(1987) 07 AHC CK 0025

In the Allahabad High Court

Case No : First Appeal From Order No. 645 of 1978

New India Assurance Company Ltd. APPELLANT

Vs

Bhupati Narain Singh and Another RESPONDENT

Date of Decision : 17-07-1987

Acts Referred:

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

Citation : (1987) 2 ACC 535 : (1988) ACJ 593 : (1989) 66 CompCas 892

Hon'ble Judges : N.N. Mithal, J

Bench : Single Bench

Advocate : A.K. Saxena, for the Appellant;

Final Decision : Dismissed

Judgement

N.N. Mithal, J.—This is an appeal against the award of the Motor Accidents Claims Tribunal, Varanasi, u/s 110 of the Motor Vehicles Act at the instance of New India Assurance Co. with whom the truck involved in the accident was insured.

2. In brief, the facts are that on June 2, 1973, at about 2 p.m. mini bus No. USM 3377 met with an accident with truck No. UTV 2995. The mini bus was severely damaged in the said accident and the owner preferred a claim u/s 110 of the said Act claiming a sum of Rs. 48,000 by way of compensation for the damage caused to the property.

3. The claim petition was contested and the Tribunal awarded a sum of Rs. 38,000 against the appellant on the basis of the offer made by the assurance company itself to pay a sum of Rs. 38,000 to the claimant.

4. Aggrieved by the award, the insurance company has come up in appeal. The only point urged by Sri A. K. Saxena, appearing for the company, was that the liability of the insurance company would not extend beyond Rs. 2,000 in the case of damage caused to the property of a third party in view of the provisions of Section 95(2) of the Motor Vehicles Act.

5. Having heard learned counsel for the appellant, I find it difficult to accept his contention in this case. The policy of insurance is on the record and was filed by the appellant itself. Under the column meant for describing the limits of liability, the following has been mentioned :

Limit of the amount of the company''s liability u/s II-l (i) in respect of one accident

Rs.

50,000

Limit of the amount of the company liability u/s II-l(ii) in respect of any one claim or series of claims arising out of one event

50,000

6. u/s II of the policy dealing with the limited liability in respect of a third party, the limited liability has been prescribed as under :

"1. Subject to the limits of liability, the company will indemnify the insured against all sums including claimant''s costs and expenses which the insured shall become legally liable to pay in respect of :

(i) death of, or bodily injury to, any person caused by or arising out of the use (including the loading and/or unloading) of the motor vehicle.

(ii) damage to property caused by the use (including the loading and/or unloading) of the motor vehicle."

7. Since the insurance company has contracted with the owner of the truck to indemnify her to the extent of Rs. 50,000 in case of its liability u/s 2(I)(ii) dealing with damage to property caused by the use of the motor vehicle, the insurance company, will ordinarily be liable for damages to the extent of that liability. The argument of Sri Saxena, however, was that u/s 95, the liability is limited to the extent of Rs. 2,000 (now amended as Rs. 6,000 by Act No. 47 of 1982).

8. The contention of Sri Saxena, however, omits to take into consideration the opening words of Section 95, the relevant portion of which is as under :

"Section 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) is issued by a person who is an authorised insurer (or by a co-operative society allowed u/s 108 to transact the business of an insurer), and

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

9. Section 95 finds a place in Chapter VIII of the Act dealing with the insurance

of motor vehicles against third party risks. Section 94 makes it mandatory for every person using a motor vehicle in a public place to have it insured in accordance with the requirements of this Chapter. In the light of these provisions, if we read Section 95, it will follow that every policy of insurance in respect of a motor vehicle must necessarily cover the liability of the insured to the extent provided in the section. Section 95(1) and (2), if read together, cannot be understood to mean that the liability in respect of damage to property in no case can exceed Rs. 2,000 where the property of a third party is involved. It is the free will of the owner of the vehicle and the insurance company to enter into an agreement in insurance covering a higher liability than the minimum prescribed by Section 95(2). The limit which is provided under Sub-clause (2) is the minimum and there is no bar of entering into an agreement to cover enhanced liability by mutual agreement. It is always open to the insurance company to settle the terms of the insurance contract covering the liability much more extensively than is contemplated or laid down by Section 95 of the Motor Vehicles Act. The extent of liability must, therefore, be determined with reference to the terms of insurance agreement in each case. Section 95, however, will frown upon any provision in the insurance agreement which brings the extent of liability below the limit prescribed by Section 95(2) and to that extent the agreement shall be deemed to be void and the liability will extend up to the limit of liability as is provided in Section 95.

10. As shown earlier, the policy of insurance clearly lays down that the liability of the assurance company in case of damage to the property of a third party has been agreed to be up to Rs. 50,000. The submission of Sri Saxena that the award of the Claims Tribunal is against law cannot, therefore, be sustained.

11. I, therefore, find no merit in this appeal which is accordingly dismissed. In the circumstances, there will be no order as to costs.