

(2006) 05 J&K CK 0019
In the Jammu And Kashmir High Court
Case No : C.I.M.A. No. 2 of 2002

United India Insurance Co.

APPELLANT

Vs

Jagjit Singh and Another

RESPONDENT

Date of Decision : 05-05-2006

Acts Referred:

Jammu and Kashmir Evidence Act, 1977 — Section 74, 77
Motor Vehicles Act, 1939 — Section 95, 95(2), 96

Citation : (2006) 2 JKJ 407

Hon'ble Judges : J.P. Singh, J

Bench : Single Bench

Advocate : Vishnu Gupta, for the Appellant; Surinder Singh, for the Respondent

Judgement

J.P. Singh, J.—United Insurance Company Limited has come up in appeal to this Court against award dated 27.9.2001 of Motor Accidents

Claims Tribunal, Bhaderwah, whereby an award for an amount of Rs. 3,70,000/- (Rupees three lakh seventy thousand) has been awarded in

favour of Khair-Ud-Din, his wife and daughter, holding the appellant liable to satisfy the award for and on behalf of respondent No. I, the owner of

bus bearing registration No. JKP 8295.

2. The facts giving rise to this appeal may be stated thus: Khair-Ud-Din, S/o Sikander Tantary, R/o Village Bhalla Tehsil Bhaderwah, aged 56

years, had filed a Claim Petition before Motor Accidents Claims Tribunal, Jammu on 08.10.1986 with the allegations that Mohd Rafiq, his son,

was travelling on his Motor Cycle to Doda when just near his home town at Bhalla, he was hit by bus bearing No. JKP 8295 coming from the

opposite direction in a high speed, which was being driven rashly and negligently by its driver.

Mohd Rafiq is alleged to have later succumbed to the injuries while being taken to a hospital at Doda.

Respondent No. 2 claimed compensation for himself, being father of the deceased, besides his wife (mother of the deceased) and his daughter

(minor sister of the deceased), who were stated to be dependent on the deceased, who was earning an amount of Rs. 1,274.40 per month.

Initially the first respondent contested the claim petition denying that the vehicle had met with any accident.

An application appears to have been moved on 4.2.1987 for impleading appellant as party respondent on the premise that the vehicle, which had

caused accident resulting in death of Mohd Rafiq, stood insured with the appellant at the time of accident and, as such, the Insurance Company

was liable to satisfy the claim of the claimants because of the issuance of Insurance certificate No. 111700/24/6/0780/86 and Policy No.

111700/24/1/0305/86 by it in favour of the owner of the vehicle.

3. The parties were put to following issues:

1. Whether the petitioner is the legal representative and dependant of the deceased? OPP

2. Whether on 17.8.86 the deceased was going on motor cycle and met an accident with bus No. JKP 8295? OPP

3. Whether the deceased was earning Rs. 1274/- PM and was of the age of 28 years at the time of accident? OPP

4. Whether the petitioner is entitled for an amount of Rs. 5,00,000/- if so on what grounds? OPP

5. Whether the bus was wrongly involved in the case and there was no fault or negligence on the part of non applicant No. 1? OPD 1

6. Whether the accident had taken place due to negligence of the deceased if so what will be its effect on the plaint? OPD 1

7. Whether the amount is not in nexus with the facts involved? OPD 1

8. Whether the compensation claimed is inflated? OPD

9. Whether the driver was not possessing valid licence nor was he in the employment of Insured? OPD 2

10. Whether the vehicle was not having valid route (route) permit and he was gone that side against route permit? OPD 2

11. Whether the liability of the company is limited? OPD 2 ,

12. Relief.

4. A copy of the Insurance policy certified to be a true copy vide endorsement dated 13.1.1987 appears to have been placed on the records of the Tribunal.

The claimant examined Mohd Sadiq, Mohd. Amin, Ghulam Haider, Bashir Ahmed, besides himself, as witnesses, whereas no evidence was led by the appellant and the owner in the case.

5. The Tribunal, after evaluating the evidence produced by the claimants, accordingly, decided the claim petition in favour of claimants holding father of the deceased and other dependents entitled to compensation to the tune of Rs. 3,70,000/- to be satisfied by the appellant.

