(1995) 04 PAT CK 0030

In the Patna High Court

Case No : M.A. No. 407 of 1993 (R)

New India Assurance Co. Ltd. — APPELLANT

Vs

Chand Rani and Others — RESPONDENT

Date of Decision : 18-04-1995

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 11

Citation : (1996) ACJ 911

Hon'ble Judges : Gurusharan Sharma, J

Bench : Single Bench

Advocate : Eqbal, for the Appellant; S.N. Lal, for the Respondent

Judgement

Gurusharan Sharma, J.—Heard Mr. Eqbal, Counsel for the appellant, and Mr. S.N. Lal, Counsel for respondent Nos. 1 and 2, and with their consent this appeal is being disposed of at the stage of hearing under Order 41, Rule 11 of the Civil Procedure Code.

2. Claimants'' son, Mahendra Singh, died on 4.8.1986 in an accident by bus BRV 7371 which was insured with the appellant insurance company. On the basis of the evidence on record, the Motor Accidents Claims Tribunal came to the conclusion that the deceased was travelling in the said bus which turned down and fell in a ditch and in the said accident he died. It was held that the driver of the bus did not apply reasonable care and caution to avoid the accident and, therefore, the accident took place on account of an act of negligence on his part. The victim was about 26 years old and he was earning Rs. 1,500/- per month. Deducting a sum of Rs. 500/- for personal expenses per month, remaining Rs. 1,000/- per month was being contributed by him to the family, being Rs. 12,000/- annually. Taking the span of life to be 70 years and adopting suitable multiplier of 44, the Tribunal calculated the total amount of compensation at Rs. 4,22,400/-. Since the claimants made a claim of Rs. 1,50,000/- only and that the compensation cannot be awarded more than what is claimed, the Tribunal held the same as the just compensation. The Tribunal further held that Exh. A, the

original insurance policy, being a comprehensive policy and additional premium also having been paid the liability of the insurer was unlimited. The Tribunal granted interest at the rate of 15 per cent per annum from the date of claim application till the date of realisation. If the amount of compensation is not paid within two months from the date of the order, the claimants were to get penal interest at the rate of 18 per cent per annum.

3. It was submitted on behalf of the appellant insurance company that neither the insurance policy was a comprehensive one nor any additional premium for covering additional risk was paid and its statutory liability in respect of passenger was limited to the extent of Rs. 15,000/-only, and so the Tribunal committed an error in directing the insurance company to make payment of the entire amount and further committed another error in granting penal interest.

4. The Counsel for the claimants-respondent Nos. 1 and 2, on the other hand, submitted that additional premium for legal liability for accident to the passengers as per IMT-13 was already paid and so the liability of the insurer was unlimited and it has rightly been directed to pay the entire amount of compensation.

5. The appellant filed a petition annexing photostat copy of the insurance policy (Exh. A) as Annexure 1 thereof. According to the said insurance policy it appears that an additional amount of Rs. 600/- was paid by the owner of the vehicle in question to the insurance company in connection with liability to public risk (for legal liability to passengers as per ENI-IMT-13). The said IMT-13 of the policy reads as under:

IMT 13. Legal liability to passengers excluding liability for accidents to employees of the insured arising out of and in the course of their employment.- In consideration of an additional premium as mentioned in the Schedule and notwithstanding anything to the contrary contained in Section II(1)(c), but subject otherwise to the terms, exceptions, conditions and limitations of this policy the company will indemnify the insured against liability at law for compensation (including law costs of any claimant) for death or bodily injury to any person other than a person excluded u/s II(1)(b) being carried in or upon or entering or mounting or alighting from the motor vehicle but such indemnity is limited to the sum of rupees as mentioned in the Schedule in respect of any one person and subject to the aforesaid limit in respect of any one person to rupees as mentioned in the Schedule in respect of any number of claims in connection with the motor vehicle arising out of one cause:

Provided always that in the event of an accident occurring whilst the motor vehicle is carrying more than a number of persons mentioned in the Schedule hereto as being the licensed carrying capacity of that vehicle in addition to the conductor if any, then the insured shall repay to the company a rateable proportion of the total amount which would be payable by the company by reason of this endorsement if not more than the said number of persons were carried in the motor vehicle.

Provided further that in computing the number of persons for the purpose of the endorsement any three children not exceeding 15 years of age will be reckoned as two persons and any children in arms not exceeding 3 years of age will be disregarded.

Provided also that the provisions of condition 3 of the policy are also applicable to a claim or series of claims under this endorsement.

Provided further that in the event of the policy being cancelled at the request of the insured no refund of premium paid in respect of this endorsement will be allowed.

Subject otherwise to the terms, exceptions, conditions and limitations of this policy.

6. The figures arising immediately after the words ''Limit per passenger Rs.'' are blank. Even portion ''the sum of Rs.'' arising immediately after the words ''such indemnity is limited'' is also blank. The portion relating to the limit is also found blank. When the columns in the insurance policy are left blank, may be on account of an error or omission, the benefit thereof shall go either to the insured or to the claimant, rather than to the insurance company. In Bomanji Rustomji Ginwala Vs. Ibrahim Vali Master and Others, , it was held that in such circumstances, the insurance company should thank itself for the negligence of its concerned clerks and/or officers, who issued the policy in question to the insured. However, it was impossible to presume from the blank column of company''s liability that the company wanted to insert an endorsement restricting its liability to ''Act liability'' so far as its limit of liability under Clause II(I)(ii) was concerned. It would be a wild conjecture not based on any evidence. The company must thank itself for not being precise or accurate.

7. Undisputedly the Tariff Rules are statutory rules, which are binding on the insurance company and that they cannot be ignored but, if notwithstanding the said Tariff Rules, the insurance company has left the columns blank in Endorsement No. I.M.T. 13, it cannot contend with impunity that as mentioned in the Tariff Rules or statute, the liability of the insurance company is only to the extent of Rs. 15,000/-per passenger.

8. So far as the quantum is concerned, it is not open for the insurance company to question the same.

9. In the aforesaid circumstances, I do not find any reason to interfere with the impugned judgment and award, fixing the amount of compensation to the tune of Rs. 1,50,000/-.

10. So far as grant of penal interest at the rate of 18 per cent per annum, in case the compensation amount along with 15 per cent per annum interest is not paid within two months of the order, is concerned, in my opinion, it is beyond the

provisions of the Motor Vehicles Act and as such the said part of the impugned judgment and award is set aside.

11. In the result, this appeal is accordingly disposed of.

