

(2004) 03 JH CK 0071

In the Jharkhand High Court

Case No : A.F.O.O. No. 153 of 1998 (R)

Oriental Fire and General Insurance Co. Ltd.

APPELLANT

Vs

Smt. Uma Mehra and Others

RESPONDENT

Date of Decision : 18-03-2004

Acts Referred:

Citation : (2005) ACJ 1270 : (2004) 2 ACC 675 : (2004) 2 JCR 220

Hon'ble Judges : M.Y. Eqbal, J; Amareshwar Sahay, J

Bench : Division Bench

Advocate : A. Allam, for the Appellant; K.M. Verma, S.K. Mishra, S. Anwar, M.J. Jaffer and Rajesh Kr., for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—This appeal filed by the appellant-Insurance Company is directed against the judgment and award passed by 2nd Additional Motor Vehicle Accident Claim Tribunal, Hazaribagh in Claim Case No. 79 of 1987 whereby he was awarded a sum of Rs. 3,02,816/- as compensation amount to the claimant/respondents for the death caused by motor vehicle accident.

2. The facts of the case lie in a narrow compass.

3. The husband of the claimant was travelling in a jeep belonging to Allahabad Bank. On 25.3.1987 while the deceased was going for inspection of the Branch Office at Giridih one Matador bearing registration No. BPM No. 7167 came from the opposite side in high speed and dashed the jeep causing instantaneous death of the deceased. The Matador was insured with the appellant Insurance Company. The deceased was getting Rs. 9,036/- per month as monthly salary and on further promotion in near future he would have got Rs. 1,048/- additional salary. The deceased was aged 45 years. The appellant-Insurance Company contested the claim on the ground that the accident took place due to negligence of the driver of the jeep in which deceased was travelling. Further case of the appellant was that the said vehicle was insured under comprehensive policy and

the liability was limited to Rs. 50,000/- only. The Claims Tribunal assessed the compensation to the tune of Rs. 3,02,816/-. The Tribunal further held that since the vehicle was insured under comprehensive policy and the copy of the policy was not proved, therefore, entire amount shall be payable by the appellant-Insurance Company.

4. Mr. A. Allam learned counsel appearing for the appellant assailed the impugned award on the ground that the policy paper of the Matador vehicle was filed but the Tribunal ignored and over-looked the policy. Learned counsel submitted that from the policy it will appear that the maximum liability of the Insurance Company was limited to Rs. 50,000/- and therefore, the entire award against the appellant is bad in law.

5. Although from the perusal of the lower Court record, it appears that copy of the insurance policy was filed by the appellant-Insurance Company but no witness was examined on their behalf to prove the insurance policy. In my opinion, therefore, the tribunal rightly did not consider the said insurance policy.

6. Mr. A. Allam, learned counsel put reliance on the decision of the Supreme Court in the case of National Insurance Co. Ltd. Vs. Nathilal and Others, In that case it was held that the conclusion of unlimited liability cannot be drawn merely because the column against unlimited liability in the policy was left blank. There must be clear specification to that effect in the policy and payment of separate premium in respect thereof is necessary. In the case before the Supreme Court the insurance policy was proved through the witnesses examined on behalf of the Insurance Company and evidence was led to the effect that the liability of the Insurance Company was limited. In the instant case it transpires from the record of the lower Court that the tribunal gave opportunity to the Insurance Company to adduce evidence but no witness was examined to prove the insurance policy. In my opinion, therefore, that decision will be of no help to the appellant.

7. It is well-settled that in all cases where Insurance Company wishes to take his defence with regard to its liability, it should file a copy of insurance policy and bring the policy on record by proving it in accordance with law. In this regard reference may be made to the decision of the Supreme Court in the case of National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, .

8. Be that as it may, even assuming that liability of the appellant was limited to Rs. 50,000/- it has a remedy to recover the amount from the owner of the vehicle or from any person liable to pay the amount. But on that ground claimant cannot be deprived of from the entire amount of compensation.

9. For the reasons aforesaid, we do not find any merit in this appeal, which is, accordingly, dismissed.

Amareshwar Sahay, J.

10. I agree.