

(2006) 03 JH CK 0085
In the Jharkhand High Court
Case No : M.A. No. 14 of 2003

Kanhaiya Prasad Singh

APPELLANT

Vs

Bijay Krishna Sharma, Dulo Suren and New India Insurance
Co. Ltd.

RESPONDENT

Date of Decision : 31-03-2006

Acts Referred:

Motor Vehicles Act, 1939 — Section 95, 95(2)
Motor Vehicles Act, 1988 — Section 173

Citation : (2006) 3 ACC 690 : (2006) ACJ 2453 : (2006) 3 JCR 97

Hon'ble Judges : R.R. Prasad, J; M.Y. Eqbal, J

Bench : Division Bench

Advocate : P.P.N. Roy and Praveen Kumar, for the Appellant; Alok Lal, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—This appeal, u/s 173 of the Motor Vehicles Act, 1988, at the instance of the owner of the vehicle, is directed against the judgment and award dated 4.9.02, passed by Motor Vehicle Accident Claim Tribunal, Saraikela, whereby he has awarded a sum of Rs. 1,25,000/- in Compensation Case No. 14/91 and directed that out of the said amount a sum of Rs. 15,000/- shall be paid by the Insurance Company and rest of the amount shall be paid by the appellant being owner of the vehicle.

2. The facts of the case lie in a narrow compass:

Respondent No. I-claimant was returning from Ranchi to Jamshedpur in Bus No. BHZ 4444. It is alleged that the driver of the bus was driving the vehicle very rashly and negligently and it dashed against a truck bearing No. BHV-8786 standing of the road due to which several passengers of the bus including the claimant sustained grievous injuries. The claimant was admitted to Tata hospital for treatment but later on referred to Dr. B. Mukhopadhyaya of Patna where he was operated for several times. The claimant remained bed-ridden from 13.10.88 to

4.3.91 and he could not attend his normal duty. The claimant, at the relevant time, was employed as Assistant in the Office of Supdt. of Police, Jamshedpur and his monthly salary was Rs. 3000/-. The claimant alleged to have incurred expenses of Rs. 90,000/- in his treatment and also suffered a monetary loss of Rs. 1,50,000/-.

3. The appellant who is the owner of the offending bus contested the case by filing show-cause. Appellant's case is that the bus was insured with Respondent No. 3 M/s New India Assurance Co. Ltd. under valid and effective Insurance Policy. He denied that the driver of the bus was driving the vehicle rashly and negligently. The case of the appellant, therefore, is that amount of compensation if awarded is payable by the Insurance Company. Respondent No. 3, insurer of the bus, in its show-cause has taken defence that the Insurance Company cannot and shall not be held liable for payment of compensation amount, inasmuch as, under the policy the liability of the Insurance Company was restricted to Rs. 15,000/-. Claims Tribunal after considering the facts and evidence on record assessed compensation of Rs. 1,40,000/-. The Tribunal further held that as per the terms of the Insurance Policy, Insurer is liable to pay a sum of Rs. 15,000/- and rest of the amount will be realized from the owner of the vehicle. Hence, this appeal.

4. Mr. P.P.N. Roy, learned Sr. counsel appearing for the appellant, assailed the impugned award as being illegal and contrary to the facts and evidence on record. Learned counsel submitted that the vehicle was comprehensively insured with Respondent No. 3 and, therefore, entire compensation amount is payable by the Insurance Company.

5. From perusal of the impugned judgment, it transpires that claimant has filed a photocopy of Insurance Policy issued by the respondent-the New India Assurance Company which was not disputed by respondent-Insurance Company. Para-11 of the judgment is worth to be quoted here-in-below:

Issue No. 6: In this case the applicant has filed a photo copy of insurance policy of defendant No. 3, the New India Insurance Co. Jamshedpur which has not been challenged by defendant No. 3. It shows that on the alleged date of occurrence on 13.10.88 the Bus in question being No. BHZ 4444 was insured with the defendant No. 3 from 24.6.88 to 23.6.89 which covers the present period of accident. As per terms of this Insurance Policy, this insurance is of the limited liability in case of third party. In course of argument, learned advocate for the Insurance Co. submitted that under the M.V. Act 1939 a maximum third party liability was Rs. 15, 000/- per passenger. In support of his contention, he had relied the ruling of Hon''ble Supreme Court reported in New India Assurance Co. Ltd. Vs. Smt. Shanti Bai and others, , in which it has been held that u/s 95(2)(b) of the Motor Vehicle Act 1939 the Third Party risk if the accident of passenger takes place, statutory liability will be Rs. 15,000/-. Thus as per this condition, the Insurance Co. (O.P. No. 3) is liable to pay the award to the extent of Rs. 15,000/- and rest amount will be realized from the owner of the vehicle, the O.P. No. 1.

Thus issue No. 6 is decided accordingly.

6. We have also perused the copy of the Insurance Policy which is on the record. From the schedule of premium as mentioned in the policy, it is clear that a sum of Rs. 624/- was paid covering the risk of 52 persons at the rate of Rs. 12/- per passenger. It is also clear that the insurer covered the risk of the passengers as per the requirement of the Motor Vehicles Act, 1939. Admittedly, accident took place when the Motor Vehicles Act, 1939 was in force. u/s 95 of the said Act, passengers liability was restricted to Rs. 15,000/-. There is nothing on the record to show that additional premium was paid by the owner of the vehicle for covering unlimited liability of the passengers. It is well-settled that merely because a vehicle is comprehensively insured, the liability of the Insurance Company cannot become unlimited unless unlimited coverage is taken on payment of additional premium. As noticed above, under the policy the respondent-Insurance Company undertook to cover limited liability in respect of death or injury of the passengers. In that view of the matter, we do not find any error in the impugned judgment and award passed by the Tribunal.

7. For the reasons aforesaid, there is no merit in this appeal which is accordingly dismissed.