
(2008) 02 DEL CK 0005
In the Delhi High Court
Case No : FAO No. 125 of 2003

New India Assurance Co. Ltd.

APPELLANT

Vs

Hayat Singh and Others

RESPONDENT

Date of Decision : 06-02-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 8
Motor Vehicles Act, 1939 — Section 95, 95(2)

Citation : (2008) 02 DEL CK 0005

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : S.L. Gupta and M.R. Azad, for the Appellant; O.P. Mannie, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.—By way of the present appeal the appellant insurance company seeks to challenge the impugned award on the ground that the liability of the appellant was limited in terms of Section 95 of Motor Vehicles Act, 1939 i.e. prior to amendment. The contention of the counsel for the appellant is that the insurance policy of the offending vehicle was duly proved on record and in the said policy, the liability of the insurance company in respect of any one passenger was limited only to the extent of Rs. 15,000/-. Inviting my attention to the copy of the insurance policy on the record exhibited as R3W 1, counsel for the appellant contends that the insured had paid an amount of Rs. 612/- so as to cover the risk of 5 passengers at the premium of Rs. 12 per passenger. Counsel for the appellant urged that the appellant is not liable to pay the amount over and above the statutory liability of the appellant which in the present appeal is only Rs. 15,000/-

2. Per contra counsel for respondent submits that the insurance company in the present case has failed to prove the insurance policy in accordance with law and Therefore, the benefit of claiming limited liability cannot be given to the

appellant. Counsel for the respondent further contends that it is a settled legal position that the statutory liability as fixed u/s 95 of Motor Vehicles Act can always be increased by paying additional premium. On the payment of additional premium the limited liability can increase to unlimited liability. Counsel for the respondent also contends that no efforts were made by the appellant to summon the original policy from insured as no notice under Order 12 Rule 8 CPC was given to the insured. The contention of the counsel for the respondent is that once no efforts from the appellant were made to produce on record the primary document Therefore, the carbon copy of the policy exhibited as R3W 1 cannot be taken into consideration. Counsel for respondent further contends that even in the cross examination of Mr. D.K. Arora, Branch Manager of insurance company, the witness could not prove authenticity as to whether true copy proved on record was prepared from the carbon copy of the policy. Even if the carbon copy of the insurance policy was proved at later stage then in the policy the said witness Mr. D.K. Arora failed to identify the signatures on the copy of the insurance policy. He even could not tell the name and designation of the person who had appended signature on the insurance policy. Counsel for the respondent thus submitted that the appellant cannot be given the benefit of claiming limited liability as appellant has failed to prove on record the carbon copy of the insurance policy in accordance with the law.

3. I have heard the learned Counsel of parties and have perused the record.

4. I find force in the contention raised by respondent. There is no dispute on the legal proposition that the onus to prove the insurance policy is on the insurer. The appellant has claimed that its liability was limited as circumscribed in Section 95(2) of the Motor Vehicles Act, 1939. It is also not in dispute that in a case where higher amount of premium is paid such a limited liability can always be increased or expanded to either make it unlimited or higher as Section 95(2) of the Motor Vehicles Act does not put any embargo on insured to pay higher amount of premium for covering higher risk and for unlimited liability. There cannot be any dispute that it is for the insurance company not only to prove the insurance policy but to properly explain as in what manner the premium amount under different heads has been paid by the insured. There also cannot be any dispute to the legal preposition that it is only in the absence of primary evidence, the parties can be allowed to lead evidence by way of secondary evidence. The appellant failed to take any steps either by sending the requisite notice under Order 12 of Rule 8 CPC so as to summon the original insurance policy from the insured or by summoning the insured himself in the evidence. Mr. D.K. Arora, Branch Manager of the appellant insurance company who entered the witness box as RW 3 had also failed to properly prove carbon copy of the insurance policy. Earlier he had tried to prove true copy of the insurance policy but later on produced the carbon copy of the insurance policy which was exhibited in his deposition as exhibit R3W 1. The said witness could not even identify as to who had signed the said policy and what his designation was. He also admitted that original policy in question was not issued under his signatures. No weightage can

be given to such fledgling and incoherent statement given by the said witness produced by the appellant insurance company. It is thus apparent that the appellant insurance company has failed to discharge the onus to prove the carbon copy of the insurance policy in accordance with the law. The mere exhibition of a document cannot mean that such a document stands proved. The appellant could have been permitted to lead the secondary evidence for proving carbon copy of insurance policy only after it had taken the steps to summon the original insurance policy from the insured as original policy is the only primary document.

5. In the light of the aforesaid discussion I do not find merit in the present appeal.

6. The same is dismissed.