

(2010) 06 DEL CK 0046
In the Delhi High Court
Case No : F.A.O. No. 70 of 1995

New India Assurance Co. Ltd.

APPELLANT

Vs

Suraiya Begum and Others

RESPONDENT

Date of Decision : 01-06-2010

Acts Referred:

Citation : (2012) ACJ 539 : (2011) 1 TAC 215

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Salil Paul, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—The New India Assurance Company Limited by way of present appeal has assailed an award dated 28th November, 1994 wherein learned Motor Accident Claims Tribunal awarded compensation of Rs. 2,30,000/- in favour of the claimants and directed the Insurance Company to pay the entire award holding that the Insurance Company had failed to prove that its liability was limited.

2. It is not disputed by the Appellant Company that it has not brought on record of the Tribunal the insurance policy. It is submitted that the Insurance Company could not produce the carbon copy/original insurance policy in question as the same got misplaced and was not traceable. However, the same got traced after passing of award and was being filed alongwith the appeal and a prayer was made that this carbon copy should be considered by the Court under Order XXXI, (sic XLI) Rule 27 of Code of Civil Procedure.

3. The only issue involved in this Appeal is whether the liability of the Insurance Company was limited or unlimited. As per the carbon copy placed on record of the appeal, the Insurance Company has charged premium of Rs. 240/- towards Liability to "Public Risk" apart from premium for own damages, I.E.V. and Premium for driver and cleaner and Riot & Strike. Thus, it has to be seen

whether by charging premium of Rs. 240/-, the Insurance Company indemnifies the insurer only to the extent of 1,50,000/- as is pleaded by the Insurance Company or its liability was unlimited.

4. This Court had treated this issue in *Neeta Trehan and Ors. v. Gopal Krishan and Ors.* III (2010) A.C.C. 624: FAO No. 257/1991 decided on 17th May, 2010 wherein it was observed as under:

14. The issue arises whether this insurance cover obtained by the insured was limited to a liability of Rs. 1,50,000/- being the minimum liability for which a vehicle was required to be insured by the owner or this premium covered wider liability. Counsel for the Appellants has drawn my attention to the judgment in *Veena Pruthi's* case (supra) given by the Division Bench of this Court where the Division Bench of this Court held that if the premium was Rs. 125/-, the liability would be limited to Rs. 1,50,000/- and not unlimited. On the same logic it is stated that if the premium was Rs. 240/ for Class A(2) vehicle, the liability of Insurance Company would be limited to Rs. 1,50,000/-.

15. Where obtaining of an insurance cover is made mandatory by statute, the contract is to be interpreted in the light of statutory provisions. In case of motor vehicles, obtaining of an insurance cover by the owners of vehicles is a statutory requirement. Thus, an insurance policy has to be interpreted keeping in view the statutory provisions and the rules of tariff as framed by the Advisory Board. Under the tariff rules, two separate tariffs are provided for "Act Only Liability" and for "Public Risk". It cannot be said that the Advisory Board provided tariff for "Act Only Liability" as a superfluous phenomenon. The Advisory Board was having in mind that where the owner wants to take an insurance policy covering the minimum liability u/s 95 of the Act, then the premium should be different. If the owner wants wider liability then the premium should be different and that is the reason that for "Act Only Liability", a premium of Rs. 200/- was provided and for "Public Risk", a premium of Rs. 240/- was provided. Public risk is a wider term and takes into account the entire risk faced by the owner for bringing vehicle on road. If there had been no compulsion under the Act to obtain an insurance policy, the only insurance cover which owner could have obtained from an Insurance Company for covering public risk would have been this that he would pay Rs. 240/- and get the public risk covered. If the Act would have not prescribed any limit, the public risk would naturally have been unlimited. The Act prescribed that every owner of vehicle should get insurance cover covering a minimum amount. Beyond that, the Act did not provide anything. It is under these circumstances that the Tariff Advisory Committee prescribed separate premium for "Act Only Policy" and separate premium for a "Public Risk Policy". I, therefore, consider that the "Public Risk" premium would cover unlimited amount of risk and would not cover a limited amount of risk.

18. There is another aspect to be kept in mind When an owner approaches insurance agent for insurance, he is told what would be the tariff payable by him and on payment of tariff, an insurance certificate or cover note is issued. The

5. In view of the fact that Insurance Company had charged Rs. 240/- as premium whereas premium for "Act Only Liability", as per tariff rules was Rs. 200/-, I consider that the Insurance Company had unlimited liability. The premium scheduled as given and tariff rates are as under:

(PUBLIC CARRIER)

PREMIUM FOR		Licensed	Carrying
"Own Damage" Liability to the "Act Only" Capacity of the Cover Public Risks Vehicle			
(a) Not exceeding 1016 Kgs. (1 Tons)	Rs. 340 Plus 1.05 on I.E.V. Rs. 120 Rs. 100		
(b) Not exceeding 3040 Kgs. (5 Tons)	Rs. 550 Plus 1.10% on I.E.V. Rs. 240 Rs. 200		
(c) Not exceeding 5080 Kgs. (5 Ton)	Rs. 850 Plus 1.10% LEV. Rs. 240 Rs. 200		
(d) Exceeding 850 Kgs. (5 Tons)	Rs. 850 Plus Rs. 200 for each additional 1016 Kgs. (1 Ton) or part thereof Plus 1.10 on I.E.V. Rs. 240 Rs. 200		

6. I find no force in the plea of the Insurance Company that its liability was limited only to Rs. 1,50,000/- and not to the entire award amount as awarded by the Tribunal. The appeal is hereby dismissed. No order as to costs.