**(2005) 11 BOM CK 0014**

**In the Bombay High Court**

Dwarkaprasad Baluram Sharma and Another — APPELLANT

Vs

Lokuram Ramchandra Premchandani and Others — RESPONDENT

**Date of Decision :** 16-11-2005

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 95

**Citation :** (2006) 3 ACC 756 : (2006) 1 ALLMR 595 : (2006) 2 RCR(Civil) 490

**Hon'ble Judges :** S.T. Kharche, J

**Bench :** Single Bench

## Judgement

S.T. Kharche, J.—The appeal is directed against the judgment and award dated 2nd May, 1987 passed by the learned Member, Motor Accident Claims Tribunal in Motor Accident Claim No. 3 of 1985, whereby the liability of the Insurance Company has been restricted only to the tune of Rs. 50,000 .

2. Mr. Jagtap, learned Counsel for the appellants contended that appellant No. 1 is owner of motor vehicle i.e. a jeep involved in accident. The jeep was duly insured with respondent No. 6 -United India Insurance Company Ltd. It is not in dispute that the accident occurred on 7th September, 1984 and Saviribai Premchandani who was the pillion rider on Luna Moped died in the said accident which was arising out of the jeep bearing No. MXH-4199 which had given dash to Luna. Learned Counsel for the appellants contended that since the jeep involved in the accident was comprehensively insured with respondent Insurance Company, h the Tribunal has committed an error in restricting the liability of the Insurance Company to tune of Rs. 50,000. In support of this submission he relied on the decision of the Supreme Court in the case of National Insurance Co. Ltd. Vs. Keshav Bahadur and Others, .

3. Mr. Thakur, learned Counsel appearing for respondent-Insurance Company contended that the liability of the insurer is limited as indicated in Section 95 of the Motor Vehicles Act and the Tribunal was perfectly justified in restricting the liability of the Insurance Company to the tune of Rs. 50,000 in absence of any specific agreement between the insurer and the owner of the vehicle.

4. This Court has given thoughtful consideration to the contentions canvassed by the learned Counsel for the parties. In National Insurance Co. Ltd. v. Keshav Bahadur (supra) it has been observed in paras 6 and 7 as under:

The liability of the insurer is limited as indicated in Section 95 of the Act. But it is open to the insured to make payment of additional higher premium and for the insurer to accept higher risk covered in respect of third party also. But in the absence of any such clause in the insurance policy, and proof of payment of additional premium the liability of the insurer cannot be unlimited in respect of third party and it is limited only to the statutory liability. A three- Judge Bench of this Court in New India Assurance Co. Ltd. v. Shanti Bai 1995 (1) T.A.C. 659 in para 7 held as follows:

(i) a comprehensive policy which has issued on the basis of the estimated value of the vehicle does not automatically results in covering the liability with regard to third party risk for an amount higher than the statutory limit;

(ii) that even though it is not permissible to use a vehicle unless it is covered atleast under an "Act only" policy, it is not obligatory for the owner of a vehicle to get it comprehensively insured; and

(iii) that the limit of liability with regard to third party risk does not become unlimited or higher than the statutory liability in the absence of specific agreement to make the insurer''s liability unlimited or higher than the statutory liability.

In case of appellant insurer not taking any higher liability by accepting higher premium, the liability is neither unlimited nor higher than the statutory liability fixed u/s 95(2) of the Act. Even if a vehicle is the subject-matter of comprehensive insurance and a higher premium is paid on that score limits of the liability with regard to third party risk do not become unlimited or higher beyond the statutory liability fixed. For this purpose a specific agreement has to be arrived at between the insured and the insurer and separate premium has to be paid in respect of additional amount of liability undertaken by the insurer in that regard. This position was highlighted by this Court in National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, . In New India Assurance Co. Ltd. Vs. C.M. Jaya and Others, . A Constitution Bench approved the view taken in Shanti Bai and Jugal Kishore, It was held that in case of the insurer not taking any higher liability by accepting higher premium for payment of compensation to third party, the insurer would be liable to the extent limited u/s 95(2) of the Act and would not be liable to pay the entire amount of compensation.

5. Thus, it is settled law that in case, if the insurer is not taking any higher liability by accepting higher premium for payment of compensation to third party, the insurer would be liable to the extent limited u/s 95(2) of the Motor Vehicles Act and would not be liable to pay the entire amount of compensation awarded. However, if the insured has taken the higher liability by accepting higher premium for payment of compensation to the third party, the insurer would be

 

liable to pay the entire amount of compensation. In the present case, perusal of the insurance policy would reveal that it is not the "Act only" policy. It is comprehensive insurance policy, however, the premium which has been accepted by the Insurance Company can be tabularised as under:

O.D. Basic Premium Rs. 1756.00 Add 1/4% on S.R Rs. 217.50 Add 6 Passengers Rs. 86.36 Add Driver Rs. 8.00 Add T.P Risks Rs. 1 80.00 ----------- Rs. 2245.86 less 10% disc Rs. 224.00 ----------- Rs. 2021.86 ----------- i.e. Rs. 2022 ------------

However, it has been specifically mentioned in the clause of insurance policy as under:

Limits of Liability-

Limit of the amount of the Company''s liability u/s II-I(a) in respect of any one accident--Unlimited.

Limit of the amount of the Company''s liability u/s II-I(b) in respect of any one claim or series of claims arising out of one event - Unlimited.

6. Perusal of the aforesaid clause in the insurance policy, undoubtedly makes it clear that the Insurance Company has accepted the higher liability by accepting higher premium for payment of compensation to the third party and, therefore, it is obvious that the Tribunal has committed an error in restricting liability of the Insurance Company to he extent of Rs. 50,000 in view of Section 95(2) of the Motor Vehicles Act. Therefore, the impugned award cannot be sustained in law and the appeal deserves to be allowed so far as the liability of the Insurance Company is concerned.

7. Appeal is allowed. The respondent-Insurance Company is directed to pay the entire amount of compensation to the claimants, if not already paid.

 