
(2007) 02 DEL CK 0088
In the Delhi High Court
Case No : F.A.O. No. 329 of 1996

The New India Assurance Co. Ltd.

APPELLANT

Vs

Veena Devi Alias Veena Kumari and Others

RESPONDENT

Date of Decision : 05-02-2007

Acts Referred:

Citation : (2007) 95 DRJ 69

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : Non, for the Appellant; O.P. Goyal, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—Present appeal filed by the Appellant/Insurance Company raises the question of limited liability of the Insurance Company.

2. Brief facts of this case are that on 9th August, 1982 deceased Sh. Vinod Kumar was traveling in Bus No. DHP 3430 from Narela to Delhi,

when a Truck No. DIG-3919, driven by Respondent No. 5, came from Randhawa side and struck against the left portion of the Bus. The impact

of the accident was such that the engine of the said bus was thrown away and the said Sh. Vinod Kumar received fatal injuries whereas, other

persons received grievous injuries. The widow and two minor children of said Vinod Kumar, deceased are Respondent Nos. 1,2 and 3 and the

widowed mother (who died during the pendency of the case and was deleted from the array of the parties) filed claim petition seeking

compensation against the Driver, owner and the Insurer of the above said truck alleging therein that since the accident occurred due to rash and

negligent driving of the truck on the said date, time and place by its driver

Respondent No. 5 causing fatal injuries to Shri Vinod Kumar, they are entitled to receive compensation of Rs. 2,50,000/- from them.

3. In the joint written statement filed by the driver and owners, it was pleaded that the said truck did not hit the left side as alleged in the claim

petition and the deceased was traveling in the bus while standing on the Exit gate and due to the sudden application of brakes by the bus driver, the

deceased hit against the front glass of the bus and as a result thereof he fell down from the bus and came under the wheel of the same bus.

4. In the written statement filed on behalf of the Insurance Company (Appellant), it has been pleaded that under the Insurance Policy, at the time of

the accident, the liability of Insurance Company to pay compensation, if any, was limited to Rs. 50,000 only.

5. The learned Tribunal vide impugned judgment dated 30th May, 1996 held that the accident occurred due to rash and negligent driving of

Respondent No. 5 and awarded compensation of Rs. 2,50,000/- in favor of Respondent Nos. 1, 2 and 3 and further held that Insurance company

(Appellant) has failed to prove its plea of limited liability of Rs. 50,000/- under the contract of the Insurance and directed the Appellant to pay

entire amount of compensation Along with interest @ 12% per annum from the date of filing of the petition.

6. Against the order of the Tribunal, Insurance Company (Appellant) has filed the present appeal.

7. The main plea taken up by the Appellant is that its liability was limited to the extent of Rs. 50,000 only, since, the owner of the vehicle, did not

file the original policy of insurance on record to prove that under the agreement with the Appellant they has paid the extra premium to enhance the

limit of third party liability from the limit of ""Rs. 50,000/-"" to ""Unlimited"" and as such in the absence of any of the evidence, the liability under the

Insurance Policy cannot be considered as ""unlimited"".

8. On 19th April, 2005 when the matter was listed, none was present on behalf of Appellant whereas, counsel for Respondents was present and

the order was deferred.

9. On 1st February 2007, when matter came up before this Court, again none was present for the Appellant. However, on behalf of Respondents

Shri. O.P. Goyal, Advocate was present. Arguments advanced on behalf of

Respondents' counsel have been heard.

10. It has been argued by learned Counsel for the Respondents that the Onus is upon insurance Company to prove that the insurance policy in question was of "limited liability". The Appellant did not place any proof of the insurance policy on record.

11. The learned Counsel for Respondents in support of his contentions has cited a recent decision of the Apex Court, *Tejinder Singh Gujral v.*

Inderjit Singh and Anr. (2007) ACJ 37. In this case, the accident took place between a tempo and scooter driver, due to negligence of tempo

driver and the scooterist sustained injuries. The insurance policy of tempo was not proved. The question was whether a presumption would arise

that liability of the Insurance Company was unlimited; it was held:

The learned Tribunal, however, committed an error in opining that the insurance policy was not required to be proved. Learned Single Judge of the

High Court, in our opinion, rightly held that the insurance policy having not brought on record, a presumption would arise that the liability of the

insurer was unlimited.

12. The learned Tribunal in its judgment has considered the plea of "limited liability" taken by the Appellant and relevant findings to this effect are as

under:

In this case the Respondent No. 3 Insurance Company has also raised a plea of limited liability with regard to the payment of compensation.

According to Respondent No. 3 its liability was only limited to Rs. 50,000/- (fifty thousand only). Thus, it was incumbent upon the Respondent

No. 3 to prove the Insurance policy properly.

In this regard Respondent No. 3 has examined Rw1 who is a legal assistant of Insurance Company. He has proved on record a letter written to

the owner of the offending vehicle and postal receipt, registered AD and UPC all showing the dispatch of letter to owner as ExRw1/1 to Rw1/4

respectively. Similarly, premium paying receipt ExRw1/5 and other receipts ExRw1/6 have been placed on record by the Respondents. But these

are of no help to the Respondent No. 3 as they have failed to prove on the record the Insurance policy which is the only document which stipulates

the terms and conditions to be adhered by the parties by virtue of the contract of policy. Before parting with my discussion on the point of limited

liability, I may like to add, a few more lines which are the out come of the cross examination of Rw1.

Rw1 did not know as to when the records pertaining to this policy were destroyed. The carbon copy of the policy was also destroyed. The

company has become aware of this case (as was informed) on 18/2/83. But I fail to understand as to why the Respondent No. 3 destroyed the records without ascertaining the fate of this case.

Thus my above discussion leads me to a conclusion that the Insurance Company failed in proving its plea of limited liability of Rs. 50,000/-.

Consequently, this plea of limited liability of the company is rejected and the Respondent No. 3 is liable to pay the compensation of Rs. 2,50,000/-

to the petitioners.

13. The onus is upon Appellant to prove that the policy issued by it was of "limited liability" restricting the liability of the Insurance Company to the extent of Rs. 50,000/-. The Appellant-Insurance Company has not even proved on record the office copy of the insurance policy which it could have proved otherwise in accordance with the provisions of law and the Appellant has failed to discharge this onus that the policy was of limited liability.

14. Further, the premium receipt Ex.RW-1/5 and other receipt Ex.RW-1/6, does not co-relate to this plea of the Appellant that these receipts are with regard to payment made towards limited liability only. These receipts does not prove that premium paid in this case was towards Limited Liability Policy. Insurance Policy is the only document which stipulates the terms and conditions to be adhered by the parties and as already held, the Appellant has failed to prove its insurance Policy.

15. Accordingly, I have no hesitation in holding that the liability of the Insurance Company was unlimited.

16. learned Counsel for Respondents during the course of arguments has also pointed out that the entire amount of compensation as awarded by the learned Tribunal has already been received by the Respondents and nothing remains to be paid by the Insurance Company.

17. Under these circumstances, it is held, that the present appeal is not maintainable and the same is, hereby, dismissed.

18. No order as to costs.