
(2010) 07 DEL CK 0255
In the Delhi High Court
Case No : F.A.O. No. 33 of 1990

The Oriental Insurance Co. Ltd.

APPELLANT

Vs

Kuldeep Gangwani and Others

RESPONDENT

Date of Decision : 02-07-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Motor Vehicles Act, 1939 — Section 95

Citation : (2010) 07 DEL CK 0255

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : V.P. Chaudhary and Sushma, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—By present appeal, the insurance company has assailed the award dated 31st August, 1989 on the ground that the learned Tribunal wrongly held the liability of the insurance company as unlimited.

2. The Tribunal on this issue had observed as under:

18. Plea of respondent No. 3/Insurance Company, in this case, had been that their liability was limited to the extent provided u/s 95 of the Motor Vehicles Act. On the point, respondents examined S.K. Gupta, Assistant Oriental Insurance Company who proved the copies of insurance policy as Exs. R1 & R2. Neither Ex. R1 nor Ex.R2 specify the extent of limited liability nor the amount of limited liability can be found out either from the documents relied upon by the respondents or from the written statement. Subsequent to the examination of R2 3W1 on 30.3.89, the learned Counsel appearing for the Insurance Company placed on record, a notice having been sent to the insured in June, 1989 for production of the original insurance policy before the Insurance Company to enable them to take steps for production of the same in the Court but before tendering this notice in July, 1989 by moving an application u/s 151 CPC., the

evidence on behalf of respondents 2 & 3 had already been closed by Shri J.L. Vason on 30.3.1989. Hence the production of the copy of this notice as well as the documents Exs. R1 & R2 is of no consequence in the circumstances of the present case for the reasons aforesaid and held that in the absence of definite proof of limited liability to be adduced by the Insurance Company, their liability, in this case, has to be held unlimited.

3. It is submitted by counsel for the appellant that the premium charged in this case was Rs. 125/-, as per details given in the schedule of policy placed on record of the trial court. He submitted that no extra amount was paid by the insured to cover unlimited liability and the liability of appellant should have been held limited to Rs. 50,000/-.

4. The Certificate of Insurance relied upon by the appellant (duplicate copy) available at page 295 of the record shows that the Certificate was issued in respect of third party risk and a premium of Rs. 120/- was charged. The details of premium given in the Schedule of Premium show that for Liability to Public Risk, Rs. 125/- was charged and for liability of driver and cleaner, Rs. 16/- were charged and 15 per cent discount (Rs. 21/-) was given. Thus, Rs. 120/- (after discount) were charged from the insured. It is not disputed by the appellant that premium for "Act Only Liability" was Rs. 100/- and the premium for "Liability to Public Risk" was Rs. 125/-. This Court in F.A.O. No. 257 of 1991 titled Neeta Trehan and Ors. v. Gopal Krishan and Ors., decided on 17th May, 2010 had considered the issue of liability and observed as under:

14. The issue arises whether this insurance cover obtained by the insured was limited to a liability of Rs. 1,50,000/- being the minimum liability for which a vehicle was required to be insured by the owner or this premium covered wider liability. Counsel for the appellants has drawn my attention to the judgment in Veena Pruthi's case (supra) given by the Division Bench of this Court where the Division Bench of this Court held that if the premium was Rs. 125/-, the liability would be limited to Rs. 1,50,000/- and not unlimited. On the same logic it is stated that if the premium was Rs. 240/- for class A(2) vehicle, the liability of insurance company would be limited to Rs. 1,50,000/-.

