(2007) 03 DEL CK 0146

In the Delhi High Court

Case No : F.A.O. No. 84 of 2001

New India Assurance Co. Ltd. APPELLANT

Vs

Shri Thakur Singh Rana and Others RESPONDENT

Date of Decision : 30-03-2007

Acts Referred:

Motor Vehicles Act, 1939 — Section 111, 95(1), 95(2)
Motor Vehicles Act, 1988 — Section 95(1)

Citation : (2007) 03 DEL CK 0146

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : L.K. Tyagi, for the Appellant; Sumeet Kaur, for Respondents Nos. 1, 2, 6 and 7, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—Question which I am supposed to answer is whether the deceased was a passenger and hence liability of the appellant, as per the policy of insurance, is a limited liability?

2. Date of accident is 3.11.1988. Thus, it is not in dispute that the issue raised has to be decided in light of the policy of insurance taken out by the owner of the mini bus bearing No. DBP-1488 and the provisions of the Motor Vehicles Act 1939.

3. Learned Counsel for the parties did not dispute that cause of action arose on the date of the accident and that the Motor Vehicles Act 1988 came into force with effect from 1.7.1989.

4. According to the appellant, insured had paid premium of Rs. 12/- per passenger and hence liability of the insurance company was limited to Rs. 15,000/- per passenger.

5. Policy of insurance has not been proved in evidence. However, certificate of insurance issued by the appellant in respect of the vehicle in question has been

proved at the trial. Under the caption ''Schedule of Premium'' pertaining to liability to public risk, the certificate of insurance reads as under:

SCHEDULE OF PREMIUM 1,975-00 B. LIABILITY TO PUBLIC RISK Rs. 240-00 Add: for L.L. to passengers. as per END IMT. 13

27 Passengers Rs. 324-00 Limit per passenger Rs. ... Rs. Maximum Rs. ... as per M.V. Act 1939

Add for L.L. to paid driver and/or Rs. 16-00 Cleaner as per END IMT.16

Add for increased T.P. Limits Section 111(i) Unlimited Rs. 75-00 Section 11 1(ii) Rs. ... Rs. Add for ... Rs. Rs. 2,630-00 COMPREHENSIVE PREMIUM (A + B) Less 5% S.D. Rs. 131-00 Less : 10% Sp. Discount (If due) NET PREMIUM DUE (ROUNDED OFF) 2,499-00

6. It is not in dispute that the deceased late Shri Chatter Singh Rana was in the process of boarding the bus and got crushed under the rear wheel of the bus due to fact that when he was in the process of boarding the bus, the driver accelerated the bus all of a sudden, resulting in Chatter Singh Rana slipping from the foot-board and getting crushed under the rear wheel of the bus. He died at the spot.

7. With reference to certain decisions, learned Tribunal has held that the deceased was not a passenger in the bus inasmuch as he had yet to enter the bus, purchase a ticket and commence the journey.

8. I need not discuss the said decisions for the reason all decisions pertain to accidents after 1.7.1989 and therefore are under the M.V. Act 1988.

9. Issue is squarely covered in favour of the appellant as per the decision of the Supreme Court reported as Noorjahan (Tmt) Vs. Sultan Rajia Tmt alias Thaju and Others, In said decision, Supreme Court was considering the liability of the insurance company to satisfy the award in favour of the claimants who were the dependents of Syed Abu Thakir. He suffered grievous injuries while alighting from a bus and died on the way to the hospital.

10. Whereas insurance company alleged that he was a passenger at the time of the accident and hence liability of the insurance company was limited, claimants and the owner alleged to the contrary.

11. Section 95(1) of the M.V. Act 1939 was the focus of consideration before the Supreme Court. It would be useful to extract the relevant part of said section which was considered by the Supreme Court. The same reads as under:

95. Requirements of policies and limits of liability.- (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-

(a) xxx xxx xxx

(b) insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2)

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place.

