

(1995) 09 DEL CK 0097
In the Delhi High Court

United India Insurance Co. Ltd.

APPELLANT

Vs

Karan Singh and Others

RESPONDENT

Date of Decision : 18-09-1995

Acts Referred:

Citation : (1997) 2 ACC 580

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Judgement

C.M. Nayar, J.—The present appeals arise out of the Award dated May 3, 1993 passed by Shri Charanjit Jawa, Judge, Motor Accident Claims Tribunal, Delhi. The respondents-claimants filed five claim petitions arising out of the same accident which took place on May 1, 1986. The petitions were ordered to be consolidated and were disposed of by the common Award.

2. The brief facts are that on May 1, 1986 bus No. DEP-5609 driven by respondent No. 1, owned by respondent No. 2 and insured with the appellant-Insurance Company was going on Old Rohtak Road. It was alleged that the same was being driven rashly and negligently by respondent No. 1 on account of which the accident took place and Sanjay, Gulshan Kumar, David, Ved Prakash and Mahesh Kumar died as a result of the accident.

3. Respondent No. 1 was proceeded ex parte on January 5, 1987. Respondent No. 2 and appellant were earlier represented by one Lawyer Shri Rawat and respondent No. 2 later changed the Lawyer but after filing the written statement he did not appear. Therefore, the appellant-Insurance Company, who was respondent No. 3 before the Tribunal only contested the proceedings. The accident has been admitted in the written statement filed by respondent No. 2. The appellant Company has taken up all the defenses available to it under the Motor Vehicles Act, including the plea of limited liability to the extent of Rs. 15,000/- in accordance with the terms of the Insurance policy. The factum of Insurance has been admitted.

4. The learned Judge framed the issues in the respective claim petitions. It will be sufficient to reproduce the same in one case, as the issues are common in all the petitions:

1. Whether the petitioners are the legal representatives of the deceased?
2. Whether the deceased suffered fatal injuries in an accident on May 1, 1986 caused due to rash and negligent driving of the bus No. DEP-5609 on the part of the respondent No. 1 ?
3. To what amount of compensation, if any, are the petitioners entitled and from whom ?
4. Relief.

The Tribunal decided Issue No. 1 in respect of all claim petitions in favor of the claimants and no challenge in respect of the same is made in the present appeals. Issue No. 2 was also decided in favor of the claimants and similarly there is no challenge by the appellant-Company to the findings on this issue.

5. The Tribunal proceeded to dispose of Issue No. 3 by appraising evidence on record and awarded the following amounts in respect of each claim petition: 1. F.A.O. No. 171/93 arising out of Suit No. 187/86 Rs. 2,50,000/- 2. F.A.O. No. 172/93 arising out of Suit No. 188/86 Rs. 2,25,000/- 3. F.A.O. No. 173/93 arising out of Suit No. 189/86 Rs. 84,000/- 4. F.A.O. No. 174/93 arising out of Suit No. 190/86 Rs. 1,80,000/- 5. F.A.O. No. 175/93 arising out of Suit No. 191/86 Rs. 1,50,000/-

The respondents-claimants were also held entitled to interest at the rate of 12 percent per annum from the date of petition and the appellant-Insurance Company and other respondents were liable to pay the amount of compensation and interest jointly and severally within 30 days from the date of award failing which interest was chargeable at the rate of 15 percent per annum from the date of petition. 6. The present appeals have been filed by the appellant-United India Insurance Co. Ltd. The learned Counsel has not impugned the Award or the decision on any other issue and has only confined his submissions with regard to the liability of the appellant Company. He contends that the liability of the Insurance Company in the present case is only to the extent of Rs. 15,000/- per passenger as the deceased were traveling in the offending bus as passengers. He has assailed the findings of the Tribunal as recorded in paragraph 25B. The learned Judge rejected the plea of limited liability by recording the finding that the liability of the Insurance Company cannot be said to be limited to the extent of Rs. 15,000/-per passenger only for the following reasons as stated in the Award:

(a) In the policy Ex.R. 1 limited under the head "Limit of Liability" it is printed in respect of one claim or several claim petitions arising out of one even Rs. 50,000/-, while in the pleading Insurance Company has taken the plea that its limited liability is to the extent of Rs. 15,000/-.

