

**(2008) 01 DEL CK 0076**  
**In the Delhi High Court**  
**Case No : FAO No. 385 of 2000**

The New India Assurance Co. Ltd.

APPELLANT

Vs

Smt. Narinder Kaur and Others

RESPONDENT

---

**Date of Decision :** 21-01-2008

**Acts Referred:**

**Citation :** (2008) 01 DEL CK 0076

**Hon'ble Judges :** Kailash Gambhir, J

**Bench :** Single Bench

**Advocate :** R.K. Tripathi, for the Appellant; Nemo, for the Respondent

**Final Decision :** Dismissed

---

## Judgement

Kailash Gambhir, J.—By way of the present appeal the appellant Insurance company seeks to challenge the impugned Award on the ground that the liability of the appellant was limited as per the provisions of the old Act. That the accident in question had taken place on 27.2.88 involving TSR bearing registration No. DLR 8376. One of the issues involved in the present appeal is confined only to the aspect of limited liability, while another issue, which has been taken up by the appellant is that the factum of the involvement of the TSR itself was in dispute. Brief summary of the facts for deciding the present appeal are:

On 27.12.1988 at about 8.30 p.m. Sh. Balbir Singh was standing at the DTC Bus Stop of Mayapuri for catching a bus. A TSR bearing registration No. DLR 8376, being driven by Sh. Jiwan Dass in a rash & negligent manner came from the direction of Lajwanti & knocked down Sh. Balbir at the bus stop, a result of which the deceased received various injuries on his body. Sh. Balbir was taken to RML hospital from the accident spot & he died on 27/2/1988.

2. I have heard learned Counsel for the appellant and have perused the Award. Nobody has chosen to appear from the side of the respondents. Counsel for the appellant has placed reliance on the testimony of RW-2 to contend that the said

witness has duly proved the limited liability of the appellant insurance company. Placing reliance on the deposition of the said witness, namely, S.R. Kanda, Sr. Assistant of the appellant insurance company wherein he has stated that the company has not charged extra premium under the said policy in question so as to cover wider liability. Counsel thus contends that the appellant cannot be burdened to satisfy the compensation amount over and above the liability of the appellant as limited by the Statute.

3. On the aspect of the negligence the contention of the counsel for the appellant is that there was one Maruti car, which had hit the TSR, who in turn hit the pedestrian resulting into his death. Counsel for the appellant contends that FIR was not registered in the present case and the negligence of the TSR was not proved on record by the respondents/claimants.

4. Perusal of the Award shows that the Tribunal has duly taken into consideration the testimony of RW-2, who was produced by the appellant to prove the carbon copy of the insurance policy. The Tribunal has held that as per the deposition of the said witness the insured had paid an additional amount over and above the amount chargeable for "Act only" policy. For "Act only" policy the premium, which was payable at the relevant time was Rs. 40/- only, but the said witness had admitted that Rs. 48/- was paid so as to cover the risk of third party liability. Although, the counsel for the appellant contends that the said Rs. 8/- was paid for covering the risk of the driver, but the testimony of the said witness discloses that in all a sum of Rs. 146/- was paid under the said policy, which included Rs. 90/- for covering the risk of three passengers @ Rs. 30/- and Rs. 40 was paid for "Act only" policy. Rs. 8/- was paid for covering the risk of the driver. If the said amount is taken into calculation even still the amount of Rs. 8/- is still left out of the total amount paid by the insured i.e. Rs. 146/-. It is thus evident that an additional amount was paid over and above the premium chargeable for "Act only" policy and, Therefore, it is manifest that the third party liability was covered. There is no dispute on the proposition that if the premium is paid for covering the risk of the third party then the liability is unlimited.

5. I, Therefore, do not find any infirmity in the finding of the Tribunal. The liability of the insurance company as on the relevant date under the said policy was unlimited. As regards the arguments of the counsel for the appellant concerning the negligence point I find that there is no force in the submission made by the counsel for the appellant. The Tribunal has dealt that issue with sound reasoning and justification. The theory of the Maruti car hitting at the first instance has not been proved by the driver of the offending vehicle. The Tribunal has established the doctrine of *res-ipsa-loquitor* in the facts and circumstances of the case and has held that it was for the driver to prove on record that the TSR was first hit by the Maruti car and on the failure to do so the testimony of the witness adduced by the respondents/claimants were correctly believed by the Tribunal.

6. No merit in the appeal.

7. Dismissed.