

(2001) 07 SHI CK 0028

In the High Court Of Himachal Pradesh

Case No : C.M.P. No. 668 of 2000 in F.A.O. No. 146 of 1991

New India Assurance Co. Ltd.

APPELLANT

Vs

Satbir alias Sukhbir and Others

RESPONDENT

Date of Decision : 30-07-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, 151

Citation : (2002) 1 ACC 684 : (2002) ACJ 684

Hon'ble Judges : Kamlesh Sharma, J;K.C. Sood, J

Bench : Division Bench

Advocate : K.D. Sood, for the Appellant; Ajay Sharma and Bimal Gupta, for the Respondent

Judgement

Kuldip Chand Sood, J.—All these appeals arise out of the judgment of Motor Accidents Claims Tribunal (1), Kangra at Dharamshala dated 5.4.1991. The claims petitions came to be filed in these appeals on account of the accident of bus No. DEP 6466 on 20.3.1989 in all the petitions. The claimants were passengers in this bus. The claimants in all these petitions have been awarded compensation as under:

(i) M.A.C. Petition No. 46 of 1989: Rs. 51,000 (ii) M.A.C. Petition No. 47 of 1989: Rs. 66,500 (iii) M.A.C. Petition No. 43 of 1989: Rs. 29,000 (iv) M.A.C. Petition No. 40 of 1989: Rs. 25,000

2. In addition to this, the claimants- respondents have also been awarded interest at the rate of 12 per cent per annum from the date of application till date of realization.

3. Briefly stated, the facts of the case are:

On 20.3.1989, the bus DEP 6466 was being driven by Kulwant Singh from New Delhi to Jwalamukhi. On its way to Jwala-mukhi, it met with an accident. The driver was negotiating a curve when the bus turned turtle and fell down on the right side of the road. Several passengers received injuries and some of them

died.

4. The case of the claimants was that accident occurred due to rash and negligent driving of the driver of the bus. Respondent Harbans Lal was the owner of the bus at the relevant time. New India Assurance Co. Ltd., appellant, was the insurer. The owner of the bus and driver did not appear and were proceeded ex parte. Insurance company contested the claim and was permitted to raise the defences other than the statutory. The accident was admitted. One of the pleas raised was that liability of the insurance company u/s 95 (2) (b) (ii) of the Motor Vehicles Act, 1939 is limited to the extent of Rs. 15,000 per passenger. Several issues were settled by the Claims Tribunal, including issue No. 5 which reads:

(5) Whether the liability of respondent No. 3 is only to the extent of Rs. 15,000 per passenger, as alleged?

5. The insurance company tendered photocopy of the insurance cover as Exh. R-1 and closed the evidence. The insurance company failed to produce on record true copy of the policy of insurance. However, this document was read in evidence. Learned Tribunal rejected the plea of the insurance company that its liability was limited to Rs. 15,000 and took a view that liability of the insurance company is unlimited as mentioned in schedule of the premium in the copy of insurance policy, Exh. R-1.

6. The insurance company, feeling aggrieved by the findings of the Tribunal, has filed these appeals. In all the appeals, cross-objections have also been filed by the claimants.

7. Insurance company moved an application under Order 41, Rule 27 read with Section 151 of the CPC on 10.8.2000 for permitting it to lead additional evidence. According to the insurance company, the liability of the company was only statutory and contractual, limited to the extent of Rs. 15,000 per passenger u/s 95 (2) (b) of the Motor Vehicles Act, 1939. The insurance company tendered a copy of the policy in evidence. The learned Claims Tribunal recorded the findings that insurance policy was not proved and there ought to have been some evidence on behalf of the insurance company to substantiate the contention that the liability of the insurance company is limited. It is submitted that in this case, a premium of Rs. 588 was charged for 49 passengers at the rate of Rs. 12 per passenger in accordance with the "India Motor Tariffs Schedule of Rates". It is submitted that "in order to satisfactorily pronounce the judgment and to avoid ambiguity which may be there, interest of justice demands that appellant is permitted to produce and prove the policy Exh. R-1 with reference to the premium charges and also the motor tariff and lead additional evidence". According to the insurance company, "it is necessary that the petitioner is permitted to lead additional evidence to do substantial justice between the parties to enable it to prove policy Exh. R-1 already produced on record and also the premium charged in respect thereof and the amount covered by the policy in respect of passengers insured".

8. The application is opposed by the non-applicants-claimants on the grounds that the application has been filed after nine years of the filing of the appeal by the insurance company and it cannot be allowed at this stage. It is also pleaded that "proof of the insurance policy is not necessary to pronounce the judgment satisfactorily". The case of respondents-claimants is that the appellant insurance company merely intends to fill up the lacunae left by the company at the trial stage by leading evidence which they failed to produce before the Tribunal where they were given ample opportunity to lead such evidence. The insurance company, it is further pleaded, cannot be permitted to take advantage of their own remissness which will cause prejudice to the replying respondents.

9. Having heard the learned Counsel for the parties, we are of the view that in the facts and circumstances, the application(s) deserves to be allowed.

10. Photocopy of the insurance policy was tendered as Exh. R-1 in evidence without any objection from the claimants-respondents though the policy was not proved by leading appropriate evidence in accordance with law. This is not a case where any new evidence is sought to be led. The document, Exh. R-1, copy of the insurance policy, which is on record, is only to be proved by the insurance company. Similarly, the insurance company by leading evidence, intends to show that the premium charged in the insurance policy was only for the limited liability in respect of the passengers. This court in *New India Assurance Co. Ltd. v. Roshan Lal C.M.P. No. 533 of 1997 in F.A.O. (MVA) No. 61 of 1990*; decided on 5.1.2001, in such circumstances held that the document being material evidence should be permitted to be proved in accordance with law by the insurance company to enable the court to pronounce the judgment after arriving at "just and right conclusion regarding the liability" of the insurance company.

11. We are of the view that if the insurance company is allowed to prove the policy, Exh. R-1 and tariff premium in accordance with law, it will not cause any prejudice to claimants-respondents inasmuch as this insurance policy was admitted in evidence as Exh. R-1 without any protest from the claimants-respondents and such evidence will help the court to pronounce the judgment and do complete justice between the parties.

12. We allow the application(s). Appellant is permitted to lead additional evidence as Exh. R-1 proves the insurance policy already on record and the insurance tariff in accordance with law subject to payment of cost of Rs. 3,000 in each case payable within two weeks from today. It is made clear that the claimants-respondents shall have a right to lead evidence in rebuttal.

13. The case shall now be listed for additional evidence of the appellant on the date to be fixed by the Registrar (Vigilance) within six weeks from today for which purpose, appropriate steps shall be taken by the appellant.