(b) In Ex.R.1 Rs. 15,000/- against the claim limit per passenger has been written in blue ink in hand in portion A to A. Similarly the premium at the rate of Rs. 12/- per passenger is also in the blue ink in hand. These words appear to have been added later on. There are no initials of any officer making this writing.

(c) The person who has signed this document R1 was not produced in the witness box to prove this copy and RW1 examined is unable to identify the signature of the officer who has signed it.

(d) The record was not brought or produced by the RW1 to show that the original document was ever dispatched to the insured in this case.

(e) The record from which Ex. R.1 was prepared was also not produced.

(f) The proposal form produced does not contain the fact whether the proposal was for limited or for unlimited liability. Because according to RW1 the proposal form in both the cases are the same.

(g) Ex.R. 1 apparently is the carbon copy as appears from the look thereof. Therefore, the additions in hand made in portion A to A thereon cannot be taken to be authenticated unless it is proved that in the original Insurance Policy sent to the owner respondent No. 2 that these additions had been made and I find to this effect there is no evidence produced by the respondent Insurance Company.

(h) From the amount of premium alone it cannot be gathered whether the original contract between the insured and the insurer was for limited or unlimited liability, unless it is specifically proved by the Insurance Company that owner of the vehicle while getting the vehicle insured was specifically told of the fact of less premium amount being paid by it/or what more amount was required for unlimited liability, in this regard also there is no evidence.

(i) In Ex.R1 underneath words are written "subject to endorsements No. 23, 26, 21, 22, 13, 16 etc." but these endorsements cannot be known having not been produced Along with the Ex. R1 to find the contents of such endorsements and in this way Ex.R1 is not correct/true copy of the original/complete.

(j) The notice sent to the insured Ex. R4 is dated 23.4.91 whereas the written statement was filed in this case on 12.12.87 and prior to it no efforts made by the Insurance Co. to get produced the original documents from the insured.

Therefore, the Tribunal on the basis of the above findings has held that the policy is not proved in accordance with law and the liability of the appellant-Company cannot be held to be limited to the extent of Rs. 15,000/- per passenger.

7. Mr. Dhanda, learned Counsel for the appellant has referred me to the policy Ex.R.1, which is purported to be carbon copy of the original policy which had been produced before the Tribunal. The reading of the said copy indicates, as is correctly held by the Tribunal, that the said document Ex.R.1 "apparently is the carbon copy as appears from the look thereof". The learned judge has, however, rejected the same as he has held that in the said document Rs. 15,000/- against

the claim limit per passenger has been written in blue ink in hand and the premium at the rate of Rs. 12/- per passenger is also in the same ink and in hand. This obviously has gone adversely against the contention of the appellant as the Tribunal has held that these figures seem to have been inserted at a subsequent stage and are not initialed. The counsel for the appellant has all the same argued that these insertions were not even necessary to be incorporated in the carbon copy of the policy as the statute provides limit of liability on the basis of premium paid by the insured. He has further contended that the policy in dispute is a comprehensive policy covering the insured's estimated value of the vehicle at Rs. 2,20,000/-. The company had charged premium at the rate of Rs. 12/- per passenger in respect of 49 passengers i.e. Rs. 588/- to cover its limited liability u/s 95(2)(b)(ii) of the Motor Vehicles Act, 1939, which was then in force. The tariff, as prevalent at the relevant time when the accident took place reads as follows :

Legal Liability for Accident to Passengers

I. Applicable to all Passenger Carrying Vehicles except Motorised Rickshaws

Total	Licensed	passenger	carrying	Per Passenger on capacity	Limit of Liability
(A) Any one Passenger	15,000	20,000	30,000	Unlimited	(B) Any one Accident
Overall limit depending upon the total licensed Passenger Carrying Capacity					
Rate per passenger Rs. 12/- Rs. 23/- Rs. 30/- Rs. 50/-					

Therefore, it is argued that the liability of the appellant company cannot, in any manner, exceed a sum of Rs. 15,000/- per passenger.