6. Sh. Vishnu Gupta, learned Counsel for the appellant Insurance Company, while questioning the maintainability of claim petition on behalf of mother and sister of the deceased, urged that quantum of compensation had been erroneously awarded by the Tribunal.

7. His star argument, however, was that the Company had erroneously been fastened with the absolute liability of satisfying the award, whereas the Insurance Policy relied upon by the claimant and not disputed by the owner throughout the proceedings before the Tribunal and this Court, did not justify the award of the Tribunal holding the appellant liable to satisfy the award regardless of the limited liability, which the Insurance Policy eloquently spoke of in respect of the appellant.

8. Sh. Gupta referred to the judgments of Supreme Court of India and various High Courts of the country, to urge the following points on behalf of appellant:

1. The Tribunal has erred in holding that the failure of the company to lead evidence in support of its limited liability would lead to irresistible conclusion that the liability of the Insurance Company was unlimited.

2. It is the duty of the owner, insured, rather than the Insurance Company, insurer, to prove the liability of the Company in case the owner wished to get itself indemnified for its liability.

3. The accident having occurred during the currency of Motor Vehicles Act 1939, the Company cannot be held liable for paying more than what was prescribed in Section 95 of the Motor Vehicles Act.

4. That quantum of compensation awarded in favour of the claimants was excessive.

9. S. Surinder Singh, learned Counsel for the owner respondent No. I, on the other hand, relied upon The Oriental Fire and General Insurance Co.

Ltd., Chandigarh Vs. Smt. Chandrawali and Others, and Ajit Singh Vs. Sham Lal and Others, , to support the contrary view that failure of the

Insurance Company to lead evidence and produce original Insurance Policy would lead to the conclusion that liability of the Insurance Company

was absolute.

10. I have considered the submissions of learned Counsel for the parties and gone through the judgments cited by the learned Advocates.

11. It is an admitted case of the parties that the appellant Insurance Company, had not sought requisite permission of the Court to contest the claim

petition on grounds other than those, which were available to an insurer under the Motor Vehicles Act.

12. The question of quantum raised by Sh. Gupta cannot, thus, be raised by him because the question does not fall in the permissible defences

which are available to an insurer under the Motor Vehicles Act.

13. I do not find substance in the other submission of Sh. Gupta that non-mentioning of the names of mother and sister of the deceased in the array

of petitioners, would debar the claimant from claiming compensation on their behalf, particularly when both mother and sister have been specifically

mentioned in the claim petition as dependants of the deceased.

14. The claim petition, even otherwise, does not appear to have been contested as not maintainable during the currency of the petition before the

Claims Tribunal. Plea raised by Sh. Gupta, cannot, thus, be permitted at the appellate stage.

15. I will now refer to the question raised by Sh. Gupta as to the limited liability of the Insurance Company in the present case.

16. The Motor Accidents Claims Tribunal, Doda, to which the case appears to have been later transferred, has held Insurance Company liable to

satisfy the award solely on the ground that the Insurance Company had failed to produce the original Insurance Policy records, despite taking

about a years time to do the needful.

17. View taken by the Tribunal, in my opinion, is erroneous; in that, it had erred

to appreciate the true scope and meaning of a Contract of Insurance. The Contract of Insurance is a contract of indemnity for the tortfeasor. The tortfeasor, in case it desires to get itself indemnified, is,

thus, required to prove that it had entered into any such contract whereby the indemnifier was liable to satisfy the liability incurred by such person.

18. It was, thus, the owner and not the Insurance Company, which was required to produce the Insurance Policy and prove the liability of the

Insurance Company. Non-production of Insurance Policy in absence of absolute liability of the insurer, under law would not, thus, saddle the

Insurance Company with any liability.

19. A Division Bench of this Court held in *Kewal Krishan and Others Vs. Smt. Krishna Devi and Others*, , that in order to escape liability to pay

compensation to the victim of the accident, it is for the insured to prove that insurers liability was unlimited. Although the Insurance Company in this

case had pleaded limited liability by producing a copy of the Insurance Policy, yet the owner/insured neither controverted this plea nor produced

any evidence to the contrary, so there was no reason for the Tribunal to hold that the liability of the insurer was unlimited.