Provided that a policy shall not be required

(i) xxx xxx xxx

(ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises, or

(iii) xxx xxx xxx

12. In respect of sub para (ii) of the proviso to Sub-section (1) of Section 95 of the M.V. Act 1939, in para 7 of the report, Supreme Court observed as under:

7. It is clear that legislature intended that such persons, viz., passengers who are in the process of alighting from a public service vehicle, should be covered by the policy of insurance, which requirement is mandatory u/s 95(1)(b)(ii) of the Act. Further, once such persons, viz., those who are entering or alighting from the vehicle are treated as passengers, the limit of liability of the insurance company has to be located in Clause (ii) of Section 95(2)(b) of the Act. The limit at the relevant time was Rs. 10,000/-.

13. Concurring with the view taken by the High Court that Syed Abu Thakir was a passenger and not a third party, Supreme Court observed as under:

The High Court rightly interpreted the proviso (ii) extracted above to mean that the liability in respect of death of or injury to persons alighting from the vehicle at the time of the accident need not be covered except where the vehicle is a vehicle in which the passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment. In other words, where the vehicle is a vehicle in which the passengers are carried for hire or reward or by reason of or pursuant to a contract of employment, giving rise to the above liability arising out of an accident, the vehicle has necessarily to be covered. It can be seen that the proviso is an exception to Section 95(1). As per Sub-section (b) the insurance policy must insure the persons specified in the policy against (i) any liability to person or property of a third party, and (ii) against death or personal injury to any passenger of a public service vehicle. The liability in respect of those suffering personal injury while getting into or alighting from the vehicle need not be covered if the vehicle is not one in which the passengers are carried for hire or reward. But as in the present case, the vehicle is one that carries passengers for hire or reward, the liability for personal injury or death caused while getting into or alighting from the vehicle would be required to be covered by the policy. In other words, such people who suffer injury or die while alighting from the vehicle are to be covered by the general rule that the insurance policy for a public service vehicle should cover the liability against the death of or bodily injury to any passenger of such a vehicle.

14. Decision of the Supreme Court makes it clear that in view of Section 95(1)(b) of the M.V. Act 1988, a policy of insurance shall not be required to cover liability in respect of death of or bodily injury to persons boarding or alighting from a motor vehicle because Clause (ii) of the proviso thereto engrafts an exception and says that where the vehicle is one in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, it shall be necessary to cover liability in relation to person carried in or upon said vehicle which would include cases of death or bodily injury caused while entering or mounting or alighting from said vehicle.

15. Therefore, if a person is still in the process of boarding or alighting from the vehicle, said person would be entitled to the coverage, within the limit of liability fixed under the statute at the relevant point of time.

16. It has to be noted that the afore-noted provisions are beneficial provisions engrafted by way of an exception to provide an insurance cover to passengers.

17. Since it was cited, it is my duty to note that a decision of a learned Single Judge of this Court reported as Narender Singh, Joginder Singh, Dalal Singh and Sushila Devi Vs. Sudarshan Kumar (Deceased) through his legal heirs and Others,

18. Learned Counsel for the respondents urged that the ratio of said decision is that in respect of passengers, insurance company must satisfy the award passed in favour of the claimants and thereafter recover the amount paid in excess of its limited liability from the assured.

19. It may be noted at the outset that said decision related to death of passengers who were on a pilgrimage to Ujjain in the bus which suffered a fatal accident and fell in Shipra river near the city of Ujjain.

20. The said decision has not noted the authoritative pronouncement of the Supreme Court in Noorjahan''s case (supra). Secondly, terms of the policy nor certificate of insurance was proved in the said case. Document Ex.RW-1/A on which insurance company was relying was a photocopy of the stated insurance policy. The learned Single Judge held that being neither original insurance policy nor a carbon copy nor an office copy thereof, the document had no evidenciary value. Independent thereof, learned Judge held that since the document did not contain all the terms and conditions of the insurance, issue can be considered in light of the Indian Motor Tariffs effective from 1.12.1973. In para 40 of the report, the learned Single Judge noted decision of the Supreme Court reported as Amrit Lal Sood and Another Vs. Smt. Kaushalya Devi Thapar and Others,

