

(2014) 09 DEL CK 0044

In the Delhi High Court

Case No : First Appeal from Order No. 177 of 1994

Sudesh Kohli

APPELLANT

Vs

Ram Gopal

RESPONDENT

Date of Decision : 01-09-2014

Acts Referred:

Citation : (2014) 176 PLR 35

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : Navneet Goyal, Advocate for the Appellant

Judgement

Jayant Nath, J.—By the present appeal the appellants/claimants seek to impugn the directions of the Award dated 3.5.1994 passed by the Tribunal. The basic ground in this appeal is that the Tribunal though awarded a compensation of Rs. 4.5 lacs but restricted the liability of respondent No. 3 Insurance Company only to Rs. 50,000/- holding that the insurance cover was not for unlimited liability and the risk for third party was limited to the extent of Rs. 50,000/-. Brief facts are that on 01.11.1977 Shri Suresh Chander Kohli who was aged 35 years was going on his two wheeler scooter on Ring Road near Industrial Area, Kirti Nagar when he was hit by a truck said to be driven rashly and negligently. He died on the spot. As already stated above, the Tribunal awarded compensation of Rs. 4.5 lacs to the claimants/appellants.

2. Learned counsel appearing for the appellant submits that the present issue pertains to the Motor Vehicles Act of 1939. He submits that at that point of time the third party liability was not unlimited like the present statute. He further points out that as per terms and conditions of the insurance policy the limit of third party liability was fixed at Rs. 50,000/- and the respondent No. 3 Insurance Company had to specify the liability that may arise in favour of a third party. In case the liability was more it could recover the excess amount above Rs. 50,000/- from the insured/owner of the offending vehicle. He relies on the terms and conditions of the insurance policy which are on the record of the Trial court

Ex. R-2. He also relies upon the judgment of the Supreme Court in the case of New India Insurance Company Ltd. v. Vimal Devi and others, 2010 A.C.J. 2878 a judgment of this Court following the aforesaid judgment i.e. the case of Gurcharan Kaur and Another Vs. Raja Ram and Another, . Learned counsel for respondent No. 3 has pointed out that before any liability is fastened or any recovery rights are given to respondent No. 3 company, it would be necessary that the owner and driver of the offending vehicle, namely, respondents No. 1, 2 and 4 should also, be present.

3. As far as the submission of respondent No. 3 is concerned a perusal of the order sheets show that on 12.1.2010 the said respondents stood duly served but they have not been appearing since then before this Court. In my opinion, nothing further needs to be done regarding presence of the said respondents.

4. Coming now to the submissions of learned counsel for the appellant. The relevant clause relied upon of Ex. R-2 reads as follows:--

"IMPORTANT NOTICE

The insured is not Indemnified if the Vehicle is used or driven otherwise than in accordance with this Schedule Any payment made by the Company by reason of wider terms appearing in the certificate in order to comply with the Motor Vehicles Act 1939 is recoverable from the insured. See the Clause headed.

"AVOIDANCE OF CERTAIN TERMS AND RIGHT OF RECOVERY"

5. He also relies upon the Avoidance clause which reads as under:--

"AVOIDANCE OF CERTAIN TERMS AND RIGHT OF RECOVERY

Nothing in this Policy or any endorsement here on shall affect the right of any person indemnified by this Policy or any other person to recover an amount under or by virtue of the provisions of the Motor Vehicle Act 1939 Section 96.

BUT the insured shall repay to the Company all sums paid by the Company which the Company would not have been liable to pay but for the said provisions."

6. Relevant portion of section 96 of the Motor Vehicle Act, 1939, namely, section 96(1) and 96(4) reads as follows:--

"96. Duty of insurers to satisfy judgments against persons insured in respect of third party risks.--(1) If, after a certificate of insurance A[* * *] has been issued under sub-section (4) of section 95 in favour of the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of Section 95 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if

he were the judgment-debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments".

(2)

(3)

(4) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would, apart from the provisions of this section, be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person."

7. The aforesaid clauses had directly come up for consideration before the Supreme Court in *New India Insurance Company Ltd. v. Vimal Devi and others* (supra). This Court after reproducing the aforesaid clauses of the avoidance policy clause, the Supreme Court in paragraph 7 held as follows:--

"7. The Avoidance Clause in the policy in this case makes all the difference and the direction of the High Court to the Appellant, insurance company to make payment of the full amount of compensation to the claimants and to recover its dues from the owner of the vehicle is directly in accordance with that Clause. In our view, the submission of Mr. Calia is well founded. The Appellant in this case can derive no benefit from the decision in *New India Assurance Co. Ltd. Vs. C.M. Jaya and Others*, "

8. Similarly, this Court in the case of *Gurcharan Kaur and another v. Raja Ram* (supra) in paragraphs para 50 and 51 held as follows:--

"49. On a conspectus of the law laid down by the Supreme Court and on perusal of the Schedule to the insurance policy (Mark "A") and the Standard terms of the India Motor Tariff relied upon by both the parties, I am of the view that the only available conclusion in the present case is that even though the liability of the Insurance Company is limited\ qua the insured as claimed by it, the liability of the Insurance Company qua "any person" or a third party such as the appellants is not limited. The necessary corollary is that in accordance with the terms of the insurance policy, the appellants are entitled to recover from the Insurance Company the entire amount awarded by the Claims Tribunal as enhanced by this Court.

50. To conclude, the appellants are held entitled to an enhanced amount of compensation of Rs. 1,02,000/- with interest as awarded by the Tribunal. The Insurance Company is directed to pay the entire amount to the appellants after deducting the amount, if any, already paid. The Insurance Company shall be entitled to recover the amount paid by it in excess of its liability from the owner and driver of the vehicle in accordance with law. The appeal is allowed in the above terms. There shall be no order as to costs."

9. Hence, the clauses which are subject matter of the insurance policy of respondent No. 3 Insurance Company have already been duly interpreted by the Supreme Court. A perusal of the said clause and the judgment of the Supreme Court would clearly show that in the facts of the present case the Insurance Company Respondent No. 3 would be liable to pay the award amount and would also thereafter get recovery rights from the owner and driver of the offending vehicle.

10. In view of the above legal position and the facts and circumstances of this case, the Award is modified. Respondent No. 3 insurance company shall be liable to pay the amount to the claimant as per the award. After having made payment they shall be entitled to recovery rights against respondents No. 1, 2 and 4.

11. Let the awarded amount be deposited in Court with accumulated interest as per the Award of the Tribunal within six weeks from today. The amount shall be thereafter released to the appellant proportionately as per the Award of the Tribunal.

12. It is unfortunate that this appeal has taken so much time to be disposed of. It transpires that the file was lost and pursuant to an application filed by the appellant in 2009 the file was reconstructed. Appeal stands disposed of.