
(2003) 04 AHC CK 0273
In the Allahabad High Court
Case No : F.A.F.O. No. 242 of 1993

Sarwan Kumar Suri and Sons and Another	APPELLANT
Vs	
District Judge and Others	RESPONDENT

Date of Decision : 01-04-2003

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(2)

Citation : (2003) 6 AWC 5317

Hon'ble Judges : N.K. Mehrotra, J

Bench : Single Bench

Advocate : U.K. Dhaon and C.B. Pandey, for the Appellant; G.S. Chauhan, for the Respondent

Final Decision : Allowed

Judgement

N.K. Mehrotra, J.—This is the first appeal against the judgment and award dated 23.8.1993 passed by the Motor Accident Claims Tribunal, Sitapur in Motor Accident Case No. 85 of 1992, Smt. Bhagwan Devi Tripathi and Ors. v. U.P.S.R.T.C. and others, allowing the claim petition of the predecessor of the Respondents 2 to 4 and awarding a sum of Rs. 34,000 alongwith the interest @ 12% per annum against the Appellant Nos. 1 and 2.

2. I have heard the learned Counsel for the Appellant and the New India Assurance Company Ltd. Respondent No. 5. The other Respondents have not appeared to make any submission.

3. It appears that on 4.4.1992, Bus No. UP-34/6283 belonging to U.P. State Road Transport Corporation dashed against House No. 24 situated at Mohalla Ghandhi Nagar, Sidhauri belonging to Shri Uma Shanker Tripathi, the claimant (now the deceased) and caused damage to a portion of his house.

4. The case of the U.P. State Road Transport Corporation is that this Bus while taking out from the gate of the bus station towards national highways, collided with truck No. DIG/6654 coming from Lucknow towards Sitapur and the driver of

the bus could not control it and dashed with the house of the claimant. The Appellants are the owners of the truck No. DIG 6654.

5. Learned Tribunal recorded its finding that the accident took place due to rash and negligent driving of truck No. 6654 and there was no negligence of the driver of bus No. UP 34/6283 and therefore, the Tribunal found the owner and the driver of the truck and Insurance Company of the truck liable for compensation. Learned Tribunal assessed the damages of the house at Rs. 40,000. Further the learned Tribunal fixed the liability to the tune of Rs. 6,000 for New India Assurance Company because it was a case of third party property damages and the learned Tribunal was of the view that the liability of the Insurance Company in case of third party cannot exceed Rs. 6,000. The rest of the amount of Rs. 34,000 was directed to be paid by the owner of the truck, the Appellant.

6. In this appeal, the Appellant has filed a supplementary-affidavit on 12.9.2000 and alongwith the affidavit, the Appellants have filed a photostat copy of the Insurance Policy, Annexure-A1 and photostat copy of the letter dated 26.2.1996, written by the Branch Manager of the New India Assurance Company to the Divisional Manager, Lucknow Annexure-A2. These documents have not been rebutted in any manner by the New India Assurance Company. At the time of arguments, the learned Counsel for the New India Assurance Company made submission that in case these documents are considered, then the case should be remanded back to the Tribunal but when the opportunity to rebut these documents, was offered, he could not indicate any document which can be filed in rebuttal of these documents.

7. Learned Counsel for the Appellant at the time of arguments has pressed only one ground which is mentioned in the ground Nos. C and H of the memo of appeal and the only contention on the basis of these ground by the learned Counsel for the Appellant is that the truck No. DIG 6654 was insured by the New India Assurance Company Ltd. under Comprehensive and Unlimited Insurance vide policy No. 3123110404702 from 27.5.1991 to 26.5.1992 and, therefore, the Appellants are indemnified by the insurance company against the third party property damage limits and this aspect was ignored by the learned Tribunal. Actually, these documents which have been filed by the supplementary-affidavit, were not filed before the Tribunal and since these documents have been admitted in this appeal, the submission of the Appellant is to be considered in the light of these documents Annexures-A1 and A2 filed by the supplementary-affidavit. Annexure-A1 goes to show that the New India Assurance Company has charged an amount of Rs. 75 for "Increased third party property damage limits". The same policy note contains terms and conditions of the agreement between the insurer and the insured. Term of the agreement shown by IMT 70 is as follows :

"IMT 70.-Increase in the limits of liability of property damage. In consideration of payment of additional premium Rs.it is hereby declared and agreed that the limit of liability u/s II-I (ii) of the policy is increased from Rs. 6,000 to Rs. only in respect of property other than property belonging to insured or held in

trust or in the custody or control of the insured.

It is further specifically understood and agreed that the increased limit does not apply to property carried in the vehicle hereby insured. Subject otherwise to the terms, exceptions, conditions and limitations of this Policy."

8. Further Annexure-A2 is a letter written by the Branch Manager, Ghaziabad to the Divisional Manager, Lucknow with regard to the policy involved in this truck accident.

9. In this letter, the Branch Manager has written that policy is subject to IMT 70 vide which unlimited third party property damage is covered by charging additional premium. Thus, the condition of the agreement between the insurer and the insured goes to show that the liability with regard to the third party property damage is unlimited and, therefore, the appeal is liable to be allowed to the extent that the impugned order of the Tribunal is to be modified that the entire amount of Rs. 40,000 of compensation shall be paid by the New India Assurance Company and there will be no liability of the owner of the truck, the Appellants.

10. Learned trial court has referred that u/s 95 (2), of Motor Vehicles Act, 1939, there is a limit of Rs. 6,000 in all respect of damages to any property of a third party but in National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, , it has been held by the Hon''ble Supreme Court that in the absence of any specific agreement undertaking any liability in excess of the statutory limit and payment of separate premium, therefore the insurer's liability would be confined to that provided in the statute.

11. Here in the instant case, there is specific agreement and separate premium has been paid. Therefore, the insurer's liability is not restricted to Rs. 6,000.

12. In result, the appeal is allowed.

13. The impugned order is modified to the extent that the total amount of Rs. 40,000 shall be indemnified by the New India Assurance Company Respondent No. 5 alongwith the interest at the rate awarded by the Tribunal. The portion of the order which directs the owners Appellants to make the payment of Rs. 30,000 is set aside.

14. The amount deposited by the Appellants, shall be permitted to be withdrawn by the Appellants themselves.