(2008) 02 AHC CK 0037

In the Allahabad High Court

The National Insurance Co. Ltd. APPELLANT

Vs

Smt. Sushila and Others RESPONDENT

Date of Decision : 22-02-2008

Acts Referred:

Citation : (2008) 02 AHC CK 0037

Hon'ble Judges : Shishir Kumar, J;Amitava Lala, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Amitava Lala, J.—This appeal has been made by the insurance company from a judgment and award passed by the Motor Accident Claims Tribunal, Bulandshahar, dated 30th October, 2007. By preferring this appeal the insurance company contended before this Court that occurrence of death of the deceased cannot be covered by the insurance policy.

2. We have seen the insurance policy, being Annexure No. 4 to the affidavit filed in support of the stay application made in the appeal. It appears that the premium was taken on 4 heads namely TP, DR+CL, NFPP &TPPD. Since the appellant has taken the plea that it is not liable to pay compensation on account of death of deceased being a gratuitous passenger, we called upon explanation of the insurance company in this regard, when they have placed the same, being Information dated 22nd February, 2008 giving the full form of such heads as follows:

TP :THIRD PARTY PREMIUM DR+CL :DRIVER CLEANER NFPP :NON FARE PAYING PASSENGER TPPD :THIRD PARTY PROPERTY DAMAGE

Such information given to this Court be kept with the record in original.

3. Apart from that we have gone through the deposition of the development officer of the insurance company itself. However, the recording of the deposition by the tribunal is quoted hereunder:

From the side of opposite party No. 2 DW 1 Sri Fateh Singh Bhati Development Officer was produced in support of their version. Witness DW 1 Fateh Singh Bhati has stated on oath that he is submitting the attested copy of insurance policy of Tata Vehicle No. UP 13A 7784. This vehicle was goods carrying vehicle which is registered and approved for carrying the goods. In the aforesaid vehicle, the insurance company have no liability to pay compensation for passengers. Cross Examinations have been made at a great length with DW-1 and in the cross examination it was accepted by him that including driver of Tata 407 three persons can seat in which a driver, a cleaner and a businessman used to seat. In the terms and conditions of policy it has mentioned that apart from the driver, a cleaner and business man can use to seat. Thus as per the statement of Fateh Singh Bhati DW-1, it is clear that the insurance policy is valid for driver, cleaner and a businessman or any one. DW-1 Fateh Singh Bhat has also admitted that in the insurance policy it has no where mentioned that gratuitous passenger cannot get compensation. During the course of cross examination, the DW-1 Fateh Singh Bhati has also accepted that the tata 407 Vehicle No. UP 13 A 7784 was insured by the National Insurance Company Bulandshahar at the time of accident. In the policy in question the third party risk is covered and for this the premium has already been paid to the insurance company, as such it is clear that the vehicle is validly covered for third party. The deceased was travelling along with driver of tata 407 which comes under third party and as per the terms and conditions of the policy apart from the driver and cleaner, he was entitled to travel, in such circumstances, the deceased cannot be said as gratuitous passenger.

4. Hence, we are of the view that we cannot hold that the deceased cannot be covered by the insurance policy, particularly, when there is no explanation as to the head of NFPP (NON FARE PAYING PASSENGER) and as to whether the deceased was representative of the businessman or himself proceeded for any business purpose. Learned Counsel appearing for the appellant said that the deceased was a labourer and other passengers were also being carried by the vehicle. We are of the view that irrespective of such head of the premium i.e. NON FARE PAYING PASSENGER, we are herein only considering the cause of the deceased and not others. Therefore, when there was no definite case on the part of the insurance company, we have to go by the case of the claimants. Hence, the ratio of unreported judgment of the Supreme Court dated 9th May, 2006 passed in Civil Appeal No. 2609 of 2006, National Insurance Company Ltd. v. Lala Ram and Ors., has no application to the facts of this case.

5. Above all, the insurance company is not fastened with the liability, rather, it has been directed to make payment to the claimants as a stop gap arrangement with a right to recover the same from the owner. The conditions of recovery under the order impugned are as follows:

In case of breach of policy, in such circumstances, the insurance company have right that they may proceed for recovery of the said amount from the owner of the vehicle after making payment to the claimants/petitioners.

6. Hence, in totality we don''t find any reason to interfere with the judgment and award at all, therefore, we cannot admit the appeal. The appeal is consequently dismissed without imposing any cost.

7. Incidentally, the appellant prayed that the statutory deposit of Rs. 25,000/- made before this Court for preferring this appeal be remitted back to the concerned Motor Accidents Claims Tribunal as expeditiously as possible in order to adjust with the amount of compensation to be paid to the claimants, however, such prayer is allowed.

Shishir Kumar, J.

8. I agree.

