

(2010) 09 RAJ CK 0019

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 1235 of 1998 and Civil Cross Objection No. 7 of 2000

Jamna Lal

APPELLANT

Vs

Kishan Kumar and Others

RESPONDENT

Date of Decision : 01-09-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 95(2)

Citation : (2011) 1 RLW 748 : (2011) 1 TAC 995

Hon'ble Judges : Mahesh Bhagwati, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mahesh Bhagwati, J.—Challenge in this appeal is to the judgment and award dated 1st September, 1998 whereby the learned Motor Accident Claims Tribunal, Tonk awarded compensation of Rs. 1,98,000/- in favour of the Appellant-claimants No. 1 to 3 limiting the liability of Respondent No. 3-the National Insurance Co. to the amount of Rs. 1,50,000/- and rest of the amount of compensation to be paid by Respondent No. 2-Om Prakash Sethi, together with interest @ 9% per annum to be realized from the date of filing application, till the date of actual realisation of the amount of compensation.

2. Contextual facts of the case, in nub, depict that on 9th May, 1981 the Appellant Jamna Lal and his family members were going in a Truck bearing registration No. RRM-6825 from Gumanpura to their village. They had paid the fare to the driver of the Truck. It is alleged that the driver of the truck drove the same very rashly and negligently at an excessive speed, as a result for which the Truck turned turtle resulting into the death for Mst. Ramdayali, Bharatraj, Kekraj and Kumari Mamta and serious injuries to some of the persons, who were sitting inside the Truck. The Appellant filed a petition before the Motor Accident Claims Tribunal and claimed compensation of Rs. 2,87,700/-. The learned Tribunal passed an award of Rs. 1,98,000/-, but the liability of the Insurance Co. was

limited only up to Section 1,50,000/-. the Appellant has beseeched to allow the appeal and pass an award for a sum of Rs. 2,87,700/-in his favour and against all the Respondents jointly and severally along with interest @ 9% p.a. from the date of filing the claim, till realization.

3. Respondent No. 3 the National Insurance Co. has filed cross objections imploring to dismiss the appeal with cost and absolve the Insurance Co. from its liability. It is stated by Respondent No. 3 that the learned Tribunal fastened the liability to pay the amount of Rs. 1,50,000/- on the Appellant in the light of the judgment pronounced by the Hon"ble Apex Court in the case of Smt. Mallawwa Etc. Vs. The Oriental Insurance Co. Ltd. and Others, which stood already over ruled.

4. The case of the Respondent No. 3 is that the Appellant was traveling with his family members in a goods vehicle and the insured committed breach of the conditions of the Insurance Policy. Thus, the Insurance Co. as not liable to pay the amount of compensation, Respondent No. 3, in alternate, has also submitted that the insurer and the insured entered into the contract, which limits the liability to pay the amount of only to the extent of Rs. 1,50,000/-, hence, the Respondent No. 3 cannot be fastened the liability to pay the amount of compensation beyond Rs. 1,50,000/-.

5. Heard the learned Counsel for the parties and carefully perused the relevant material on record including the relevant provisions of law.

6. The only crucial question springing for consideration in the instant appeal is whether in a case of Insurance Policy not taking any higher liability by accepting a higher premium, in case of payment of compensation to a third party, the insurer would be liable to the extent limited u/s 95(2) or the insurer would be liable to pay the entire amount of compensation awarded by the learned Tribunal?

7. The same controversy arose before the Hon"ble Apex Court in the case of New India Assurance Company v. C.M. Jaya, (1999) 2 SCC 47 . There being apparently conflicting views on the subject, the Division Bench of Hon"ble Apex court referred the matter to a larger Bench for its adjudication and the Constitution Bench of Hon"ble Apex Court comprising of five judges answered the question in the following terms:

In the case of Insurance Company not taking any higher liability by accepting a higher premium for payment of compensation to a 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.

8. The Hon"ble Apex court relied upon the judgment rendered in the case of National Insurance Co. Ltd. Vs. Nathilal and Others, wherein it was held that in view of the fact that no extra premium was paid towards unlimited liability as could be seen from the policy produced, the liability of the Insurance Company was limited to Rs. 15,000/-. In this case, the Hon"ble Apex Court set aside the

award of the Tribunal and affirmed the judgment rendered by the High Court.

9. Adverting to the facts of the instant case and the Insurance Policy issued by the national Insurance Company Ltd. in favour of the insurer M/s. Sethi Goods Transport Company Pvt. Ltd. with which the vehicle No. RRM-6825 was insured, it is noticed that the aforesaid vehicle was insured by M/s. Sethi Goods Transport Company with the Respondent No. 3 and the liability was limited to the amount of Rs. 1,50,000/-. Limits of liability s per the Insurance Policy is as under:

Limits of the amount of the Company's liability u/s II-I(ii) in respect of any one claim or series of claims arising out of one event Rs. 1,50,000/-

10. It is not in dispute from the admitted copy of the Insurance Policy produced before the Court that the liability of the Respondent No. 3 is limited to Rs. 1,50,000/- in regard to the claim in question. It is also not in dispute in this case that no additional higher premium was paid to cover unlimited or higher limit than the statutory liability fixed, as found in the terms of the policy extracted above.

11. In the light of law stated above, it necessary follows that the liability of the Respondent No. 3 Insurance Co. is limited to Rs. 1,50,000/- as was rightly held by the learned Tribunal. The impugned award is found to be perfectly just and proper and suffers from no legal infirmity and thus in the light of judgment of Constitution Bench in the case of New India Assurance Co. Ltd. v. C.M. Jaya (supra), the impugned award warrants no intervention.

12. In the ultimate analysis, it is held that the liability of the Respondent No. 3 Insurance Co. is limited to Rs. 1,50,000/- as held by the learned Tribunal.

13. For the reasons stated above, both the Civil Misc. Appeal No. 1235/1998 filed by Jamna Lal and the cross objections numbers as 7/2000 being bereft of any merits stands dismissed. The impugned judgment and award dated 1.9.1998 passed by Motor Accident claims Tribunal, Tonk is upheld.

14. No order as to costs.