(1994) 11 AHC CK 0082

In the Allahabad High Court

Case No : First Appeal From Order No. 28 of 1982

New India Insurance Co.Ltd. APPELLANT

Vs

Jagrani & Ors. RESPONDENT

Date of Decision : 15-11-1994

Acts Referred:

Motor Vehicles Act, 1939 — Section 110D, 95(2)(b)(ii)

Citation : (1994) 11 AHC CK 0082

Hon'ble Judges : S.R.Singh, J

Final Decision : Dismissed

Judgement

S.R.Singh, J.—This appeal under Section 110D of Motor Vehicles Act, 1939 has been preferred against the award given by Motor Accident Tribunal, Bijnor in M. V. Petition No. 76 of 1978 connected with M. V. Petition No. 87 of 1978. The accident giving rise to claim petition occurred on 2261978. Deceased Har Prasad was travelling in Mini Bus No. USI 5372 owned by one Jagdish Saran. The deceased was going from Bareilly to Bijnor. The vehicle met with an accident resulting in injuries on the person of Har Prasad who died in hospital on 2961978. The Claims Tribunal, on consideration of evidence on record, allowed a sum of Rs. 38,000 by way of compensation to the claimants, viz. the widow, daughter and two sons of the deceased, pendente lite and future interest at the rate of 6% per annum was also awarded from the date of the petition. The appellant Insurance Company and the owner of the vehicle were held jointly and severely liable to pay the amount of compensation to the claimants. The only point urged on behalf of the appellant Insurance Company was that the amount of compensation awarded by the Claims Tribunal exceeds the statutory limit prescribed by Section 95(2)(b)(ii) of the Motor Vehicles Act. It is, evident, from a perusal of Section 95, that a policy of insurance insures a person or class of persons specified in the policy to the extent specified in subsection (2) against any liability which may be incurred by him in respect of death of or bodily injury to any passenger or damage to any property of a third party caused by or arising out of the use of vehicle in a public place or against the death of or bodily unjury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place except where the matter is covered by proviso to subsection (2)(b)(ii) of Section 95 a policy of insurance is to cover any liability in respect of any one accident in respect of passengers, up to Rs. 5,000 as the law then stood. Learned counsel for the respondent, however urged that there is nothing in the Act prohibiting insurer to own a liability a greater than the statutory liability. He has placed reliance upon a decision of the Supreme Court in National Insurance Co. Ltd. v. Jugal Kishore, AIR 1978 SC 719.

2. Having given my anxious consideration to the submissions made at the Bar and having perused the policy, I am of the view that the policy of insurance in the instant case being in the nature of a ''comprehensive insurance'' and an extra premium of Rs. 114 was charged towards legal liability to the extent of 19 passengers, the liability of the appellant would go beyond the statutory liability. It may be observed that the point as to the extent of its liability was not specifically raised by the appellant company before the Tribunal. On 25101994 the matter was adjourned with a view to enabling the counsel for the parties to find out the statutory provisions, if any, specifying the amount of premium to be charged for passengers in respect of vehicles registered as contract carriage. Tariff Schedule has not been produced before me, but having regard to the law laid down by the Supreme Court in the abovementioned case AIR 1988 SC 719 and having regard to the nature of insurance and extra premium of Rs. 114 charged for 19 passengers, I am of the view that the liability of the Insurance Co. was unlimited and it cannot be permitted to urge that the extent of liability cannot exceed the limit prescribed by subsection (2)(b)(ii) of Section 95 of the Act.

3. In the result the appeal fails and is dismissed with costs on parties. The interim order dated 1211982 stands discharged.