(2003) 07 JH CK 0010

In the Jharkhand High Court

Case No : LPA No. 106 of 1995 (R)

New India Assurance Co. Ltd. APPELLANT

Vs

Smt. Chand Rani and Others RESPONDENT

Date of Decision : 14-07-2003

Acts Referred:
Motor Vehicles Act, 1939 — Section 95(2)

Citation : (2004) 3 ACC 748 : (2004) 3 JCR 258

Hon'ble Judges : P.K. Balasubramanyan, C.J;R.K. Merathia, J

Bench : Division Bench

Advocate : Alok Pal, for the Appellant; S.N. Lal and Rajeev Anand, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard both sides.

2. This appeal is by the Insurance Company (Respondent No. 2) before the Motor Accident Claims Tribunal in a claim for compensation. The Tribunal held that the parents of the deceased was entitled to a compensation of Rs. 1,50,000/-. After marking the policy of insurance as Ext. A, the Tribunal held that the Insurance Company was liable to pay the entire amount.

3. The Insurance Company appealed. It contended before the learned single Judge that its liability was limited to the statutory minimum u/s 95(2) of the Motor Vehicles Act, 1939. It was contended that it was a passenger bus, which had a capacity to carry fifty passengers and the premium to cover the risk was at the rate of Rs. 12/- per head and that indicated that it was merely a statutory policy and the liability was not unlimited. It was, therefore, submitted that the entire amount was not liable to be paid by the Insurance Company. This contention was met on behalf of the claimants by submitting that the liability regarding passengers and their personal injury was unlimited as per the policy and there was nothing to show that the liability was limited. The learned single

Judge on a consideration of the policy came to the conclusion that there was no reason to interfere with the finding of the Tribunal that the insurance company was liable to honour the Award in its entirety. But finding that the Award of penal interest was not justified, the learned Judge interfered with that part of the Award and reduced the liability of the Insurance Company. Feeling aggrieved, the Insurance Company has filed this appeal.

4. Learned counsel for the insurance company with reference to the policy submitted that in view of the fact that a premium of Rs. 12/- per head alone was paid, the liability was only statutory liability as limited by Section 95 of the Motor Vehicles Act, 1939 and going by the decision of the Supreme Court in New India Assurance Co. Ltd. Vs. C.M. Jaya and Others, the liability must be limited to the statutory liability. Counsel also referred to the various decisions of the Supreme Court and the recent decisions of this Court in Oriental Insurance Co. Ltd v. Lalmuni Devi and Anr. 1998 (2) PLJR 151. Jay Singh Vs. Lal Muni Devi and Another, and Oriental Insurance Co. Ltd. v. Dilip Kumar Saha and Anr. 2002 (2) JCR 364 (Jhr): 2002 (2) JLJR 269.

5. According to the counsel even if the expression "unlimited" has been used in the policy, dealing with claims arising u/s II-1(i) of the policy, in view of the premium charged the liability of the Insurance Company was limited to the statutory minimum as has been held by the decisions of this Court brought to our notice. As against this, learned counsel for the claimants referred to the decision of the Supreme Court in Oriental Insurance Co. Ltd. v. Cheruvakkara Naffessu and Ors. 2001-(1) JCR 186 (SC) and an unreported decision in Misc. Appeal No. 147 of 2002, Oriental Insurance Co. Ltd. v. Smt. Gauri Devi and Ors., counsel also pointed out that there was no plea in the written statement filed by the Insurance Company before the Tribunal that its liability was limited or that it was only for the statutory minimum.

6. We have anxiously considered the rival contentions. We must agree with the learned counsel for the insurance company that the position to some extent is not clear. Though there is a provision in the policy that the liability is unlimited in respect of the claim like the one, arising before us, the fact remains that only the minimum premium was paid limiting the liability to the statutory minimum. Even the application before the Tribunal indicates that the deceased was claimed to have been a passenger in the bus. In this situation, it may be possible to say that, in view of the premium paid, the liability may be limited. But then, as pointed out by the learned single Judge, the omissions and the provision for unlimited liability in a claim u/s II-1(1), there arises a considerable doubt on this aspect. But we find that the Insurance Company never raised a contention before the Tribunal that its liability was limited. In a situation, where we have hesitation in coming to one conclusion or the other or two interpretations of the policy are possible in the light of the decisions as cited before us, we think that the absence of a plea in that behalf by the insurance company before the Tribunal must tip the scale in favour of the claimants.

7. In view of this and in view of the fact that both the Motor Accident Claims Tribunal and the learned single Judge have interpreted the policy in favour of the claimants, we are satisfied that it is not necessary or proper to interfere with the decision of the learned single Judge. In that view, we decline to interfere.

8. Learned counsel for the Insurance Company tried to argue that the interest may be reduced to 9% per annum, from 12% per annum. Of course, in view of the decisions in respect of rates of interest, as noticed by the Supreme Court, award of interest at 9% per annum would be proper. But earlier, normal Interest at 12% was being awarded. Considering the fact that the victim was a young man of 26 years and the claimants are his old parents, we are not satisfied that we should interfere with the Award of interest in this case. We, therefore, reject that contention also.

9. The appeal is dismissed.