15. Where obtaining of an insurance cover is made mandatory by statute, the contract is to be interpreted in the light of statutory provisions. In case of motor vehicles, obtaining of an insurance cover by the owners of vehicles is a statutory requirement. Thus, an insurance policy has to be interpreted keeping in view the statutory provisions and the rules of tariff as framed by the Advisory Board. Under the tariff rules, two separate tariffs are provided for "Act Only Liability" and for "Public Risk". It cannot be said that the Advisory Board provided tariff for "Act Only Liability" as a superfluous phenomenon. The Advisory Board was having in mind that where the owner wants to take an insurance policy covering the minimum liability u/s 95 of the Act, then the premium should be different. If the owner wants wider liability then the premium should be different and that is the reason that for "Act Only Liability", a premium of Rs. 200/- was provided and

for "Public Risk", a premium of Rs. 240/- was provided. Public risk is a wider term and takes into account the entire risk faced by the owner for bringing vehicle on road. If there had been no compulsion under the Act to obtain an insurance policy, the only insurance cover which owner could have obtained from an insurance company for covering public risk would have been this that he would pay Rs. 240/- and get the public risk covered. If the Act would have not prescribed any limit, the public risk would naturally have been unlimited. The Act prescribed that every owner of vehicle should get insurance cover covering a minimum amount. Beyond that, the Act did not provide anything. It is under these circumstances that the Tariff Advisory Committee prescribed separate premium for "Act Only Policy" and separate premium for a "Public Risk Policy". I, therefore, consider that the "Public Risk" premium would cover unlimited amount of risk and would not cover a limited amount of risk.

18. There is another aspect to be kept in mind. When an owner approaches insurance agent for insurance, he is told what would be the tariff payable by him and on payment of tariff, an insurance certificate or cover note is issued. The contract of insurance, thus, stands concluded on receipt of tariff/premium in terms of the tariff schedule as laid down by Advisory Board. Insurance policy is subsequently mailed to owner by insurance company. If insurance company unilaterally inserts a clause in the policy which is contrary to tariff regulations, such a clause is not binding. All insurance policies are in the shape of one standard performa used for different kinds of coverage. If while sending insurance policy to owner the company official does not score off non-applicable clauses or inserts a limited liability clause which is contrary to the tariff charged from owner, such a clause is not binding.

5. Since in this case, the premium charged was not premium for "Act Only Liability" and higher premium was charged for "Public Risk"/third party, the liability of the insurance company has to be held unlimited.

6. The counsel for the appellant further argued that this Court in Neeta Trehan's case (supra) had not devolved upon the definition of "Liability to Public Risk" as given in the tariff schedule. He relied upon following definition:

2. THE LIABILITY TO THE PUBLIC RISK (THIRD PARTY LIABILITY INSURANCE POLICY)

This policy used to give indemnity to the insured against legal liability for claims by the public in respect of accidental personal injury or damage to property caused by the insured vehicle. This policy differed from "Act Only Policy" in two respects.

(i) Accident at a private place was also covered.

(ii) Extent of coverage of damage to third party property was the same as the statutory liability of the insurer in respect of personal injury.

7. This Court in United India Insurance Company Ltd. Vs. Mrs. Surekha Bakshi

and Others,) had considered this issue and observed as under:

8. What is an "Act only" policy and what is "liability to the public risk" or "third party cover" has been explained in the Schedule of Tariffs issued by the appellant.

9. There are three sets of covers provided in the India Motor Tariffs issued by the appellant , namely, (1) "Own damage cover", (2) "Liability to the public risks or third party cover", and (3) "Act Only" liability cover. To determine whether it was a wider cover liability i.e. public risks or third party cover or "Act Only" liability cover, it would be appropriate to refer to page 1 of the said Tariff. It has been stated in the Tariff that own damage cover alone cannot be issued. It has to be issued in conjunction with liability to the Public Risks only. What is "Liability to the Public Risks or Third Party Cover" and what "Act Only" liability cover stand for are defined as under:

LIABILITY TO THE PUBLIC RISKS OR THIRD PARTY COVER:

Indemnity to the Insured against liability for claims by the public in respect of accidental personal injury or damage to property caused by or arising out of the use of the insured vehicle

"ACT ONLY" LIABILITY COVER:

Indemnity to the Insured against legal liability as under the Motor Vehicles Act, 1939, for claims by the public in respect of accidental personal injury or damage to property caused by or arising out of the use of the insured vehicle Subject to the General Exceptions of the policy.

