
(1998) 02 DEL CK 0067
In the Delhi High Court
Case No : F.A.O. No. 85 of 1990

New India Assurance Co. Ltd.

APPELLANT

Vs

Smt. Krishna Sharma and Others

RESPONDENT

Date of Decision : 19-02-1998

Acts Referred:

Evidence Act, 1872 — Section 74

Citation : AIR 1998 Delhi 386 : (1999) 95 CompCas 362 : (1998) 44 DRJ 748 : (1998) 119 PLR 11

Hon'ble Judges : Usha Mehra, J

Bench : Single Bench

Advocate : Sanjeev Sabharwal, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Usha Mehra, J.—The appellant, New India Assurance Company Ltd., has assailed the order of the Motor Accidents Claims Tribunal (in short "the Tribunal") primarily on the ground of its limited liability.

2. According to the appellant, the Tribunal erroneously awarded the amount in excess of the statutory liability. The Tribunal also ignored the certificate of insurance produced by the appellant which fully proved that the liability of the insurance company was limited.

3. In order to appreciate the challenge to the award by the appellant, the brief facts of the case are that on January 3, 1987, at about 10.45 a.m. Dr. Geeta Ram Sharma, aged about 58 years, was going on his moped. When he reached at T-Point at Wazirabad Road, Maujpur Road Crossing, Truck No. DBL-3744 driven rashly and negligently came from behind and hit his moped. As a result of this accident, Dr. Geeta Ram Sharma fell and the truck ran over him killing him on the spot. The deceased was a lecturer. He was drawing a salary of Rs. 2,750 per month plus earning from other sources. He left behind his widow and two minor daughters. His legal heirs filed claim petition under the Motor Vehicles Act (in

short "the Act") claiming compensation to the tune of Rs. 10,00,000 lakhs beside interest. The respondents, i.e., driver, owner and the insurance company, contested the case. The Tribunal, by the impugned award dated December 11, 1989, held the liability of the insurance company to be unlimited. He further held that there was contributory negligence on the part of the deceased. This he fixed at 10 per cent. and 90 per cent. on the part of the truck driver. The income of the deceased was assessed by the Tribunal at Rs. 8,000 per month. After making deductions on account of personal and other expenses, the economic loss to the family was worked out to Rs. 4,000 per month. Applying the multiplier of 12 years the Tribunal awarded a sum of Rs. 5,76,000 from which deduction of Rs. 57,060 on account of 10 per cent. negligence on the part of the deceased was allowed. Thus, the amount payable to the legal heirs of the deceased worked out to Rs. 5,18,940.

4. In this appeal we are only concerned with the question of limited liability of the appellant. To establish limited liability Mr. Sabharwal, counsel for the appellant, placed heavy reliance on the certificate of insurance produced through Shri S.K. Malhotra (R.W.-3), legal assistant of the appellant-company. The certificate of insurance was certified by an officer of the appellant to be true on the basis of register maintained by the appellant. Mr. Sabharwal contended that the certified copy of the certificate of insurance, exhibit R.W.-3/1, was admissible in evidence without any proof. It being a public document required no proof on its production. To support his argument he placed reliance on the Full Bench decision of the Punjab and Haryana High Court in *United India Insurance Company Ltd. Vs. Kamla Rani and Others*, . According to him, once the certificate of insurance was exhibited the court ought to have held that the liability of this appellant was limited as held by this court in *Oriental Fire and General Insurance Co. Ltd. Vs. Veena Pruthi and others*, .

5. Mr. Sabharwal's main thrust is on the certificate of insurance. According to him, the said certificate fully establishes and proves that the liability of the insurance company was limited to the extent of Rs. 1,50,000. The Tribunal could not have created liability for the appellant beyond this amount mentioned in the certificate. The Tribunal fell into grave error by ignoring this document. I am in respectful disagreement with the interpretation given by the Punjab and Haryana High Court to a "public document". According to *United India Insurance Company Ltd. Vs. Kamla Rani and Others*, since the certificate of insurance was issued by the governmental company in performance of its statutory duties hence such a certificate has to be classified as a public document. It was presumed by the Bench that issuance of an insurance policy is an act of an official body and of a public officer hence the policy of insurance issued under the provisions contained in the Act would cover such a document to be a public document u/s 74 of the Evidence Act. This is a very far-fetched interpretation which can be given to such a document in order to cover it u/s 74 of the Evidence Act.

6. There are various reasons not to subscribe to the interpretation given in

United India Insurance Company Ltd. Vs. Kamla Rani and Others, to such a document. The reasons are obvious, namely, Section 2, Sub-section (17)(h) of the Civil Procedure, Code stipulates that a person in order to be a public officer has to fall under the description given in this sub-section and the clauses enumerated therein. Clause (h) of Sub-section (17) reads as under:

"Every officer in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty."

7. Therefore, what this clause stipulates is that that public officer should be in the employment of the Government. What is "Government"? It has been defined under Sub-section (25) of Section 3 of the General Clauses Act, 1897, to mean "Government" or "the Government" shall include both the Central Government and any State Government. By no stretch of imagination employees of insurance company can be called Central Government employees or State Government employees. They are employees of the corporation, an autonomous body. Therefore, their officers cannot be called public officers. Moreover, they are not performing any public duty. They in fact perform contractual duty. An insurance policy is a document of contract entered into by the insured with the insurer. By virtue of this contract the insurer will issue only that insurance policy which is demanded by the insured. There is no public duty cast on the insurer to issue only one set of policy. The Insurance Act itself permits the insured to take out any set or kind of policy of his choice. It is on the basis of his proposal form that the insurer issues a policy and a contract comes into existence. At that time, the officer of the insurance company is performing not any public duty but an act of contract. That is why in order to escape its unlimited liability, the insurance companies rely on this document of contract. There are a good number of governmental companies for example nationalised banks, Steel Authority of India and many more which are governed and controlled by the Government but it does not mean their employees are Government employees.

