
(1991) 11 MP CK 0029
In the Madhya Pradesh High Court
Case No : M.A. No. 135 of 1983

New India Assurance Co. Ltd.

APPELLANT

Vs

P.N. Vijaiwargiya and Others

RESPONDENT

Date of Decision : 25-11-1991

Acts Referred:

Motor Vehicles Act, 1988 — Section 110A

Citation : (1993) 1 ACC 262 : (1992) ACJ 319

Hon'ble Judges : T.N. Singh, J

Bench : Single Bench

Advocate : V.K. Sharma, for the Appellant; N.M. Haswani and P.L. Jain, for the Respondent

Judgement

T.N. Singh, J.—On the maintainability of the claim and the appeal, Division Bench has rendered the opinion on 18.11.1991 in claimants' favour. The appeal is accordingly held maintainable and also the Section 110-A petition under which, for damage in the course of an accident to a motor car, claim was made.

2. Under the impugned award, the insurer-appellant is made liable for payment of Rs. 11,508.50 to the respondent P.N. Vijaiwargiya, owner of motor car No. CPH 87. In this appeal, two points are urged by Mr. Sharma, appellant's counsel, contending, firstly, that the extent of the claim has not been proved and, secondly, that the liability in its entirety could not have been saddled on the insurer-appellant.

3. I have gone through the entire evidence and also the pleadings and one contention I find justified and, therefore, I hold that the impugned award warrants interference because claim for higher amount is allowed. On evidence have come photographs of the damaged vehicle CPH 87 along with the negatives. Unfortunately, the photographer was not examined, but PW 3, Lalta Prasad who was driving the vehicle, has been examined to prove those photographs. His evidence has been accepted by the Tribunal and I would also ditto the conclusion of the trial court that in the accident which had occurred on

7.7.1981, the car was damaged. Lalta Prasad, however, was not the driver of the car and he was not in the employment of the owner Vijaiwargiya. Admittedly, the car was loaned to him for use for the definite purpose on that date, and beyond that, he had no connection whatsoever with the car. At the time of the accident, the owner was not present and his evidence, deposing as PW 2, is that Lalta Prasad had got the car repaired. It had cost him Rs. 16.000/-. In his evidence, at para 5, Lalta Prasad, on the other hand, said that what damage was caused in the accident the mechanic knew, but the car was extensively damaged. Unfortunately, no mechanic was examined to prove actual damage caused to the car as a result of the accident.

4. On record have come certainly a number of documents, bills etc. for spare parts used and for repair charges. However, what has also come and is of signal significance is Exh. P-17.

5. That perhaps is the best evidence on which the claim of the respondent-owner can be sustained to the extent proved. Indeed, it appears, after almost a year, the estimate for repairs was prepared on 4.7.1982 which is Exh. P-17 and even beyond that came other documents with regard to charges of spare parts and repairs. The bills are of 8.6.1982, 29.7.1982, 13.8.1982, etc. etc. Comparing photographs, the estimate and the bills, I entertain no doubt that the claim is inflated and a lot of items of work are got done subsequently after a year and several items of spare parts can also be said to be unrelated to the cause of accident. Superficial body damage is depicted in the photographs. On the other hand, use of large number of spare parts could be justified only on the assumption that the accident was extensive and penetrating and other limbs of the vehicle were affected. Unfortunately, that evidence has not come on record and on mere assumption, claim for reimbursement for spare parts used or repairs made beyond the estimate cannot be allowed. Under Exh. P-17, estimated cost of repairs of Rs. 7,660 is claimed and that is allowed.

6. In so far as the other contention is concerned, therein I have seen no merit. Mr. Haswani is right indeed in submitting that in the insurance policy, Exh. D-1, there is an endorsement under the column of "Limits of Liability" and against Section II-I (ii), the insurer had undertaken to indemnify the insured for "unlimited" amount. He submits rightly that Sub-section (5) of Section 95 of Motor Vehicles Act, 1939 is attracted to the instant case and the insurer must discharge statutory liability thereunder and not under Sub-section (2) of Section 95. Although Mr. Sharma submitted, pressing in service National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, , that the "comprehensive risk policy" did not mean that the statutory liability contemplated u/s 95 (2) is enlarged. I do not think if that contention can be pressed in the instant case because it is not possible to hear the complaint of Mr. Sharrna that the word "unlimited" has been typed through mistake in the policy. That plea was not taken anywhere and, therefore, Jugal Kishore's case cannot be applied to the facts and circumstances of the case.

7. In the result, the appeal succeeds partially. The award stands modified to the extent indicated. Interest has been awarded by the Tribunal, but that shall now be applicable to the modified sum. No costs.