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(2010) 02 CHH CK 0020

In the Chhattisgarh High Court

Case No : M.A. No. 287 of 1991

New India Insurance Co. Ltd. APPELLANT

Vs

Shailesh Agarwal and Another RESPONDENT

Date of Decision : 01-02-2010

Acts Referred:

Motor Vehicles Act, 1939 — Section 11(1), 110A, 95(2)

Citation : (2010) 4 MPJR 64

Hon'ble Judges : Nawal Kishore Agarwal, J

Bench : Division Bench

Judgement

N.K. Agarwal, J.

The instant appeal is directed by the appellant/New India insurance Company Limited against the award dated 5-3-91 passed by IInd Additional motor Accident Claims Tribunal, Durg in Claim Case No.56/88 whereby and whereunder an amount of Rs.43,0007- has been awarded along with interest at the rate of 12% per annum from the date of application till its recovery against the appellant as well as respondent No.2.

Fact of the case, in brief, are as under:-

Indisputably, on 20-2-87, claimant/respondent No.1 was sitting in the car bearing registration No. MKS 88 which was being driven by its owner, as a passenger and was going from Raipur to Malajkhand. Near Dhamdha at about 8-9 am the said car met with an accident, as a result of which the claimant sustained injuries.

The claimant filed an application u/s 110-A of the Motor Vehicles Act, 1939 (briefly, ''Act'') against the owner driver and the appellant/ Insurance Company claming Rs. 3,80,100/- as compensation for the injuries sustained by him in the said accident.

The insurance company by filing its written statement took a specific plea that its liability is limited to Rs. 15,000/- in view of Section 95(2) of the Act.

Learned Tribunal on a close scrutiny of the evidence led, material placed and submissions made held the respondent No.2 responsible for the said accident and awarded Rs.43,000/- along with interests at the rate of 12% per annum holding appellant and respondents no.2 jointly and severely liable for its payment.

Shri Shree Kumar Agrawal, learned Sr. Advocate, appearing for the appellant would submits that the liability of the appellant/ insurance company is confined to 15,000/- only in view of Section 95 (2)(b) of the Act.

Per contra, Sushri Maya Verma, learned counsel appearing for respondent No.2 would submit that as per the policy Ex. P-54, the appellant insurance company has charged extra premium and covered the risk upto the limit of Rs.50,000/- and, therefore, the insurance company is liable to satisfy the award and learned Tribunal has not committed any error in fastening the entire liability upon the insurance company.

I have heard learned counsel for the parties, perused the record of the Tribunal and the policy Ex. P-54.

Question for consideration in the instant case is that whether the appellant insurance company has covered risk of passenger traveling in a public service vehicle upto the limit of Rs. 50,000/- which is over and above the statutory limit of Rs. 15,000/- per passenger by charging extra premium in this behalf.

Indisputably u/s 95(2) (b) of the Act, the statutory liability of the insurance company is confined to Rs. 15,000/- for each individual passenger. It is not in dispute that the insurance company can undertake risk more than what has been prescribed under the statute but for this purpose, a specific agreement has to be arrived at between the owner and the insurance company and separate premium has to be paid on the amount of liability undertaken by the insurance company in this behalf. Likewise, if the risk of any other nature for instance, with regard to the driver or passengers etc. in excess of statutory liability, if any, is sought to be covered, it has to be clearly specified in the policy and separate premium paid therefor. This is the requirement of the tariff regulations framed for the purpose. Coming to the copy of policy Ex. P-54 in the instant case, it would be seen that section II thereof deals with liability to third parties. Sub-section (1) minus the proviso thereto reads hereunder:-

(1) Subject to the Limits of Liability the Company will indemnify the insured against all sums including claimant''s cost and expenses which the insured shall become legally liable to pay in respect of (i) death 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. The Schedule to the policy indicates the limits of liability and the amount of premium paid. The limits of liability are indicated as hereinbelow:

Limit of Liability : Limit of the amount of the Company''s liability u/s 11-1(1) in respect of Any one accident Limit of the amount of the Company''s liability u/s 11-1(11) in respect of Any one claim or series of Claims arising out of one event

Such amount as is necessary to meet the requirements of the Motor Vehicles Act 1939 Rs. 50,000

The premium paid on the other hand is shown as below;

Basik premium

Rs.275.00

+ 1% IEV

00

00

+T.P.

Rs.120.00

+Pass 5 23/- each

Rs.115.00

+1 Driver

00

00

A Perusal of the policy indicates that the amount of liability, undertaken with regard to the death or bodily injury to any person caused by or arising out to the use (including the loading and or unloading) of the motor vehicle falling u/s 11(1) (i) has been confined to "such amount as is necessary to meet the requirements of the Act. This liability as is apparent from Section 95 (2) (b) (i) was at the relevant time Rs.50,000/- only and liability u/s 95(2)(b)(ii) was Rs. 15,000/- for each individual, passenger. The details of premium also indicate that for each individual passenger, Rs.23/- per passenger has been taken as premium and a bare perusal of the policy Ex. P-54 (A) (copy of policy marked separately) would indicate that nothing has been charged u/s 11(1) (i) and Section 11(1) (ii) as additional premium to undertake any liability more than the statutory liability, Therefore, it is not correct to say that limit of Rs. 50,000/ - as mentioned in the Schedule of policy under the head of limits of liability pertains to passenger. The amount of Rs. 50,000/- mentioned therein appears to be for the purpose of Section 95(2) (b)(i) of the Act, that is in respect of persons other than passenger carried for hire or reward, which is the statutory liability of the company under the Act.

Now the question remains for consideration is that by charging Rs.23/- for each passenger, whether the insurance company has covered the risk upto limit as prescribed in the statute or has undertaken additional risk therefore ?

The Supreme Court in the case of New India Assurance Co. Ltd. Vs. Smt. Shanti Bai and others, has dealt with this aspect of the matter. There New India assurance Co. Ltd. pointed out with reference to its tariff in respect of "legal liability for accidents to passengers that if the limit of liability for any one passenger is fifteen thousand rupees,'' the rate of premium per passenger is Rs.12 If the limit is twenty thousand rupees, the rate of premium per passenger is Rs. 23 per annum and so on. In respect of unlimited liability, the premium payable per passenger is Rs.50.

By taking into consideration the aforesaid premium schedule as per tariff regulation and by applying the same in the facts and circumstances of the present case, it would be crystal clear that here in the present case, the company has charged Rs. 23/- for each individual passenger and thus undertaken the risk per passenger upto the limit of Rs.20,0007- for each passenger.

In view of the above, in the considered opinion of this Court, in the instant case, the appellant company has undertaken the risk of passenger upto limit of Rs.20,000/- and to that extent, the insurance company is liable to indemnify the respondent owner and not for the entire amount of compensation.

In the result, the appeal is allowed in part and it is declared that the liability of the appellant/insurance company is limited to Rs.20,000/- and for remaining part of the award, the owner is liable for its payment to the claimants.

No order as to costs.

