

(2001) 07 JH CK 0076
In the Jharkhand High Court
Case No : LPA No. 36 of 1993 (R)

National Insurance Company Ltd.

APPELLANT

Vs

Harish Chandra Ganguly and Another

RESPONDENT

Date of Decision : 27-07-2001

Acts Referred:

Motor Vehicles Act, 1939 — Section 95, 96

Citation : (2002) 50 BLJR 2117

Hon'ble Judges : Vinod Kumar Gupta, C.J.; D.N. Prasad, J

Bench : Division Bench

Advocate : A.K. Sahani, for the Appellant; P.K. Bhowmick, for the Respondent

Final Decision : Dismissed

Judgement

1. This is an appeal by the Insurance Company against a judgment of the learned single Judge passed on 23.9.1993 in M.A. No. 239 of 1992 (R), whereby the appeal filed by the appellant against the Award passed by the Motor Vehicles Accident Claim Tribunal, Dhanbad, was dismissed.

2. The only ground urged by Mr. A.K. Sahani, learned counsel appearing for the appellant, is that the Insurance Company can not be held liable for payment of the compensation as per the Award passed by the Tribunal in its entirety, inasmuch as the appellant had a limited liability and, therefore, the Tribunal committed an error in passing an award against the appellant, ignoring the limited liability as was fixed in the Policy of Insurance. The learned single Judge has negated this contention of the appellant on the ground that the policy of Insurance was not produced, exhibited or got proved before the Tribunal and, therefore, the said contention of the appellant cannot be acceded to.

3. Upon hearing Mr. Sahani, learned counsel appearing for the appellant, we find ourselves in full agreement with the view taken by the learned single Judge and hold that it was the duty of the appellant to produce the policy before the Tribunal and adduce proper evidence, get it proved and exhibited so that the

Tribunal might have been in a position to find out for itself, whether in fact the appellant had a limited liability or not. In the present case, far from doing so, the attitude adopted by the appellant was totally unexplainable. In Col. 17 of the claim petition against the name and address of the Insurer of the vehicle, the claimant had clearly given the appellant's name as the Insurance Company along with the number and the particulars of the Insurance Policy. As against such complete information and full particulars having been furnished by the claimant, the Insurance Company in Para 10 of the written statement, in answer to the aforesaid, averred as under :--

"10. That, this defendant is not in a position to admit at present whether the vehicle bearing registration No. BPO-8766 which is involved in this case was insured with this defendant at the material time of accident or not unless the Policy No. is produced by the owner of the vehicle in question."

The entire written statement filed by the appellant clearly informs us that there is not even a whisper about the Insurance Company having any limited liability. It did not say a word about it having limited liability.

4. It is now a well established principle of law that if an Insurance Company has limited liability, based upon any term in the Insurance Policy, it becomes its duty to specifically take up such a plea in the written statement, to have an issue raised to that effect, to get the Policy proved during the course of trial and adduce such other evidence as would establish that, in fact, the liability of the Insurance Company was limited. Such is the mandate as contained in Section 96, read with Section 95, of the Motor Vehicles Act. 1939. Even though u/s 96, the Insurance Company is liable to indemnify the insured with respect to the award, u/s 95 if the liability is limited, the extent of indemnification is limited to such liability. But it does not mean that without raising such a plea or without proving this fact, by merely saying so, the Tribunal (or the Court in appeal) would be justified in allowing and giving such a limited liability of the Insurance Company. Since, the onus of proving this fact lies upon the Insurance Company and the Insurance Company having failed to discharge such onus, the Tribunal and/or the Court would be justified in fastening the entire liability upon the Insurance Company.

5. In the present case, therefore, what we have clearly seen is that neither the aforesaid fact was averred in the written statement nor was the Policy produced in the Court nor was any issue got struck in respect of such a plea of limited liability of the Insurance Company, nor was any evidence adduced to establish this fact during the course of trial. We have, therefore, no hesitation in holding that the learned single Judge was right in negating the aforesaid plea of the Insurance Company.

6. The appeal, accordingly, is dismissed with costs assessed at Rs. 10,000 (ten thousand). The award of the Tribunal is, accordingly, upheld in its entirety.

7. Appeal dismissed.