
(2006) 02 PAT CK 0033
In the Patna High Court
Case No : LPA No. 785 of 1996

Oriental Insurance Company Ltd.

APPELLANT

Vs

Smt. Saroj Gupta and Another

RESPONDENT

Date of Decision : 21-02-2006

Acts Referred:

Citation : (2006) 02 PAT CK 0033

Final Decision : Allowed

Judgement

Navin Sinha, J.—The present appeal arises from the judgment in Misc. Appeal No. 242 of 1993 affirming the order dated 15.3.1993 in Claim Case No. 67 of 1988 passed by the Additional Motor Accidents Claims Tribunal, Muzaffarpur. The appellant alone has been held liable by both the courts to pay the entire quantum of compensation to respondent No. 1 on the premise that the nature of the insurance policy taken by respondent No. 2 upon the appellant was "comprehensive" in nature. The liability to third parties was unlimited over and above the insurance coverage to the vehicle and to the owner of the vehicle.

2. On 16.7.1988 an accident took place in Village Madhaul, in the district of Muzaffarpur. One Alok Kumar Gupta was driving a motorcycle with a pillion rider. The "motorcycle was hit by a jeep being driven by respondent No. 2, who was also its owner. The deceased Alok Kumar Gupta was treated at Muzaffarpur and subsequently at Patna. Unfortunately he did not survive.

3. The deceased was unmarried. His mother, respondent No. 1, then instituted Claim Case No. 67 of 1988 before the Additional Motor Accidents Claims Tribunal, Muzaffarpur. Both the owner of the vehicle, respondent No. 2, and the appellant, the insurer of the vehicle, appeared and filed their written statements. The owner of the vehicle, respondent No. 2, inter alia contended that on the date of the accident the vehicle in question stood insured with the appellant company under the comprehensive scheme and therefore respondent No. 2 stood fully indemnified by the insurer against any payment to be made by reason of the claim. The appellant, inter alia, took the specific stand that it was not liable for

the claim of the appellant except to the extent of the amount mentioned in the cover note of the insurance policy with regard to the vehicle in question.

4. The Tribunal by order dated 16.12.1989 directed interim compensation of Rs. 15,000/- to be paid by the insurer. The Tribunal framed issues and by its judgment and order dated 15.3.1993 held that the deceased died on account of the head on collision of his motorcycle with the jeep driven by respondent No. 2. The negligence on part of the driver was writ large on the face of the accident. Holding partial negligence on part of the deceased, after fixing the quantum of compensation it apportioned the same on a 60:40 basis. The compensation thus actually payable was assessed at Rs. 1,87,200/-. The entire liability was fastened on the insurance company alone under the policy of insurance, marked as Exhibit "A", along with interest of 12% per annum from the date of application (29.8.1988) till actual payment, after adjusting the interim compensation already paid. The decree was accordingly drawn up on 15.3.1993.

5. The appellant Insurance Company then preferred Misc. Appeal No. 242 of 1993 before this Court. On 2.3.1994, this Court directed the appellant to deposit Rs. 85,000/- within two weeks from that date in Certificate Proceeding Case No. / 135 of 1993-94 pending before the District Certificate Officer, Muzaffarpur, in which event there shall be ad interim stay of the certificate proceeding. The first page of the insurance policy was enclosed as Annexure 1 to the memo of appeal. The appeal finally came to be disposed by judgment and order dated 16.7.1996 upholding the contention of respondent No. 1 that it was not open for the Insurance Company to contest its liability except on grounds as specified in Section 96(2) of the Motor Vehicles Act. The Court therefore rejected the challenge of the appellant disputing its liability and quantum to be paid in accordance with the insurance policy. The appellant was directed to pay the compensation amount as early as possible preferably within six weeks, failing which the Insurance Company shall be liable to pay interest @ 25% per annum on the balance amount to be paid to be claimant.