Following words from para 7 of the said report were noted:

On a careful reading and analysis of the decision in Amrit Lal Sood and Another Vs. Smt. Kaushalya Devi Thapar and Others, it is clear that the view taken by the Court is no different. In this decision also, the case of National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, is referred to. It is held:

(i) that the liability of the insurer depends upon the terms of the contract between the insured and the insurer contained in the policy;

(ii) there is no prohibition for an insured from entering into a contract of insurance covering a risk wider than the minimum requirement of the statute whereby risk to the gratuitous passenger could also be covered; and

(iii) in such cases where the policy is not merely statutory policy, the terms of the policy have to be considered to determine the liability of the insurer.

21. It was thereafter observed by the learned Single Judge that the decision of the Supreme Court in Amrit Lal Sood''s case (supra) made a vital distinction between a statutory liability and a contractual liability. The sum and substance of the distinction made by the Supreme Court is that under the statute the liability is limited to what is provided in the statute, but that does not prohibit the contracting parties from creating an unlimited or higher liability.

22. Concluding the discussion in Narender Singh''s case (supra) in para 58 and 59, learned Single Judge observed as under:

58. On the basis of all the decisions mentioned above, it is quite clear that the Act provides a limit to the liability of the insurance company vis-a-vis the insured. But, the insurance company and insured can through a contract, increase the liability by enhancing the amount of premium and even provide for a wider coverage in respect of third party risks. The Act does not prohibit such variations and, in fact, the India Motor Tariffs even provides for it.

59. In the present case, all the terms of the contract of insurance were not brought on record by the insurance company or the owner of the vehicle. Under these circumstances, it has become necessary to refer to the India Motor Tariffs to know the standard terms of contract. A perusal of the standard terms so derived shows that they are in substance similar to the terms of insurance contracts dealt with by the Apex Court in the decisions mentioned above. Consequently, the only available conclusion is that even though the monetary liability of the insurance company is limited as claimed by it, that limited liability is only vis-a-vis the insured. The liability vis-a-vis ''any person'' or a third party like the appellants is not limited. The insurance company has contracted with the insured to indemnify a third party to recover an amount under or by virtue of the provisions of the Act. This is, however, subject to the right of the insurance company to recover from the assured any amount paid in excess of its liability but for the Act. This is the sum and substance of the wider coverage provided by the insurance policy in the cases decided by the Supreme Court and the present

case.

23. It is apparent that the premium paid under Indian Motor Tariff was not established before the learned Single Judge and on said account benefit of the beneficial provisions of the M.V. Act 1939 was given to the claimants.

24. In the instant case, it is not in dispute that as per Indian Motor Tariff 13 if premium of Rs. 12/- per passenger was paid, liability of the insurance company would be Rs. 15,000/- per passenger. In the instant case, certificate of insurance establishes that for 27 passengers premium paid was Rs. 324/- i.e. Rs. 12 per passenger.

25. The appeal accordingly stands allowed. Impugned award is set aside. I hold that the liability of the insurance company to satisfy the award is limited to Rs. 15,000/-. Remaining amount has to be realized by the claimants from the owner of the bus.

26. Before concluding I may note that pursuant to orders dated 18.4.2001, appellant deposited the entire amount awarded, which included up to date interest. 50% thereof was permitted to be withdrawn by the claimants.

27. I therefore direct that the balance amount lying in deposit together with accrued interest thereon be returned by the Registry to the appellant by either endorsing the fixed deposit receipt in favour of the appellant or by encashing the fixed deposit receipt and preparing a cheque in the name of the appellant for said amount.

28. In respect of 50% awarded sum which has been received by the claimants I hold that save and except the amount payable under the limited liability of the appellant to the claimants, together with proportionate interest thereon, balance amount shall be recovered by the appellant from the owner of the vehicle in question and not from the claimants.

29. No costs.