
(1984) 05 SHI CK 0007
In the High Court Of Himachal Pradesh
Case No : F.A.O. No. 235 of 1983

Oriental Fire and General Insurance Co., Shimla	APPELLANT
Vs	
Mrs. Chitra Gupta and Others	RESPONDENT

Date of Decision : 17-05-1984

Acts Referred:

Motor Vehicles Act, 1939 — Section 95

Citation : AIR 1985 HP 28 : (1984) 13 ILR HP 276

Hon'ble Judges : H.S. Thakur, J

Bench : Single Bench

Advocate : Deepak Gupta, for the Appellant; Devinder Gupta and M.L. Chauhan, Law Officer, for the Respondent

Final Decision : Allowed

Judgement

H.S. Thakur, J.—This is an appeal filed by the appellant-Insurance Company praying that the liability of the appellant be limited to Rs. 15,000/- only. In order to determine this point, a few facts relevant to the case may be stated. On December 17, 1976, Rajesh Gupta the husband of respondent 1 was travelling in the ill-fated jeep owned by respondents 3 and 4. The deceased was returning from Subathu after attending to some official work there. The deceased was at that time working as Assistant Commissioner at Solan and the ill-fated jeep was requisitioned by the Deputy Commissioner, Solan for the official use of the deceased. The jeep was driven by the driver of respondent 3. The said jeep met with an accident allegedly due to rash and negligent driving. Shri Rajesh Gupta died in the said accident. The claim petition was filed by respondent I against respondents 2 to 4, and the appellant. The Claim Tribunal has awarded an amount of Rs. 2,00,000/- to respondent 1, besides interest at the rate of 6% per annum from the date of filing of the petition till the recovery. According to the learned counsel for the parties, the Tribunal has not made any apportionment of the liability to be shouldered by the appellant and respondents 2 to 4.

2. The only point which has been stressed on behalf of the appellant in this

appeal is that the liability of the appellant is limited to a sum of Rs. 15,000/- only. Mr. Deepak Gupta, learned counsel for the appellant, has drawn my attention to the Insurance Policy (RW. 2/A). It is contended by him that in terms of the said policy, the liability of the appellant is limited only to Rs. 15,000/-. Mr. Deepak Gupta has also referred to a decision in Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, This is a judgment delivered by the Supreme Court on March 25, 1977. It is pointed out by the learned counsel for the appellant that the facts of the present case are the same as that of the case mentioned above. The terms and conditions of the Insurance Policy in the aforesaid case according to him are also identical to the present case. The relevant clause of the policy has been reproduced in para 23 of the aforesaid judgment. The same is reproduced hereinunder for a ready reference :

"In consideration of the payment of an additional premium it is hereby understood and agreed that the Company undertakes to pay compensation on the scale provided below for bodily injury as hereinafter defined sustained by any passenger....."

Their Lordships of the Supreme Court while interpreting this clause has observed as under:

"24. The scale of compensation is fixed at Rs. 15,000/-. The insurance company is ready and willing to pay compensation to the extent of Rs. 15,000/- according to this endorsement but the learned counsel for the insured submitted that the liability of the insurance company is unlimited with regard to risk to the passengers. The counsel relied on section II of the policy which relates to liability to third parties. The clause relied on is extracted in full:

"Section II -- Liability to Third Parties.

1. The Company will indemnify the insured in the event of accident caused by or arising out of the use of the Motor Car against all sums including claimant's costs and expenses which the insured shall become legally liable to pay in respect of-

(a) death of or bodily injury to any person but except so far as is necessary to meet the requirements of Section 95, Motor Vehicles Act, 1939, the Company shall not be liable where such death or Injury arises out of and in the course of the employment of such persons by the insured."

"25. It was submitted that the wording of Clause I is wide enough to cover all risks including injuries to passengers. The clause provides that the Company will indemnify the insured against all sums including claimant's costs and expenses which the insured shall become legally liable. This according to the learned counsel would include legal liability to pay for risk to passengers. The legal liability is restricted to Clause I(a) which stated that the indemnity is in relation to the legal liability to pay in respect of death of or bodily injury to any person

but except so far as is necessary to meet the requirements of Section 95, Motor Vehicles Act, the Company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured. Clause I and I(a) is not very clearly worded but the words "except so far as is necessary to meet the requirements of Section 95, Motor Vehicles Act, 1939," would indicate that the liability is restricted to the liability arising out of the statutory requirements u/s 95, The second part of Clause I(a) refers to the non-liability for injuries arising in the course of employment of such person. The meaning of this sub-clause becomes clear when we look to the other clauses of the insurance policy. The policy also provides for insurance of risks which are not covered u/s 95 of the Act by stipulating payment of extra premium. These clauses would themselves indicate that what was intended to be covered under Clauses 1 and I(a) is the risk required to be covered u/s 95 Motor Vehicles Act.

26. On a construction of the insurance policy we accept the plea of the insurance company that the policy had insured the owner only to the extent of Rs. 15,000/- regarding the injury to the passengers....."

3. Keeping in view the aforesaid observations of the Supreme Court, it can be safely concluded that the appellant is only liable to pay a sum of Rs. 15,000/- to respondent 1, besides interest accruing thereon and the costs. Such a conclusion on the basis of the above decision of the Supreme Court is not disputed by the learned counsel for the respondents as well.

4. Accordingly, the appeal is allowed to the aforesaid extent, with no order as to costs.

5. It is stated by Mr. Devinder Gupta, learned counsel for respondent 1, that he does not want to press the cross-objections filed on behalf of respondent. 1 and that the same be dismissed.

6. The result of the above discussion is that the appeal as observed earlier above, is partly allowed with no order as to costs and the cross-objections are dismissed as not pressed.