
(1995) 04 DEL CK 0053
In the Delhi High Court

New India Assurance Co. Ltd.

APPELLANT

Vs

Shashi Kumar and Others

RESPONDENT

Date of Decision : 03-04-1995

Acts Referred:

Citation : (1995) 2 ACC 356

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

C.M. Nayar, J.—The present appeal is filed by the New India Assurance Co. Ltd. against the judgment dated July 6, 1987 of the Motor Accident Claims Tribunal, Delhi. The learned Counsel has only confined his relief to the question of limited liability of the Company to the extent of Rs. 50,000/-. He has otherwise not impugned the award. The claim petition was filed by Shashi Kumar, respondent - claimant for a sum of Rs. 2,50,000/- on account of the injuries sustained by him in a road accident. The said Shashi Kumar was working as Senior Project Engineer in M/s. Bhargava Consultants and drawing a salary of Rs. 2500/- per month. He started from his house on March 12, 1980 at about 9.30 a.m. on motor-cycle No. ATX 9853 for his office situated in East of Kailash. When he reached near Durga Mandir truck bearing No. DLG 6174 came from the opposite direction at a high speed and came on the wrong side all of a sudden and hit the motor-cycle of the respondent-claimant who was going on his right side at a normal speed. Due to the impact of the accident, the respondent-claimant fell down and sustained serious injuries on his right thigh, leg and foot. The motor-cycle of the respondent-claimant was also badly damaged. He was removed to Dr. Ram Manohar Lohia where he remained as indoor patient from March 12, 1980 to August 6, 1980 and subsequently was operated on June 10, 1980. The legs of the respondent were plastered on 5th August, 1980 and he was discharged from the Hospital on August 6, 1980. He claimed a sum of Rs. 2,50,000/- on account of treatment, special diet, conveyance charges, loss of

future prospects and damage to the motor cycle as well as for mental pain and agony. Written statement was filed by the appellant-Insurance Company as well as by the owner and driver of the offending vehicle. The Insurance Company, appellant herein, took the plea that its liability was limited to the extent of Rs. 50,000/-.

On pleadings of the parties the following issues were framed:

1. Whether the petitioner received injuries due to rash and negligent driving of vehicle No. DLG 6174 on the part of respondent No. 1 ?

2. To what amount of compensation, if any, is the petitioner entitled and from whom ?

3. Relief.

2. Issue No. 1 was decided in favor of the respondent-claimant and it was held that he sustained injuries on account of the alleged accident. The total amount of compensation awarded in favor of the claimant was in the sum of Rs. 1,47,302.26. There is no challenge to this award except to the extent that the liability of the Insurance Company cannot exceed Rs. 50,000/-. The Tribunal has examined the evidence on record and came to the conclusion that the appellant-Insurance Company had failed to prove the Policy showing the limited liability and, Therefore, rejected its claim. The appellant Company was, accordingly, held liable to pay the awarded amount.

3. I have learned Counsel for the parties and perused the record. The issue was framed in this regard and evidence was led by the appellant-Company. They examined two witnesses R.W. 2 Shri V.K. Anand, Assistant Administrative Officer and R.W. 3 Shri M.P. Loneppa, Assistant Manager of the Company. These witnesses have reiterated that they have verified and certified the contents of the carbon copy and filed the certified copy as Ex. RW 3/1. The Insurance Company, however, failed to produce the original Policy or the carbon copy of the policy on the plea that the same was destroyed in the year 1982. It was also admitted by the witnesses that Ex. RW 3/1 was not the original Policy issued by the Company. It was also not the carbon copy. The claim petition, as is noted by the learned Judge, was filed in the year 1980 and the Insurance Company as well as the owner and the driver of the offending vehicle were contesting the case. The written statement was filed on behalf of the appellant-Company as well as on behalf of the owner and driver by the same Counsel. In view of the admitted facts, the Tribunal came to the conclusion that the authentic carbon copy was not produced before the Court and no reason was assigned by the Company for this act of destroying the original document in a case which has being contested and was pending. In this background, there does not seem to be any infirmity in the finding that the Insurance Company was failed to prove the policy showing the limited liability on its part. I am in agreement with the finding of the Tribunal in this regard.

4. The learned Counsel for the appellant has referred me to the judgment of the Supreme Court in National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, . This judgment is based on its own facts, such as, the production of photostat copy of the Policy. This does not deal with the situation which has accrued in the present case. The original policy, which would have been in the custody of the owner, was not produced nor any attempt was made in this regard. The carbon copy was also not produced and the same was alleged to have been destroyed in the year 1982 during the pendency of the proceedings before the Tribunal. Paragraph 9 of the above said judgment deals with the situation when the original policy as well as the carbon policy is not produced by the Insurance Company. The same reads as follows:

9. Before parting with the case, we consider it necessary to refer to the attitude often adopted by the Insurance Companies, as was adopted even in this case, of not filing a copy of the policy before the Tribunal and even before the High Court in appeal. In this connection what is of significance is that the claimants for compensation under the Act are invariably not possessed of either the policy or a copy thereof. This Court has consistently emphasised that is the duty of the party which is in possession of a document which would be helpful in doing justice in the cause to produce the said document and such party should not be permitted to take shelter behind the abstract doctrine of burden of proof. This duty is greater in the case of instrumentalities of the State such as the appellant who are under an obligation to act fairly. In many cases even the owner of the vehicle for reasons known to him does not choose to produce the policy or a copy thereof. We accordingly wish to emphasise that in all such cases where the Insurance Company concerned wishes to take a defense in a claim petition that its liability is not in excess of the statutory liability it should file a copy of the insurance policy along with its defense. Even in the instant case had it been done so at the appropriate stage necessity of approaching this Court in civil appeal would in all probability have been avoided. Filing of the policy, Therefore, not only cuts short avoidable litigation but also helps the Court in doing justice between the parties. The obligation on the part of the State or its instrumentalities to act fairly can never be over-emphasised.

Therefore, the reading of the above passage will reiterate the necessity of production of the original policy or atleast the carbon copy at an appropriate stage of the proceedings so that no injustice is done to any of the parties. The Insurance Companies have consistently in many cases failed to file the carbon copy of the policies to canvass that their liability is limited and have also made no attempt to produce the original policy. In this background, no relief can be given to the appellant-Company even in the present case. The appeal, as a consequence, is dismissed with costs, which are quantified at Rs. 2500/-.