
(2007) 03 AHC CK 0260
In the Allahabad High Court

National Insurance Company Ltd.

APPELLANT

Vs

Rajendra Prasad and Others

RESPONDENT

Date of Decision : 15-03-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 145, 147, 2

Citation : (2007) 3 AWC 2609

Hon'ble Judges : R.K. Rastogi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.K. Rastogi, J.—This is an appeal against award dated 20.12.1996, passed by Sri D.D. Upadhyay, IVth Additional District Judge/Motor Accident Claims Tribunal, Lakhimpur Kheri in M.A.C.P. No. 8 of 1994, Rajendra Prasad v. Narendra Misra and Anr.

2. The facts relevant for disposal of this appeal are that on 5.8.1993 respondent No. 1 Rajendra Prasad was carrying passengers on his tango. driven by a mare. He was boarding some passengers at village Dhasarapur police station Fardhan district Kheri when Maruti car No. U.H.T. 9272 came from the side of Gola Gokaran Nath. It was owned by Narendra Misra and Virendra Misra, respondents 2 and 3. The Maruti car hit the tanga and consequently some passengers received injuries. The mare also received injuries and died after the accident. Rajendra Prasad also received injuries in this accident. The Maruti car was insured with the National Insurance Company, present appellant. Rajendra Prasad filed two claim petitions, one in respect of the injuries received by him which was M.A.C.P. No. 7/94 and other was M.A.C.P. No. 8/94 in respect of death of his mare. Both these claim petitions were heard and decided by the Claims Tribunal by a common award dated 20.12.1996. In that award the Presiding Officer awarded a sum of Rs. 10,000 as compensation to Rajendra Prasad for the injuries received by him and Rs. 15,000 for the loss suffered by him due to death of his mare. No appeal has been filed by the insurance company or by owner

against the award of Rs. 10,000 as compensation in M.A.C.P. No. 7 of 1994, and present appeal has been filed by the insurance company against the award of Rs. 15,000 as compensation in respect of death of mare.

3. I have heard learned Counsel for the appellant.

4. None has appeared for the respondents even after revision of the cause list inspite of being represented through counsel.

5. The learned Counsel for the appellant has made only one submission before me. His contention was that mare is to be considered as property of the claimant Rajendra Prasad. He referred to definition of the word "property" given in Section 145(e) of the Motor Vehicles Act, which reads as under:

145(e) "property" includes goods carried on the motor vehicle, roads, bridges, culverts, causeways, trees, posts and milestones.

6. The word "goods" appearing in the above definition has been defined in Section 2(13) of the Motor Vehicles Act, which reads as under:

(13) "goods" includes livestock, and anything (other than equipment ordinarily used with the vehicle) carried by a vehicle except living persons, but does not include luggage or personal effects carried In a motor car or in a trailer attached to a motor car or the personal luggage of passengers travelling in the vehicle.

7. He submitted that the mare of Rajendra Prasad, respondent No. 1 -is to be considered as live-stock included in the term "goods", and so it is covered within the term "property" as defined in Section 145, Motor Vehicles Act. So under Sub-section (2) of Section 147 of the above Act liability of the insurer is restricted to Rs. 6,000 only. Sub-section (2) of the above section reads as under:

(2) Subject to the proviso to Sub-section (1), a policy of insurance referred to in Sub-section (1), shall cover any liability incurred in respect of any accident, upto the following limits, namely:

(a) save as provided in Clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

8. The learned Counsel for the appellant also cited before me a Division Bench ruling of Calcutta High Court in the case of United India Insurance Company Ltd. v. Swapan Kumar Manna and Anr. 2001 (1) TAC 666. In this case there was damage to the drawing room wall of the claimant in motor accident and the Tribunal awarded Rs. 80,000 as compensation against the owner and the insurer of the vehicle. Certificate of insurance showed limit of insurer's liability to be Rs.

6,000 only and no document was produced which could show that insurance policy covered any more amount of damages. The Tribunal had fastened entire liability upon the insurance company but the High Court held that liability of the insurance company shall be limited to Rs. 6,000 only and the remaining amount is to be borne by the owner of the vehicle. He also cited another ruling of Andhra Pradesh High Court in the case of United India Insurance Co. Ltd. v. R. Narayan Reddy and Anr. 2002 (1) TAC 772. In this case, damage was caused to tractor trailer on account of accident with truck, and the Tribunal awarded Rs. 77,000 as compensation. It was held by the High Court that liability of the insurance company was limited to Rs. 6,000 only.

9. It is to be seen that in the present case there is nothing on record to show that the policy covered any risk beyond statutory liability of Rs. 6,000. Under these circumstances, liability of the appellant-insurance company is limited to payment of Rs. 6,000 only and the appeal deserves to be allowed to this extent. It may, however, be observed that owners of the vehicle, i.e. respondent Nos. 2 and 3 have neither filed any cross-appeal nor cross-objection to challenge the amount of award and as such award of Rs. 15,000 against them in respect of the death of mare of the claimant is maintained, but since liability of insurance company is limited to Rs. 6,000 only the insurance company shall be liable to pay only this amount and the remaining amount shall be borne by respondent Nos. 2 and 3.

10. The appellant-insurance company shall be liable to pay interest at the rate allowed by the Tribunal on the amount of Rs. 6,000 only, and the remaining liability for payment of interest shall be borne by respondent Nos. 2 and 3.

11. The appeal is allowed only to the extent indicated above.