

(1991) 02 DEL CK 0003

In the Delhi High Court

Case No : First Appeal No. 73 of 1989 and Civil Miscellaneous Appeal No. 822 of 1989

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Bhoop Singh and Others

RESPONDENT

Date of Decision : 15-02-1991

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(2)

Motor Vehicles Act, 1988 — Section 147

Citation : (1991) 1 ACC 493 : (1991) 43 DLT 502

Hon'ble Judges : R.L. Gupta, J

Bench : Single Bench

Advocate : P.K. Seth and C.P. Narang, for the Appellant;

Judgement

R.L. Gupta, J.

(1) This appeal has been filed by the Insurance Company against the judgment dated 18th November, 1988 of the learned Motor Accident Claims Tribunal by which he awarded Rs. 1,60,000.00 to respondent No. 4. He also awarded interest at the rate of 12% per annum on the amount of Rs. 90,000.00 awarded as special damages in this case to the respondent from the date of the petition.

(2) The brief facts from which this claim petition arose are that on 18th March, 1982 at about 10.15 Am respondent Vinod Kumar Mittal was driving his motor cycle Dex 561) on Ring Road. When he arrived near Hot Mix Plant, a truck bearing No. Dhl 7165 coming in the wrong direction from opposite side dashed against the motor cycle as a result of which respondent fell on his left side and suffered injuries. The respondent had stated that he had become crippled and sustained permanent disability due to which he could not walk normally and also could not lift weight with his hands and that he had to walk with the help of crutches. He also alleged that his leg had been shortened by about 1". His statement was also supported by medical evidence.

(3) The main ground pleaded in this appeal by the Insurance Company is that the liability of the company under the insurance policy was limited to Rs. 50,000.00 only and, Therefore, the finding of the learned Tribunal on specific Issue No. 3 in this respect that the liability was unlimited was wrong.

(4) Notice to show cause was issued to the respondents. Appearance was put in on behalf of respondents 2 and 4 only.

(5) I have heard arguments advanced by learned counsel for the parties and have carefully perused the record. Learned counsel drew my attention to the finding on Issue No. 3 which is regarding the limit of the liability of the insurance company. It will be profitable to notice the evidence examined in this respect on behalf of the insurance company. Rw 1, U.B. Kapoor, an Assistant of the insurance company deposed that he had brought an office copy of the policy which bears the signatures of Sh.K.K.Anand, ADM. A copy of the same is Exhibit R-1. At the time of its exhibiting, objection was raised on behalf of the respondent/claimant. The learned Tribunal discussed in detail about this policy and gave very plausible reasons as to why this copy could not be relied upon. There is no doubt that a document relied upon by a party has to be produced in Court. Since the vehicle was insured by the owner of the offending truck, it was quite natural to presume that the original policy would be in possession of the owner. In such an event the insurance company should have given a notice to the owner to produce the original insurance policy. At no stage notice was shown to have been issued by the appellant/insurance company to the owner of the truck. Now Ex. R-1 does not purport to be an exact carbon copy of the original because it contains some writings in hand. If actually this carbon copy had been prepared at the same time as the original then obviously the handwritten facts could not have been incorporated in the so-called carbon copy. Moreover, I fail to understand why this carbon copy of the policy is alleged to be signed by Mr. K.K. Anand, ADM. From my own personal knowledge, I know that there was no Adm by this name in Delhi. Secondly, even if there was one, an Adm could never have worked as the branch manager of an insurance company. It is, Therefore, not possible to understand how the carbon copy purports to be signed by an officer who has nothing to do with the insurance company. Therefore, it is impossible to understand how the so-called copy can be taken to be the replica of the original. RW-1 admits that this policy was neither issued by him nor prepared in his presence. My conclusion, Therefore, is that this copy cannot be taken to be a copy of the original by any stretch of imagination and is a spurious document. Therefore, if the so-called copy of the insurance company is ruled out of consideration, there is nothing more on record to indicate that the liability of the appellant company is limited.

(6) Therefore, I am of the view that the finding of the Tribunal on this aspect of the case cannot be interfered with. The appeal is, Therefore, dismissed.

(7) The appellant shall now deposit the remaining part of the awarded amount Along with interest within four weeks before the Tribunal.