10. Reading of above makes it clear that in the case of "Act Only" liability cover, the liability of the insurer is limited as defined under the Motor Vehicle Act, 1939. Further more it would be subject to the General Exceptions of the policy. Whereas in the case of Liability to the Public Risks or Third Party Cover, the insurer will indemnify the insured against claims raised by the public in respect of accident either of personal injury or damage to the property caused by the insured vehicle. Reading of the two definitions given in the Tariff makes it clear that Third Party cover and "Act Only" cover are two distinct things. These are not synonymous nor at par with each other as suggested by Mr. Mehra. Perusal of Ex.RW-2/1 i.e. proposal form makes it clear that the insured had opted for third party risk cover. In the column "Scope of cover required" three categories of covers were mentioned, namely, (i) Comprehensive, (ii) Third Party; and (iii) Act Liability. The insured got tick marked the second opinion i.e. third party cover meaning thereby that at the time of taking out the policy the insured opted for wider liability cover and not an "Act Only" cover. The defense as set up by this appellant in its written statement that liability of the insurer was limited because insured took out "Act Only" policy stand refuted with the above facts which had come on record. The insurance cover Exhibit RW-2/2 which deals with the limit of the liability clearly show that risk to personal injury was not restricted to Rs. 50,000/-. The said clause in the insurance cover reads as under:

Limits of Liability

Limit of the amount of the Company's liability u/s II-I(i) in respect of any one accident: Such amount as is necessary to meet the requirements of the Motor Vehicle Act, 1939.

Limits of the amount of the company's liability u/s II-I (ii) in respect of any one claim or series of claims arising out of one event. Rs. 50,000/-.

11. As per the policy Clause II-I (ii) is with regard to damage to the property and Clause II-I (i) deals with the death or bodily injury to any person. The limit of Rs. 50,000/- had been prescribed against clause II-I(ii) which deals with damage to the property. But no limit of Rs. 50,000/- was prescribed against Clause II-I (i) which deals with death or bodily injury to any person. Therefore, even policy Exhibit RW-2/2 does not prescribe any limit of liability with regard to cases of bodily injury or death. Since limit of liability was not attached to Clause II-I(i) hence the insurer has to indemnify the insured against all claims which the insured was made liable to pay.

12. The Schedule of Premiums for Motor Insurance deals with the case of "liability to the public risks" regarding motorised rickshaw. It covers three wheeler scooter provided the capacity of the same does not exceed 350 c.c. For such a vehicle the basic premium of "Act Only" policy is Rs. 40/- whereas for wider risk cover the premium is Rs. 48/-. In this case the insured paid extra premium in order to get wider risk covered and, Therefore, paid Rs. 48/-. Thus by paying Rs. 8/- extra in comparison to "Act Only" liability he got his auto rickshaw covered for wider liability. In fact the insurer in this case by covering wider liability acted as security for the third party with respect to its Realizing compensation for the death caused. Supreme Court in the case of New Asiatic Insurance Co. Ltd. Vs. Pessumal Dhanamal Aswani and Others, while dealing with the liability of Insurance Company qua third party observed that conditions in the policy are effective only between the insured and the company, and have to be ignored when considering the liability of the company to third party. It was stated that "the avoidance clause says that nothing in the policy or any endorsement thereon shall affect the right of any person indemnified by the policy or any other person to recover an amount under or by virtue of the provisions of the Act. It also provides that the insured will repay to the company all sums paid by it which the company would not have been liable to pay but for the said provisions of the Act.

13. From the reading of this judgment it is clear that third party claim would not be affected by any term of the policy.

8. Similarly, Division Bench of Rajasthan High Court in National Insurance Co. Ltd. Vs. Hastimal Lodha and Others, also considered a definition regarding "Liability to Public Risk" or third party cover and came to conclusion that where a premium of Rs. 240/- ("Public Risk Liability" premium) had been charged by the insurance company (to cover the "Liability to Public Risk") which was higher than

the "Act Only Premium" of Rs. 200/-, the liability of insurance company was unlimited.

9. I find no force in this appeal and the appeal is hereby dismissed.