Equivalent citations: 1999ACJ171, JT1998(7)SC473, RLW1999(2)SC253, (1998)9SCC160, 1999 AIR SCW 4712, 1998 (9) SCC 160, (1999) 3 TAC 209, (1999) 1 ACJ 171, 1998 ALL CJ 2 1071(1), (1999) 35 ALL LR 114, (1999) 1 ALL WC 283, (1999) 2 RAJ LW 253, (1999) SC CR R 32, (1998) 7 JT 473 (SC), 1999 SCC (CRI) 244, 1999 (1) KLT SN 22 (SC)

Bench: Sujata V. Manohar, D.P. Wadhwa

ORDER

1. Leave granted.

2. The Insurance Company has been absolved from liability in respect of the claim for compensation by the High Court on the ground that the driver had no valid licence. The High Court has noted that under Section 96(2)(b)(ii) of the Motor Vehicles Act, 1939, if the Insurance Company contends that the driver of the vehicle had no valid driving licence, the burden is on the Insurance Company to establish it. The High Court, however, came to the conclusion that this burden had been discharged by the Insurance Company.

3. We have seen the only evidence which the Insurance Company produced in support of the plea. This is the evidence of Inspector of Police who investigated the accident. In his evidence, PW 1 who was the Inspector of Police, stated in his examination-in-chief. "My enquiry revealed that the 1st respondent did not produce the licence to drive the abovesaid scooter. The 1st respondent even after my demand did not submit the licence since he was not having it." In his cross-examination he has said that it is the Inspector of Motor Vehicles who is required to check whether the licence is there but he had not informed the Inspector of Motor Vehicles that the 1st respondent was not having a licence since he thought it was not necessary. In our view, this evidence is not sufficient to discharge the burden which was cast on the Insurance Company. It did not summon the driver of the vehicle, No record from the Road Transport Authority has also been produced. In these circumstances, the Insurance Company has not discharged the burden cast upon it under Section 96(2)(6)(ii) of the Motor Vehicles Act, 1939. The impugned order of the High Court is, therefore, set aside and the order of the Tribunal is restored. The appeal is allowed accordingly. No order as to costs.