

(1989) 08 DEL CK 0036
In the Delhi High Court
Case No : F.A.O. No. 45 of 1981

M/s. New India Assurance Co. Ltd.

APPELLANT

Vs

Mrs. Bimla Ahuja and Others

RESPONDENT

Date of Decision : 21-08-1989

Acts Referred:

Motor Vehicles Act, 1939 — Section 110, 95, 96

Citation : (1990) 1 ACC 229 : AIR 1990 Delhi 68 : (1990) 68 CompCas 502

Hon'ble Judges : M. Sharief-ud-din, J

Bench : Single Bench

Advocate : K.K. Jain Ajay K. Jain, A.D. Sanger, Pramod Dayal and Ms. Suruchi Aggarwal, for the Appellant; O.P. Goyal, for the Respondent

Judgement

1. While arguing this appeal Mr. Jain appearing for the appellant has made a very limited grievance. He is not aggrieved of the findings of the Motor Accident Claims Tribunal that the accident occurred due to rashness and negligence of the driver of the offending vehicle nor is he aggrieved of the amount of compensation awarded to the claimants. Mr. Jain urges that in this case the liability of the insurance company appellant is limited to Rs. 50,000/- only and that it could only be made liable to that extent and not beyond that.

2. Now adverting to the facts, it may, be stated that on 12th of Dec. 1973 at about 11.45 a.m. one Om Prakash Ahuja who was traveling on a motor cycle was crushed to death by the offending vehicle bus No. DLP-5096. Consequently, a petition under S. 110-A of the Motor Vehicles Act was filed before the Tribunal and the Tribunal by its order dated 16th of July 1980 made an award for a sum of Rs. 1,04,940/- in favor of the petitioners in the claim petition and further directed that interest at the rate of 6% per annum from the date of filing of the petition till the date of the final realisation of the awarded amount shall be paid.

3. The point before me for consideration is very short. I may at this stage, however, point out that Mr. Goyal did not deny me the assistance even though he maintains that Shri Sardari Lal Bhatia, senior counsel, was appearing for the

claimants and that the brief has been withdrawn from him by the respondents. Mr. Goyal admits that there is no permission by the court for his withdrawal. The matter has been on my board and was expected to come up for final arguments at any time.

4. Mr. Jain contends that the claim petition was proceeded ex parte against the owner and the driver of the vehicle and since the owner and the driver failed to put in any "appearance and to make the original insurance cover note available he made an application before the Claims Tribunal requesting that he be allowed to lead secondary evidence in order to prove the extent of the appellant's liability. He has invited my attention to an order dated 28th of Aug. 1978 of the Tribunal whereby this application was disposed of and in which the Motor Accident Claims Tribunal recorded a finding that the liability of the insurance company was limited to Rs. 50,000/- only. In order to understand the position clearly, I may quote the order which reads as under:-

"This order will dispose of the application of respondent No. 5 insurance company to place on record the copy of the insurance policy. The petitioners in their reply dated 23-8-78 have opposed this.

Heard the learned counsel for the parties. The record bears out that the petitioner has taken the plea in the petition that the offending vehicle was comprehensively insured with the respondent No. 5 vide paras 16 and 22 of the petition. On the other hand, respondent No. 5 in its written statement while admitting the fact of the vehicle in question being insured have denied their liability and have taken the specific plea that as per provisions of section 95 of the Motor Vehicles Act their statutory liability is limited to the tune of Rs. 50,000/-. The major bone of contention between the parties appears to be substituting the liability of respondent No. 5 insurance company in case where a vehicle is comprehensively insured. However, to my mind the provisions of the Motor Vehicles Act make it abundantly clear that the liability of the insurance company in respect of the passenger vehicles is limited to Rs. 50,000/- only. In that view of the matter, Therefore, the liability of respondent No. 5 would not be beyond the statutory limit that has been prescribed. Hence, there appears to be no necessity for the production of the copy of the insurance for this purpose. The petitioners are, of course, not put to any prejudice and in case they succeed in establishing their claim the liability of respondent No. 5 would be limited to Rs. 50,000 / -while the rest of the amount if established could be recovered by the petitioners from the other respondents. With these observations the application is disposed of accordingly."

5. At the time of the arguments before the Accident Claims Tribunal, this argument was specifically raised on behalf of the appellant. But the Tribunal brushed it aside on the specious argument that this order is no more relevant because the insurance company subsequently chose to lead evidence wherein they withheld the insurance policy. I must at once point out that the insurance company like any other State instrumentality is an impersonal body and things

are not expected to move in these agencies in the manner in which they generally move when they are under the control of one single individual. The evidence led by the insurance company, whatever be its merits one has to understand, was not led to disprove its case or set the finding of the Tribunal dated 28th of August 1978 at naught. There was a specific issue raised in this regard by the Tribunal, namely, issue No. 4 as to the extent of the liability of the insurance company and the order dated 28th of Aug. 1978 was passed by the Tribunal after carefully looking at the copy of the insurance policy and after finding out the rate of tariff charged. It was in that situation that the Tribunal recorded a finding on this issue finally concluding the issue that the liability of the insurance company was limited to Rs. 50,000/- only. How and on what specific reasoning it came to be changed subsequently one does not really understand. This was a finding on an issue, which had not been appealed against, and no grievance at any stage was made against this finding. This is a judgment of a Tribunal which have certain sanctities attached and it was not available to the Tribunal to review this finding and to come to a different conclusion particularly when no appropriate remedy was sought against that order. I am, Therefore, of the opinion that the Tribunal has misdirected itself by not abiding by the findings of its predecessor on the issue regarding the extent of the liability of the insurance company appellant herein. After all, if the liability of the insurance company is limited and it is apparent from the rate of tariff paid by the insured I see no reason to foist a liability more than the one agreed upon by the parties. That would result in substantial miscarriage of justice. The claimants further are not prejudiced by such findings as they are entitled to recover the remaining amount of compensation from the owner and the driver of the vehicle. I in that view of the matter allow this appeal and hold that the liability of the insurance company in this case is limited to the payment of Rs. 50,000/- and for the remaining amount the driver and the owner of the vehicle shall be jointly and individually responsible for the payment. The appeal is allowed accordingly.

6. Appeal allowed.