6. Shri Ajay Kumar appearing on behalf of the appellant submitted that the judgment of the Single Judge was erroneous in law in so far as it upheld and imposed liability on the appellant in excess of the terms of the policy and the statutory liability of the appellant under the policy in terms of Section 95(2)(b) (i) of the Motor Vehicles Act (hereinafter referred to as "the Act"). As on the date of the accident, the statutory amount of third party liability fixed under the Act was Rs. 50,000/- only. The Tribunal and the learned Single Judge erred in fastening the entire liability on the appellant alone merely for the nomenclature of the policy as "comprehensive". The policy was valued at Rs. 1,30,000/- being the estimated value of the vehicle for which respondent No. 2 as owner of the same could lay compensation. In absence of any specific agreement between the Insurance Company and the owner of the vehicle to pay higher compensation than the statutory amount mentioned in Section 95(2)(b)(i) of the Motor Vehicles Act, 1939 and acceptance of unlimited liability by the appellant upon payment of

additional premium, no unlimited liability could be imposed on the Insurance Company. It was further contended that where a vehicle is comprehensively insured a higher amount of premium is payable than that for an "act only" policy depending upon the estimated insured value of the vehicle. This entitled the owner of the vehicle to claim reimbursement of the entire amount of loss or damage suffered upto the estimated value of the vehicle. Such a policy did not fix unlimited liability with regard to third party risk beyond the statutory liability fixed under the act unless there be a specific agreement to that effect. This has to be clearly specific in the policy and separate premium must be paid on "the same. This aspect of the matter though raised before the Tribunal and the learned Single Judge has not been considered and therefore required interference in this appeal. He relied upon a judgment of the Supreme Court reported in National Insurance Co. Ltd. Vs. Keshav Bahadur and Others, . Shri Sinha submitted that he was not pressing the appeal with regard to the issue of the right of the Insurance Company to dispute its liability as held by the Single Judge.

7. Shri Subodh Kumar Sinha, appearing for respondent No. 1, urged that the order under appeal was inconsonance with law and required no interference. The appellant can have its remedies against the respondent No. 2 inter se. This Was riot the concern of respondent

8. Despite valid service of notice none has appeared on behalf of respondent No. 2.

9. The Court has heard learned Counsel for the Appellant and for the respondent No. 1 and perused the materials on record.

10. The only issue for determination in the present appeal by this Court is whether the order of the Tribunal as upheld by the Single Judge fastening the entire liability on the appellant alone is justified or not. A perusal of the policy reveals in column B as follows:

Add for increased PP limits

Section II I (i) unlimited

Section III (ii) Rs. ...

This column records a premium of Rs. 16/- only. There is no agreement on record, and neither was it the case of the respondents, that there was an agreement for acceptance for unlimited third party liability under the policy by the Insurance Company. The amount of premium paid makes it apparent that the premium was in respect of "Act only policy" with regard to third party risk in terms of the statutory requirement of Section 95(2) of the Motor Vehicles Act.

11. This issue of the matter need not detain us any further in view of the authoritative pronouncement of the Supreme Court reported in New India Assurance Co. Ltd. Vs. C.M. Jaya and Others, by a Bench of five judges.

12. In the Jaya case (supra) the deceased was ridding pillion on a two wheeler when it met with an accident with a truck insured by the appellant therein. The Tribunal upon claim awarded compensation and held that the liability of the Insurance Company was limited to Rs. 50,000/- and the balance amount was recoverable from the driver and owner of the truck jointly and severally. On appeal by the truck owner the High Court held that the liability of the appellant Insurance Company was unlimited as the vehicle was comprehensively insured. The Apex Court considering the conspectus of law and judgment on this aspect of the matter held at paragraph 8 as follows :-

Thus, a careful reading of these decisions clearly shows that the liability of the insurer is limited, as indicated in Section 95 of the Act, but it is open to the insured to make payment of additional higher premium and get higher risk covered in respect of third party also. But in the absence of any such clause in the insurance policy the liability of the insurer cannot be unlimited in respect of third party and it is limited only to the statutory liability. This view has been consistently taken in the other decisions of this Court.

