

(1995) 09 DEL CK 0071

In the Delhi High Court

New India Assurance Co. Ltd.

APPELLANT

Vs

Dr. V.K. Sanghal and Another

RESPONDENT

Date of Decision : 25-09-1995

Acts Referred:

Citation : (1995) 2 ACC 702

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Judgement

C.M. Nayar, J.—The present appeal is directed against the Award dated March 12, 1982 passed by Shri P.R. Thakur, Judge, Motor Accident Claims Tribunal, Delhi.

2. The respondent Dr. V.K. Sanghal, employed in the Municipal Corporation of Delhi, was going on his two-wheeler scooter No. DHI-7377 after attending the meeting of Indian Dental Association at the clinic of Dr. R.K. Bali, East of Kailash, New Delhi and when he was proceeding towards Vikram Hotel, the taxi bearing Registration No. DLT-3939 came from behind and hit the scooter driven by the respondent-claimant, Dr. V.K. Sanghal. It was further alleged that the impact was so violent and forceful that the respondent and the scooter were dragged to considerable distance and as a result of the accident, he suffered serious injuries on his left leg and suffered compound fracture on left leg Tibia and Febula; that there was crush injury of the left leg below knee as well, besides injuries all over the body. The respondent was removed to Jai Prakash Narain Hospital where he remained admitted as indoor patient till January II, 1979. The taxi was being driven and owned by Harpat Singh, respondent No. 2 and was insured with M/s. New India Assurance Co. Ltd. appellant herein. The claim petition was filed for compensation of Rs. five lakhs against the appellant and respondent No. 2. Respondent No. 2 was proceeded ex-parte vide order dated April 3, 1980.

3. The following issues were framed:

1. Whether the petitioner received injuries due to rash and negligent driving of vehicle No. DLT-3939 on the part of respondent No. 1?

2. To what amount of compensation, if any, is the petitioner entitled?
3. Whether the respondent Insurance Company (appellant herein) is not liable for the grounds taken in the written statement?
4. Relief.

4. The learned Judge referred to the evidence on record and held that the accident was caused due to the rash and negligent driving on the part of respondent No. 2. The compensation was then assessed and on appreciation of evidence on record, the Tribunal made an award in the sum of Rs. 98,700/- in favor of the respondent-claimant with costs and interest at the rate of 6 per cent per annum from the date of petition till realisation. These findings are not challenged before this Court. The same are, accordingly, affirmed.

5. The learned Counsel for the appellant has only confined his argument to impugn the Award in respect of issue No. 3. He has argued that the liability of the appellant Insurance Company, is limited to the extent of Rs. 50,000/- only and the Award is liable to be apportioned on that basis. It has been stated that the policy has contained the clause with regard to the limit of the amount of the liability of the Insurance Company as "Such amount as is necessary to meet requirements of Motor Vehicles Act, 1939". In this regard it is stated that the amount so specified in the statute was Rs. 50,000/- and, Therefore, the appellant Company cannot be held liable beyond that figure. The plea was taken by the Counsel for the claimant before the Tribunal that the insurance of the offending vehicle being comprehensive, the limitation contained in Section 95(2) of the Act did not apply. Therefore, the liability of the Insurance Company cannot be held limited to the extent of Rs. 50,000/-. This is not the correct position of law as comprehensive policy will not imply that the liability of the Insurance Company is unlimited except when it was indicated that a separate premium had been paid to cover such a liability. *National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others*, . The Tribunal has taken into consideration that the policy produced on record consists of three sheets and is either incomplete or reference to Section II-I(i) has been made by inadvertence. This fact is challenged by learned Counsel for the appellant. Be that as it may, the copy of the policy was filed before the Tribunal. I have had the opportunity to peruse the same. The policy is neither the original nor the carbon copy. It is attested to be true copy of the same. The policy has not been, in my opinion, proved in accordance with law and the same cannot be given any credence on the facts of the present case. The appeal, as a consequence, is dismissed.

6. The respondent-claimant has also filed his Cross-objections, being C.M. No. 421/82. The learned Counsel for the appellant commenced his arguments on September 21, 1995 and the matter was shown as part-heard on September 22, 1995 and adjourned to September 25, 1995 in the absence of Counsel for the respondent-claimant. It was again taken up today and no-one has appeared for the cross-objector. The Cross-objections are, Therefore, dismissed. There will be

no order as to costs.