

(2007) 09 AHC CK 0198
In the Allahabad High Court
Case No : F.A. F.O. No. 67 of 1983

Chanan Lal Sachdev and Another	Vs	APPELLANT
Gopal Das Chopra and Others		RESPONDENT

Date of Decision : 26-09-2007

Acts Referred:

Citation : (2007) 7 AWC 7648

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Advocate : Nishant Mehrotra, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Pankaj Mithal, J.—List revised.

2. Heard Sri Nishant Mehrotra holding brief of Sri V. K. Gupta for the Appellants. No one appears for any of the Respondents including Respondent No. 3, the main contesting party.

3. An accident took place on 11.9.1980 at Modinagar. A truck No. U.S.T.-6621, which was insured with Respondent No. 3 M/s. New India Insurance Company Limited, struck the rickshaw from behind. On account of the jerk, Arun Kumar Chopra, who was in the rickshaw fell down and was crushed to death by the truck. The deceased was an engineer and was working as an Assistant Director, National Productivity Council, Lodhi Road, New Delhi. He was drawing salary of Rs. 1,650 per month. On the claim petition being preferred by the parents and his brother, the Tribunal vide judgment and order dated 21.10.1982 awarded a total of Rs. 96,000 in compensation. Out of the aforesaid amount a sum of Rs. 32,000 was payable to the father of the deceased and Rs. 64,000 to the mother. The claim of the brother was rejected. The liability to pay the aforesaid amount was apportioned between the insurance company and the owner. The insurance company was held liable to pay only Rs. 50,000 as the policy was limited in nature and the balance amount was payable by the owner.

4. The Appellant No. 1, the owner of the vehicle, has preferred this appeal on the sole ground that the Tribunal had erred in limiting the liability of the insurance to the tune of Rs. 50,000. The truck was insured with the insurance company upto the liability of Rs. 1,50,000, for which an extra premium was realized and paid by the Appellant.

5. Learned Counsel for the Appellant has argued that the Tribunal without any discussion with regard to the liability of the insurance company simply on the basis of the insurance cover note Exhibit 5 on record has held that the liability of the insurance company was limited to Rs. 50,000. This is factually incorrect inasmuch as the Appellant had paid extra premium for additional liability over and above Rs. 50,000. I have perused the original record of the Tribunal. The original record contains letter of the Divisional Manager, New India Insurance Company Limited dated 18th January, 1982 (paper No. 54-Ga). This letter is in connection with the insurance policy No. 448210258 covering the above truck for the period 1.7.1979 to 30.6.1980. According to the said letter the premium of Rs. 126 was realised from the Appellant towards the insurance of the above truck in the following manner:

Basic premium Rs. 125 For driver and cleaner Rs. 16 For additional T.P. (third party) liability Rs. 39 Total Rs. 180 Less 30% N.C.B. (No Claim Bonus) Rs. 54 Balance Rs. 126 Thus, from the above letter, it is apparent that apart from paying the basic premium of Rs. 125 and Rs. 16 for the insurance of the driver and the cleaner the Appellant had paid a further sum of Rs. 39 for additional 3rd party liability. This letter further indicates that in the cover note a sum of Rs. 39 for additional 3rd party liability has been omitted. Therefore, the Divisional Manager regretted the inconvenience for the mistake in the cover note. Accordingly, the Appellant had paid premium to cover third party liability over and above Rs. 50,000, for which the basic premium of Rs. 125 is realised. The Tribunal has completely ignored the effect of the above letter and as such incorrectly concluded that the policy was limited only upto the liability of Rs. 50,000. The above letter is most relevant and material piece of evidence on record to prove that the liability of the insurance company was not limited to Rs. 50,000 only.

6. In view of the above, the appeal succeeds only to the extent that the entire compensation as awarded by the Tribunal shall be paid by the Respondent No. 3 and its liability shall not be limited upto Rs. 50,000 only.

7. Appeal allowed as above and the judgment, order and award of the Tribunal dated 21.10.1982, passed in M.A.C. No. 30 of 1980 Gopal Das Chopra and Ors. v. Chanan Lal Sachdev and Ors. M.A.C. No. 30 of 1980 is modified to the above extent only. No order as to costs.