

(2002) 10 BOM CK 0123
In the Bombay High Court

National Insurance Co. Ltd.	Vs	APPELLANT
Maruti Mahadeo Dhongade and Another		RESPONDENT

Date of Decision : 02-10-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 147

Citation : (2003) 2 ACC 496 : (2003) 2 ALLMR 275

Hon'ble Judges : D.G. Karnik, J

Bench : Single Bench

Judgement

D.G. Karnik, J.—Heard Ms. Barve for the appellant, Mr. Railkar for the respondent No. 1 and Mr. Shetye for respondent No. 2.

2. Respondent No. 2 is the owner of a truck (petrol tanker) which on a highway dashed a motor car belonging to the respondent No. 1 from behind and caused damage to it. The truck was insured with the appellant. Motor Accident Tribunal on scrutiny of the evidence came to the conclusion that the driver of the truck was negligent and so came to the conclusion that the respondent No. 1 suffered a loss to the extent of Rs. 88,000/- on account of the accident, to his property viz., motor car. Accordingly, compensation of Rs. 88,000/- was awarded. The respondent No. 2 has not filed an appeal and has accepted the liability.

3. The learned Counsel for the appellant argued only one point before me viz., that the liability of the appellant-Insurance Company was limited to Rs. 6,000/- u/s 147 of the Motor Vehicles Act. No other point was canvassed. Section 147 of the Motor Vehicles Act mandatorily requires certain liabilities to be covered in an insurance policy. They are the minimum liabilities which are required to be covered. It is open to the Insurance Company to provide under a policy a liability higher than the minimum provided u/s 147 of the Act. Therefore, the question whether the liability of the Insurance Company was limited to the amounts specified u/s 147 or whether it had agreed for a higher or unlimited liability is a question of fact to be determined in each case.

4. In the present case, the appellant-Insurance Company had not filed a written statement. It had nowhere contended that its liability was limited to the extent of Rs. 6,000/-. The Insurance Company did not produce the insurance policy during the course of the trial. Only at the time of argument, Insurance Company filed a copy of the insurance policy without proof and that too without any defence in the pleadings that its liability was limited to Rs. 6,000/-. In view of this, the Tribunal held that both the respondent No. 2 and the appellant were jointly and severally liable to pay the full amount of Rs. 88,000/- along with interest. It cannot be said that the Tribunal committed an error in reaching this conclusion. Hence, first appeal is summarily dismissed.

5. The learned Counsel for the parties pointed out that in pursuance of an order passed by this Court, at the hearing of application for condonation of a delay, had directed the appellant to deposit the entire amount together with interest in this Court. The amount has been deposited. In view of the dismissal of this appeal, the respondent No. 1 shall be entitled to withdraw the amount equivalent to the decretal amount with interest after the period of 90 days. The excess amount, if any, shall be refunded to the appellant.