

(1991) 09 RAJ CK 0001
In the Rajasthan High Court

Bhagwan Das and Others

APPELLANT

Vs

Bhanwarlal and Others

RESPONDENT

Date of Decision : 12-09-1991

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(2)(1)(d)

Citation : (1992) 1 ACC 189

Hon'ble Judges : D.L. Mehta, J

Bench : Single Bench

Judgement

D.L. Mehta, J.—This appeal is directed, against the award passed by the learned Presiding Officer, Motor Accident Claims Tribunal, Jaipur, dated 17th March 1989, in M.A.C.T. Case No. 284/1985.

2. It is an admitted position that the present appellant claimants were the owner of the vehicle and the vehicle was insured with the respondent No. 3, i.e. M/s New India Assurance Company, Ltd. Jaipur, The respondents have produced the Insurance Policy to show that their liability is limited one and the liability is only to the extent of such amount as is necessary to meet the requirements of the Motor Vehicles Act, 1939.

3. As far as the question of extent is concerned, is not in controversy before me. The only controversy raised is about the quantum of liability of the Insurance Company.

4. Mr. Bhartiya, learned Counsel for the appellants submits that D.W.2, Bhagwan Das, appellant is the owner of the vehicle. The appellant appeared before the Court as NAW 2 and stated that he is the owner of the vehicle and the vehicle was insured and the liability of the Insurance Company was un-limited.

On behalf of the Insurance Company, none appeared.

5. It will not be out of place here to mention that the Insurance Policy produced by the learned Counsel has been admitted by the party and under that policy

there is a liability of the Insurance Company. In this Policy, Mr. Bhartiya, submits that the Insurance Company, is having an unlimited liability and the clause relating, to the limited liability cannot be applied. He further submits that in case the damage to the vehicle, the liability is Rs. 1,50,000/-. Naturally, the liability in any case, is not below Rs. 1,00,000/- in case of 3rd party. Mr. Bhartiya, has produced before me the case of Nishat and Malwa Bus Private Limited and Another Vs. Inder Kaur and Others, in which the Punjab and Haryana High Court, has held that the Insurance Company, failed to raise the plea before the Tribunal that the liability is limited. It contended that the insurance policy was on record and its terms be given effect though no plea had been taken about the limit of its liability. Punjab and Haryana High Court, further held that unless a specific plea is taken by the Insurance Company, the Insurance Company cannot be held to be liable. Mr. Bhartiya, learned Counsel for the appellants has also cited before me the case of The Oriental Fire and General Insurance Co. Ltd. Vs. Dr. Sitaram and Others, In this case, the Madhya Pradesh High Court, has held that the liability under clause Section 95 (2)(d) is the minimum liability but there is nothing in the Act, which prohibits the Insurance Company from expanding limits of its liability by a contract of insurance.

6. Section 95 of the Motor Vehicles Act, 1939, is relating to the. Requirements of policies and limits of liability. Clause (b) of Section 95 of the Act of 1939 provides that the Insurance company must insure the person or classes of persons specified in the policy to the extent specified in Sub-section (2). Sub-section (2) (b) of Section 95 of the Act, provides that where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment : (i) in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all; It is an admitted position that the vehicle was contracted as carrier and was used for carrying the passengers. Mr. Bhartiya, learned Counsel for the appellants submits that the clause (b) of Section 95 of the Act will no apply as it is only a direction for the minimum guarantee of insurance payment. However, the Insurance Company, can enter into an agreement and can charge higher or additional premium for its liability and this preposition of law cannot be agitated and the power has been given to the Insurance Company, to enter into any type of agreement which may extend its liability to any amount after taking more premium then the minimum prescribed. In the instant case, the statement of Bhagwandas, the owner of the vehicle cannot be acted upon particularly, when the insurance policy has been proved and admitted by all the parties. Any oral statement cannot be read as the documentary evidence available on record. Ordinarily, unless there is a pleading about for duress or un-due influence etc. Apart from that one must understand that the owner will always shift the burden on the Insurance Company, to avoid his personal liability. As far as the Insurance Policy and the contract and terms and conditions of the Insurance Policy is concerned, it is not in dispute. I will like to refer the Insurance Policy in the clause relating to the schedule of premium. There is an additional liability instead of two persons and for that purpose, the

premium had been paid; one additional 11 passengers and driver. Thus, the additional liability created under the premium is only additional passengers and driver and do not go beyond that. I will also like to reproduce the liability of Section 2 relating to Section 2(1) relating to the liability of 3rd party in Section 2(1) of the Insurance Policy has been provided and that is subject to the limit of "the liability, the company will indemnify the contents of some claims, causes and expenses which are insured shall become legal liable to pay compensation in respect of death or bodily injuries. It has also been mentioned that the limit of the amount of the company's liability u/s 95(2)(i)(d) policy of insurance shall cover any liability incurred in respect of any one accident, where the vehicle is a goods vehicle a limit of Rs. 1,50,000/- in all including the liability, if any, such amount is necessary to meet the requirements of Motor Vehicles Act. The requirements of the Motor Vehicle Act, is about that irrespective of the class of the vehicle, a limit of Rs. 6,000/ in all in respect of damage to any property of a third party. The submissions of the Insurance Company, is that according to insurance policy, they are ready to pay the compensation and do not contest their ability, then the question of filing the written statement and producing the evidence do not arise. The insurance policy which is admitted by the claimants and also admitted by the owners of the vehicle is the foundation of the right of the owners of the vehicle and the claimants. The question about the interpretation of the insurance policy is altogether a different matter but whatever, the written has been admitted by the owners or the claimants of the vehicle and how they will interpret the policy cannot be said to be a question of fact and it is only a question of law, which has to be decided by the Court.

7. I am of view that because the insurance policy has been produced and no one has appeared on behalf of the insurance company, it cannot be said that he interpretation which the owners want to give should be accepted. The question of interpreting a document and particularly, when it is un-ambiguous is a function of the Court and not a function of the party. I have read the insurance policy as a whole and particularly schedule of premium and clauses relating to the liability and Section 95(2)(1)(d) relates to the liability of 3rd party as provided in the insurance policy.

8. Thus, I am of the view that this insurance policy can only be interpreted in a way that the liability of the Insurance Company is limited and not exceeding Rs. 50,000/- and no exceeded liability can be accepted by way of additional premium or by granting additional insurance policy.

In the result, I do not find any force in this appeal and the same is dismissed.

Costs made easy.