13. Their Lordships at paragraph 10 further held that the liability of the Insurance Company could be statutory or contractual. Where the liability be statutory an unlimited or higher liability cannot be imposed on it. The statute did not prohibit or prevent the parties from contracting to create unlimited or higher liability to cover wider risk, "in such an event the insurer is bound by the terms of the contract as specified in the policy in regard to unlimited or higher liability as the case may be. In the absence of such a term or clause in the policy, perusuant to the contract of insurance a limited statutory liability cannot be expanded to make it unlimited or higher. If it is so done it amounts to rewriting the statute or the contract of Insurance which is not permissible".

The Apex Court therefore set aside the order of the High Court directing the Insurance Company to pay the entire compensation amount beyond the statutory limited merely for reason of the policy being comprehensive in nature. It has clearly been held therein that in a case of Insurance Company not taking any higher liability by accepting a higher premium for payment of compensation to a third party the insurer would be liable to the extent limited u/s 95(2) of the Act and not be liable to pay the entire amount.

A comprehensive policy issued on the basis of the estimated value of the vehicle does not automatically result in covering the liability with regard to the third party risk for an amount higher than the statutory limit in the absence of any specific agreement and the payment of additional premium to cover third party risk for an amount higher than the statutory limit.

14. Learned Counsel for the Appellant, Shri Ajay Kumar, rightly relies upon the judgment of the Supreme Court reported in National Insurance Co. Ltd. Vs. Keshav Bahadur and Others, wherein their lordships relying upon the Jaya case (Supra) held at para 7 as follows:

7. In case of appellant insurer not taking any higher liability by accepting higher premium, the liability is neither unlimited nor higher than the statutory liability fixed u/s 95(2) of the Act. Even if a vehicle is the subject-matter of comprehensive insurance and a higher premium is paid on that score, limits of the liability with regard to third-party risk do not become unlimited or higher beyond the statutory liability fixed. For this purpose, a specific agreement has to be arrived at between the insured and the insurer and separate premium has to be paid in respect of additional amount of liability undertaken by the insurer in that regard. This position was highlighted by this Court in *National Insurance Co. Ltd. v. Jugal Kishore* (1983) 1 SCC 626 : 1988 SCC (Cri) 222 . In *New India Assurance Co. Ltd. Vs. C.M. Jaya and Others*, , a Constitution Bench approved the view taken in *New India Assurance Co. Ltd. Vs. Smt. Shanti Bai and others*, and *Jugal Kishore*. It was held that in case of the insurer not taking any higher liability by accepting higher premium for payment of compensation to third party, the insurer would be liable to the extent limited u/s 95(2) of the Act, and would not be liable to pay the entire amount of compensation awarded.

15. In view of the aforesaid authoritative pronouncements of the Supreme Court, this Court has no hesitation in upholding the submission on behalf of the appellant that merely for the reason for the policy being "comprehensive", the Insurance Company did not automatically acquire unlimited liability for third party risk. As has been noticed above the nature of the comprehensive policy has necessarily to be limited to the issue of damage to the vehicle and not to third party risk.

16. This Court therefore holds that the appellant is liable to pay compensation to the extent of Rs. 50,000/- only as its statutory liability. The appellant has already paid a sum of Rs. 1 lac to respondent No. 1. The Court however does not consider it proper at this stage to direct the respondent No. 1 to refund the excess amount so paid back to the Insurance Company. The Court further directs that the Certificate Case No. 135 of 1993-94 initiated u/s 174 of the Motor Vehicles Act by the Tribunal shall stand quashed in so far as the appellant No. 1 alone is concerned. The order of stay of further proceedings in the certificate case is hereby vacated. The Tribunal is directed to proceed with the certificate case against respondent No. 2 on day to day basis for recovery of the balance compensation amount along with interest. The Tribunal shall amend the certificate accordingly. Due notice shall be given to respondent No. 2 in the certificate proceeding.

17. The appeal is allowed but without costs.

Aftab Alam, J.

18. I Agree