20. The Division Bench accepted the view taken in *United India Insurance Company Ltd. Vs. Kamla Rani and Others*, , holding that certified copy

of Insurance policy produced by the Insurance Company was admissible in evidence without any formal proof of it and if the insured, i.e., owner of

the vehicle, disputed the correctness of the said certified copy, it was for him to produce the original, which should have been in his custody.

21. Overruling the view taken in *The Oriental Fire and General Insurance Co. Ltd., Chandigarh Vs. Smt. Chandrawali and Others*, , the Division

Bench held that certified copy of the Insurance Policy was admissible in evidence u/s 74 read with Section 77 of the Indian Evidence Act.

22. The finding of the Tribunal in the present case holding appellant liable to indemnify the owner is, thus, unsustainable because the Insurance

Policy, in the present case, was an admitted document relied upon by the claimant by giving its particulars and true copy thereof, which fact had

not been controverted by the owner.

23. In these circumstances, the Tribunal was required only to just have a look at the admitted document to find out as to whether or not the liability

of the insurer was unlimited.

24. The Tribunal has erred in not doing so, which has resulted in an erroneous decision causing miscarriage of justice and serious prejudice to the appellant.

25. Non-production of Insurance Policy by the insurer in a claim petition cannot be taken to be incurring as an absolute liability against the insurer.

To the same effect is a Division Bench judgment of the High Court of Karnataka in *New India Assurance Company Vs. Smt. Veena Upadhyaya and*

Others, .

26. Tirath S. Thakur, J, speaking for the Court in the aforesaid judgment held as follows:

It is true that before the Tribunal, the insurance company had not either produced the policy covering the offending vehicle or adduced any other

evidence in that regard. The non production of the policy cover was, therefore, made a basis by the Tribunal for holding that the liability of the

insurance company was unlimited. We do not have to proceed on the basis of any inference arising from non production of the policy. That is

because the insurance company has during the pendency of this appeal produced before us the original insurance policy pursuant to an order

passed on 31.7.2003 granting permission to it to do so. The genuineness of the policy document produced pursuant to the said order is not

challenged by the respondents. In the circumstances, therefore, we have the advantage of determining the question of liability of insurance company

by reference to the contents of the said document, which opportunity the Tribunal did not unfortunately have.

27. The question as to whether or not the liability of Insurance Company was limited is no longer res-integra and stands concluded by various

judgments of Hon'ble Supreme Court of India. Some of these judgments are *National Insurance Co. Ltd. Vs. Nathilal and Others*, ; *Jameskutty*

Jacob v. United India Insurance Co. and Ors. reported as 2006 (3) Sup 47. It was held in yet another decision of the Supreme Court of India

reported as *National Insurance Co. Ltd. Vs. Keshav Bahadur and Others*, , that insurer does not take any higher liability by accepting higher

premium; the liability is neither unlimited nor higher than the statutory liability fixed u/s 95(2) of the Act. Even if a vehicle is the subject matter of

comprehensive insurance and a higher premium is paid on that score, limit of the liability with regard to third party risk does not become unlimited

or higher beyond the statutory liability fixed. For this purpose, a specific agreement has to be arrived at between the insured and the insurer, and

separate premium has to be paid in respect of additional amount of liability undertaken by the insurer in that regard.

28. In view of the judgments of the High Courts and Supreme Court of India, the inevitable conclusion is that appellant in this case had been

erroneously saddled with the unlimited liability when it had to incur only statutory limited liability of Rs. 50,000/- (Rupees fifty thousand).

29. The award of the Tribunal is, accordingly, modified and the liability of the appellant is held to be limited to Rs. 50,000/- (Rupees fifty thousand)

along with interest accrued thereon.

30. I am conscious of the fact that Motor Vehicles Act is a welfare legislation intended to provide compensation to those who are entitled thereto

without any amount of unnecessary delay in procedural wrangles. Keeping the provisions of Section 96 of Motor Vehicles Act 1939 in view, I

would direct the Insurance Company to satisfy the award and recover the amount by executing this award against the owner and, if needed,

appropriate measures shall be taken by the Tribunal on the request of the Insurance Company to attach the assets of the owner, so as to recover

the amount, which the Insurance Company would pay to the dependants of the deceased.

31. Registrar Judicial shall, accordingly, release the awarded amount in favour of the claimants along with interest accrued thereon.