8. A public document is such a document the contents of which are of public interest and the statements are made by authorised and competent agents of the public in the course of their official duty. Public are interested in such a document and entitled to see it, so that if there is anything wrong in it they would be entitled to object. In that sense it becomes a statement that would be open to the public to challenge or dispute and, Therefore, it has a certain amount of authority. To be admissible as a public document it should not only be available for public inspection but should also have been brought into existence for that purpose. Courts have also gone to the extent of saying that if a document is prepared by a Government official for a temporary purpose only then it is not a public document. Public document consists of the acts of public functionaries, in the Executive, Legislative and Judicial Departments of Government. The right to inspect the records of the proceedings of a company given by its articles of association is not conterminous with the right to take copies. A contractual right of inspection does not itself imply a right to take

copies any more than a statutory right would do. Therefore, there is a vast difference between a contractual right and a statutory right. But so far as the insurance policy is concerned, as observed above, it creates a contractual right. There is no statutory right implied in favor of the public to inspect the policy at any time. Nor the insurance policy which is a contract between the insured and the insurance company can by any stretch of imagination be called a public document to be admissible in evidence without any proof. To be a public document it should not only be available for public inspection but should also have been brought into existence for that purpose. The insurance cover taken out by the insured is not for public purpose, it is for his protection. Simply because the insurance companies were nationalised and are under the control of the Government by itself would not make their employees Government servants. They stand on the same footing as the employees of nationalised banks. The bank accounts duly certified by the competent authority under the Bankers' Books of Evidence Act are admissible in evidence if certified u/s 4 of that Act but when challenged the bank has to produce the original books of account to prove the same. Similarly, in other Governmental companies started by the Government, their employees do not become Government employees. The employees of the insurance company are not performing statutory obligations or public duties. An obligation is cast upon the owner of the vehicle not to take out his vehicle on the road without getting it insured. It is left to the owner to take out what type of insurance he wants. It can be comprehensive, Act policy or third party risk policy. He takes his decision and then enters into a contract with the insurance company. Thus, the insurance company by issuing insurance cover and policy, performed a contractual obligation. The insurer enters into a contract of insurance with the insured. It would not thus be just to describe officers of the insurance company as public officers and an insurance policy as a public document u/s 74 of the Evidence Act.

9. In the case in hand Mr. Malhotra (R.W.-3) appearing for the insurance company in no uncertain words admitted that he was not present when the insurance policy was taken out by the insured, nor he said any register was maintained in due course of business in which entries were made by him including the entry of this policy. He also did not say that the certified copy of the certificate of insurance was prepared by him from any such register maintained in due course of business. The claimant had challenged the correctness of the certificate and asked the witness, Mr. Malhotra, to produce the register to which he replied that the said register was destroyed after three years of the issuance of the policy. This admission clearly proves that Mr. Malhotra had not seen the entries of this policy in the alleged register. He was thus not the right person to have proved the issuance of the insurance policy or the maintenance of register in due course wherefrom the alleged certificate of insurance was prepared. The Supreme Court in Chandradhar Goswami and Others Vs. The Gauhati Bank Ltd., , while interpreting Section 4 of the Bankers Books Evidence Act, 1891, held that mere entries from the bank's books of account or mere copies thereof are not

sufficient. When the party challenges the books of account, the bank has to prove the same by producing the record. Similarly, in the case in hand when the register from where the alleged certified copy of the certificate of insurance was prepared had been challenged and it was neither produced nor it was the case of the witness Mr. Malhotra that he prepared the certificate from the register, to my mind, the Tribunal rightly did not rely on such a certificate.

10. The Tribunal was justified in coming to the conclusion that no reliance could be placed on the alleged certified copy of the certificate of insurance.

11. So far as reliance by Mr. Sabharwal, on the decision of this court in *Oriental Fire and General Insurance Co. Ltd. v. Veena Pruthi* [1991] 70 Com Cas 848 is concerned, that is also of no help to him. The facts of this case and those of *Veena Pruthi's* case [1991] 70 Com Cas 848 are quite distinguishable. In that case, the owner, i.e., insured, contested the plea of limited liability raised by the insurance company on the ground that the entire liability was that of the insurance company. When the insured was asked to produce the original policy he did not do so. Therefore, the insurance company was allowed to lead secondary evidence. It produced the office copy of the policy to establish that its liability was limited. It was in this background that the secondary evidence led by the insurance company was accepted by the court. But that is not the case in hand. The appellant never called upon the owner to produce the original policy. Having failed to do so it cannot take advantage of this certificate of insurance. Even otherwise this appellant had failed to prove this certificate in accordance with law, Therefore, also no reliance could be placed on the same. Mr. Malhotra (R.W.-3) admitted that the policy in question was issued by one Mr. B.K. Behl, who was still in the employment of the insurance company. The said Mr. Behl, was not produced in the witness box. Therefore, also adverse inference could be drawn against the appellant. For these reasons, I am of the considered view that the Tribunal was justified in not relying on the said certificate. In the absence of the policy the appellant failed to prove its limited liability. Therefore, the Tribunal correctly held that its liability was unlimited.

12. No ground is made out to interfere with the award of the Tribunal. No merit in the appeal. Dismissed.