8. There is no doubt that the liability of the Insurance Company shall only extend to unlimited amount or higher than the statutory liability fixed under Subsection (2) of Section 95 of the Act in case separate premium had been paid on the amount of liability undertaken by the Insurance Company in this regard. This position is not in doubt and is reiterated in the judgment of the Supreme Court, as reported in National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, . The recent judgment of the Supreme Court as reported in New India Assurance Co. Ltd. Vs. Smt. Shanti Bai and others, lays down same proposition and relies upon the judgment of the Supreme Court in the case of National Insurance Co. Ltd., (supra). The said case is based on similar facts as arise for decision in the present appeals. Paragraph 9 of the judgment may be reproduced as follows :

9. In the present case, the premium which has been paid is at the rate of Rs. 12 per passenger and is clearly referable to the statutory liability of fifteen thousand rupees per passenger u/s 95(2)(b)(ii) of the Motor Vehicles Act, 1939. In the present case, there is no special contract between the appellant-Company and respondent 4 to cover unlimited liability in respect of an accident to a passenger. In the absence of such an express agreement, the policy covers only the

statutory liability. The mere fact that the insurance policy is a comprehensive policy will not help the respondents in any manner. As pointed out by this Court in the case of National Insurance Co. Ltd. v. Jugal Kishore comprehensive policy only entitles the owner to claim reimbursement of the entire amount of loss or damage suffered up to the estimated value of the vehicle. It does not mean that the limit of liability with regard to third party risk becomes unlimited or higher than the statutory liability. For this purpose, a specific agreement is necessary which is absent in the present case. Reference in this connection may also be made to the case of M.K. Kunhintohammed v. P.A. Ahmedkutty. The appellant-Company is, Therefore, entitled to succeed to the extent that it has been directed to pay to respondents 1 to 3 any amount in excess of Rs. 15,000/-.

9. The Tribunal has not clearly adverted to the aspects of law, as referred to above, i.e. whether the appellant-Insurance Company was liable only to the extent of its liability u/s 95(2)(b) (ii) of the Act. The carbon copy of the policy has been filed as Ex.R.1. Mr. Saini, Counsel for the respondents-claimants has contended that since no copy of the tariff was filed before the Tribunal this point could not be adjudicated upon by the Tribunal. The policy in this background was not relied upon and the liability of the appellant-Insurance Company was held to be unlimited. In the case which was decided by the Supreme Court as reported in New India Assurance Co. Ltd. v. Shanti Bai (Smt.) and Ors. (supra) the policy was even produced in the Supreme Court and the matter was decided on the basis of perusal of the policy. In this background, it will be necessary to remand the case to the Tribunal to decide, (a) whether the policy Ex. R.1 is the carbon copy or the copy which has been proved in accordance with law, and (b) whether the liability of the Insurance Company is limited to the extent of Rs. 15,000/- per passenger on the basis of the premium as paid to the insurer, appellant herein, in case the policy or carbon copy of the policy is held to be proved. The Tribunal shall grant adequate opportunity to both the parties to lead their respective evidence to decide the issues as referred to above. In view of the fact that the accident took place as far back as May 1, 1986, the learned Judge is requested to dispose of the matter on the above limited questions as expeditiously as possible, preferably within a period of six months.

10. The appellant shall not claim any refund for the amount which has been directed to be paid to the respondent-claimants by order of this Court dated March 18, 1994. This will be subject to the ultimate decision in the matter.

11. The Appeals are disposed of in the above terms. The parties are directed to appear before the Tribunal on September 29, 1995 for further proceedings. The record shall be sent back immediately by special messenger.

12. The respondents-claimants were represented by Mr. R.K. Saini as amicus curiae who has appeared on my request and has ably assisted the Court.