
(1985) 03 RAJ CK 0017

In the Rajasthan High Court

Case No : Civil Special Appeal No. 14 of 1985

National Insurance Co. Ltd.

APPELLANT

Vs

Narain Das Mehta and Others

RESPONDENT

Date of Decision : 14-03-1985

Acts Referred:

Motor Vehicles Act, 1988 — Section 95

Citation : (1986) ACJ 919 : (1986) WLN 335

Hon'ble Judges : D.P. Gupta, J; Bhargava, J

Bench : Division Bench

Advocate : G.K. Bhartiya, for the Appellant; M.R. Singhvi, for the Respondent

Final Decision : Dismissed

Judgement

1. In this appeal, the argument advanced by learned counsel for the insurance company is that the liability of the insurance company was limited to the extent of Rs. 50,000 but the learned single judge has erroneously held that the insurance company would be liable for the entire amount awarded as compensation, which is Rs. 1,44,000.

2. It may be observed that the insured and the insurance company filed a joint written statement before the Motor Accidents Claims Tribunal in which it was pleaded that the liability of the insurance company was limited to the extent provided u/s 95 of the Motor Vehicles Act. Following issue No. 3 was framed by the Tribunal:

"3. Whether the liability of non-petitioner No. 3 is limited to the extent provided u/s 95 of the Motor Vehicles Act, 1939, N.P. 3. "

Thus, the burden of issue No. 3 was placed on the insurance company, non-petitioner No. 3, before the Tribunal. No evidence was led by either party in respect of issue No. 3 nor the insurance policy or a copy thereof was produced. The Tribunal passed an award for a sum of Rs. 50,000. On appeal, the learned single judge enhanced the amount of compensation and awarded Rs. 1,44,000.

3. Before the learned single judge it was argued on behalf of the insurance company that merely because the insurance policy was not produced, the liability of the insurance company could not be treated as unlimited. The learned single judge observed that the burden of proof in respect of issue No. 3 was on the insurance company and as the burden was not discharged by the insurance company by leading any evidence, the insurance company would be held liable for the entire amount.

4. We find no reason to disturb the aforesaid finding arrived at by the learned single judge. If none of the parties led any evidence, then "the party upon whom the burden of an issue is placed must fail. The burden of issue No. 3 was specifically placed on the insurance company, who was non-petitioner No. 3 before the Tribunal. As observed above, the insurance company did not produce a copy of the insurance policy nor get the original insurance policy produced from the insured, although a common defence was presented before the Tribunal by the insured and the insurance company. No other evidence was led by the insured or by the insurance company in respect of issue No. 3 relating to the extent of liability of the insurance company. In the absence of any evidence being led by any of the parties, issue No. 3 was naturally decided against the insurance company, upon whom the burden was placed.

5. In this appeal, the insurance company has sought to produce a copy of the insurance policy. The application which has been filed in this appeal does not disclose any reasonable ground on account of which the insurance company might have been prevented from producing the copy of the insurance policy which was in its possession from the very beginning of the proceedings before the Tribunal. It has been stated in the application that a copy of the insurance policy was sought to be produced before the learned single judge, but the learned single judge did not grant time to the insurance company to produce a copy of the insurance policy. The first appeal before the learned single judge was filed in the year 1975 and the appeal was heard in September, 1984. But during the period of nine years when the appeal remained pending before the learned single judge, the insurance company did not produce a copy of the insurance policy. Although an application was filed before the learned single judge on August 14, 1984, stating that the insurance company may be allowed to argue the question about the extent of liability of the insurance company but even at that time, along with that, application dated August 14, 1984, a copy of the insurance policy was not filed on behalf of the insurance company. Thus, in the absence of any sufficient or reasonable cause for not producing a copy of the insurance policy earlier, we do not consider it proper to allow the appellant an opportunity to produce a copy of the insurance policy at the stage of special appeal. The application for taking a copy of the insurance policy on record is rejected.

6. In the absence of any evidence on behalf of the insured or the insurance company, either documentary or oral, the finding of the learned single judge in

respect of issue No. 3 cannot be interfered with. The appeal has no force and is dismissed.