(1993) 07 PAT CK 0025

In the Patna High Court

National Insurance Co. Ltd. APPELLANT

Vs

Ashok Kumar Singh and Another RESPONDENT

Date of Decision : 28-07-1993

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(2)(b), 95(2)(b)(ii), 95(2)(c)

Citation : (1994) 2 ACC 115

Hon'ble Judges : B.C. Basak, C.J;Narayan Roy, J

Bench : Division Bench

Judgement

B.C. Basak, C.J.—This is a Letters Patent Appeal filed by the National Insurance Co. Ltd. one of the four General Insurance Companies under General Insurance Corporation of India. This appeal has arisen from the Miscellaneous Appeal and Civil Review Application. The judgment disposing the Miscellaneous Appeal by the Insurance Company, the appellant before us, was passed on 4th June, 1992 and this Letters Patent Appeal was sought to be filed on 14th January, 1993. In the Letters Patent Appeal the explanations are sought to be given as follows:

That it is stated that in the instant case no extra premium was paid by the insured for covering the risk of passenger to the extent of unlimited liability or to the extent of more than die amount as is necessary to meet the requirements of the Motor Vehicles Act, 1939, which is Rs. 15,000/- in case of death or bodily injury to the passenger as provided u/s 95(2)(b)(ii) of the Motor Vehicles Act, 1939.

That it is further stated that the provision of Section 95(2)(b)(ii) provides thus:

Section 95(2)--Subject to the proviso to Sub-section (i) a policy of insurance shall cover any liability incurred in respect of any accident upto the following limits, namely:

(a) Where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason or in pursuance of a contract or employment:

(ii) in respect of passengers, a limit of fifteen thousand rupees for each individual passenger.

Therefore, the appellant insurer is liable to pay compensation only upto Rs. 15,000/- in the instant case because of the fact that the claimant was a passenger in auto-rickshaw bearing registration No. BPV 6140.

That the aforesaid M.A. 74 of 1988 (R) was heard by Single Judge of this Hon''ble Court presided over by Hon''ble Mr. Justice S.B. Sinha and vide Judgment dated 4.6.1992 his Lordship fixed the liability of the appellant Insurer to the extent of Rs. 50,000/-.

That Hon''ble Single Judge came to a conclusion in paragraph No. 18 of die judgment that the insurance policy bearing comprehensive one and the total liability of the Insurer was Rs. 50,000/- and thus Section 95(2)(b) of the Motor Vehicles Act, 1939, has no application, but the provisions of Section 95(2)(c) applies. In this respect it is stated that in fact the claimant injured was a passenger in the auto-rickshaw and no extra premium was paid by the insured for covering the risk of passenger for higher liability than die liability of insurer prescribed u/s 95(2)(b)(ii) of Motor Vehicles Act, 1939. It is further stated that the liability of Rs. 50,000/- was for the purpose of damage to the property caused by die use of motor vehicle as mentioned in Section II-1(ii) of me insurance policy (Exhibit A-Annexure - 1) and not for the purpose of death or bodily injury to a passenger of the said motor vehicle.

That the Hon''ble Single Judge has further come to a conclusion in paragraph No. 24 of the judgment that in the schedule appended to the said policy, the limit of the liability of the insurer has clearly been mentioned at Rs. 50,000/-. But the fact remains mat the limit of liability of Rs. 50,000/- is with regard to the limit provided u/s II-1(ii) of me insurance policy which clearly says that such limit is in respect of damage to property caused by the use of the motor vehicle and not in respect of death or bodily injury to any person caused by the motor vehicle as provided u/s II-1(ii) of the insurance policy.

It is reiterated that no extra premium has been paid by the insured in respect of death or bodily injury to the passenger, hence, the liability of the Insurer would be to the extent to amount as is necessary to meet the requirement of Motor Vehicles Act, 1939, i.e. Rs. 15,000/- only as provided under the provisions of Section 95(2)(b)(ii) of the Act.

That the Hon''ble Single Judge in paragraph No. 33 of the judgment has come to die conclusion that the limits of the amount of company''s liability u/s II-1(ii) in respect of any one claim or series of claims arising out of one event such amount as is necessary to meet the requirement of the Motor Vehicles Act, 1939, Rs. 50,000/-. In this respect it is stated that in fact the clause "such amount as is necessary to meet the requirements of Motor Vehicles Act, 1939 is for the provision of limits of liability of the company u/s II-1(i) for the death or bodily injury to a person caused by motor vehicle and Rs. 50,000/- is for the limit of liability of the company u/s II-l(ii) for the damage to the property caused by the use of Motor Vehicle. But the limits of liability of the company u/s II-1(i) and (ii) cannot be read together.

Against die judgment and order dated 4.6.1992 a Civil Revision Petition was filed by the Appellant-Insurance Company. This Civil Review Petition was allowed by directing payment of Rs. 15,000/- instead of Rs. 50,000/-.

So far as paragraph 6 is concerned, there is no date. So far as paragraph 8 is concerned, though their Lawyer had advised on 25th August, 1992, for filing Letters Patent Appeal but that was not complied with. Instead of that, a review petition was filed and this review petition was allowed, whereby the judgment (sic) was allowed to be corrected as Rs. 15,000/- but the other operative portion of the judgment remained the same. Not being satisfied about the same, the Insurance Company has again sought to re-open the case, by filing a Letters Patent Appeal now. It is not a fit and proper case where such leave should be allowed to the Insurance Company.

We dismiss this appeal.

We further direct that a copy of the order be sent to the Managing Director of the General Insurance Corporation of India for his information as to how the Insurance Company are conducting their cases.