
(1989) 02 DEL CK 0004

In the Delhi High Court

New India Assurance Co. Ltd.

APPELLANT

Vs

Saloni Dargan and Others

RESPONDENT

Date of Decision : 14-02-1989

Acts Referred:

Citation : (1989) 1 ACC 339

Hon'ble Judges : S.B. Wad, J

Bench : Single Bench

Judgement

S.B. Wad, J.—This is an appeal filed by New India Assurance Company Limited against the award made by the Tribunal on 26-8-1986 granting Rs. 1,19,700/- as compensation and further holding that the Insurance Company was liable to pay the entire amount. The submission of the appellants-company is that their liability is limited to Rs. 50,000/-.

2. At the time of the recording of the evidence one Shri J.C. Sharma, Assistant Administrative Officer, appeared and produced the true copy of the policy. He stated in his evidence that he had prepared the original policy, that the carbon copy of the policy was destroyed and that the Insurance Company had sent the notice and telegram to the owner Shri Ravi Dutt to produce the original in the court. The owner did not produce the original policy. The Tribunal found that the copy produced was neither of the original nor a carbon copy. The Tribunal further held that no date has been mentioned as to why the true copy was prepared. The court also found that the policy was issued in July, 1978 while the proforma of the true copy shows that the forms itself were printed in August, 1978. The Tribunal, Therefore, did not place any reliance on the true copy of the Insurance policy and held that the insurance Company was liable to pay the entire amount of compensation. The counsel for the appellants-Insurance Company submits that the true copy should be taken on record and be relied upon as the secondary evidence when the original insurance policy as well as its carbon copy are not available. In spite of the notice the owner did no produce the original. He further submits that the strict rules of evidence are not applicable in the enquiry

before the Motor Accident Claims Tribunal. His another submission is that there should be a normal presumption of the liability of Insurance Company being limited only to the statutory liability.

3. It is true that the strict provisions of Evidence Act are not applicable in proceedings under the Motor Vehicles Act and the procedure is a summary procedure and any document having some probative value and the genuineness of which is not in doubt, can be looked into by the Tribunal for getting preponderance of probable versions. In this case, the owner Ravi Dutt did not state in his written statement that the liability of the Insurance Company was unlimited or whether he had paid additional premium. He only stated that the vehicle was insured with the Insurance Company. The owner also did not come in the witness box to claim that the liability of the Insurance Company was unlimited. On the other hand, the Insurance Company stated in its written statement that its liability was limited to the statutory liability. Shri Sharma who had prepared the policy in 1978 had himself deposed before the court that the policy was not a policy for unlimited liability but it was only for statutory liability. He had stated that the original record was destroyed in 1983. Usually the record is destroyed after five years. Therefore, this version does not appear to be improbable. The submission of the counsel for the appellants that the burden is on the owner to prove that the liability of the Insurance Company is unlimited is not correct. This being the case of civil liability the rule is of the preponderance of probability. Therefore, both the owner as well as the Insurance Company are required to produce the relevant material in support of the quantum of their liability. In this case I find that the owner had not discharged his burden while the Insurance Company had.

4. For the reasons stated above, the appeal is allowed. The insurance Company is liable to pay only Rs. 50,000/-. This amount had since been released and paid to the claimants by way of cheque. It is clarified that the balance of the amount will be paid by the driver and the owner of the vehicle within a period of two months from today and a cheque for the amount in question will be deposited by them with the Registrar of this Court who after issuing notices to the claimants will disburse the amount to them.