(2010) 05 DEL CK 0185

In the Delhi High Court

Case No : FAO No. 159 of 1990

National Insurance Company Ltd. APPELLANT

Vs

Anita Ahuja and Others RESPONDENT

Date of Decision : 25-05-2010

Acts Referred:

Citation : (2010) 05 DEL CK 0185

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Shanta Devi, for the Appellant; Navneet Goyal, for the Respondent

Final Decision : Dismissed

Judgement

Justice Shiv Narayan Dhingra

1. The present appeal has been filed by the Insurance Company assailing the award dated 18.5.1990 of the learned Tribunal (MACT) whereby the Tribunal awarded a sum of Rs. 1,15,200/- along with simple interest @ 9% p.a. to the claimants and held that the liability of the appellant was not limited to Rs. 50,000/- only, but the appellant was liable to pay the entire compensation amount to the claimants. It is submitted by the Counsel for the appellant that there was no dispute/controversy regarding premium charged by the insurance company. As per the premium charged, the liability of appellant in terms of the Indian Motor Tariff, was only limited to Rs. 50,000/- and the Tribunal wrongly held that the liability of the Insurance Company was unlimited. This Court had considered the issue of liability of insurance companies in Neeta Trehan & Ors. v. Gopal Krishan & Ors. FAO No. 257/1991 decided on 17.5.2010 and observed that the liability of the Insurance Company has to be considered in view of the tariff rates as advised by the Tariff Advisory Board.

2. In the present case there is no dispute about the tariff charged and the only question to be decided is whether in view of the tariff charged, the liability of the Insurance was limited or unlimited. The policy obtained by insured in this case

was a comprehensive policy insuring the property i.e. the value of the tanker and the risk to driver, cleaner and public risk. The following premium was charged by the insurance company as per Exh. RW-1/B:

Basic

Rs. 1661.00

Plus R& S

Rs. 137.50

Plus Dr/Cl

Rs. 16.00

Plus ? % on IEV

Rs. 275.00

Rs. 2089.50

Less 15% NCB Rs.

313.50

Rs. 1776.00

The insurance company has placed on record Indian Motor Tariff which prescribed the premium to be charged in case of goods carrying vehicles falling under Class A(2) as under:

Class A (2) Goods Carrying Vehicles ? General Cartage Public Carrier

Licensed Carrying Capacity of the Vehicles

Comprehensive Town

Mofussil

Liability to the Public Risk Town

Mofussil

Act Only Liability Town&Mofussi

(1)

(2)

(3)

(4) Not exceeding 5080 kgs. (5 tons)

Rs.761/-+ 1/2 % on IEV

Rs.911/-+ 1/2 % on IEV

Rs.87/-

Rs.106/-

Rs.74/-

(5) Exceeding 5080 Kgs. (5 tons)

Above rate plus Rs.150/- for each additional ton or part thereof

Above rate plus Rs.150/- for each additional ton or part thereof

Rs.97/-

Rs.125/-

Rs.84/

The vehicle involved in this case was an oil tanker thus, the premium charged for insurance to the risk to the vehicle was Rs. 1661/- in terms of above tariff and the premium charged for the driver and cleaner was Rs. 60/-, and Rs. 137/- was the amount charged apart from these two premiums. The tariff very clearly shows that the premium for "Act Only" liability was Rs. 84/- and not Rs. 137/- which was the premium charged. A perusal of Exh. RW-1/A (Policy) issued for the previous period, which was renewed for the accident period would show that under "Limits of Liability" it was mentioned "As required by law" and it was not mentioned "Act Only" policy. Thus, the limits of liability of the Insurance Company were those which were to be determined by the Tribunal as per law applicable for awarding compensation to the dependents of the deceased. It cannot be said that the liability of the Insurance Company was limited.

I, therefore find no force in this appeal. The appeal is hereby dismissed.