

(2002) 05 MP CK 0027
In the Madhya Pradesh High Court
Case No : M.A. No. 537 of 1990

United India Insurance Co. Ltd.	Vs	APPELLANT
Mohammad Yunus and Others		RESPONDENT

Date of Decision : 17-05-2002

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 95(2)

Citation : (2003) ACJ 1542

Hon'ble Judges : V.K. Agrawal, J

Bench : Single Bench

Advocate : Amrit Ruprah, for the Appellant; R.P. Jain, for the Respondent

Final Decision : Allowed

Judgement

V.K. Agrawal, J.—This appeal is directed against the award dated 27.8.90, in Motor Claim Case No. 174 of 1989 by Second Additional Motor Accidents Claims Tribunal, Seoni, awarding compensation of Rs. 79,100, u/s 110-A of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act" for short).

2. Relevant facts stated in brief are that the claimant-respondent No. 1 was travelling by bus No. MPK 6370 on the date of accident, i.e., on 18.7.1987. At the time of accident, the said bus was being driven by the respondent No. 2 Hamidulla and was owned by respondent No. 3. The appellant admittedly is the insurer of the said vehicle. The said bus while going from Seoni to Dharan met with an accident near village Gokulpur. The claimant-respondent No. 1 suffered injuries and permanent disability.

3. The claimant-respondent No. 1 in his petition u/s 110-A of the Act averred that the accident occurred on account of rash and negligent driving of the bus by driver, respondent No. 2 Hamidulla. The claimant-respondent No. 1 suffered grievous injuries on his shoulder for which he had to undertake long treatment. Though the claimant-respondent No. 1 detailed various heads of compensation totalling Rs. 4,69,000, however, claimant-respondent No. 1 only prayed for being

awarded a sum of Rs. 2,00,000 as compensation.

4. The petition as above, was resisted by the respondent Nos. 2 and 3 as well as the appellant insurer. It also appears that the matter was referred to "Lok Adalat" in which the appellant insurer and claimant-respondent No. 1 entered into a compromise. According to the said compromise the appellant insurer admitted its liability to the extent of Rs. 15,000 and agreed to pay the sum with the stipulation that the claimant-respondent No. 1 shall be entitled to proceed against the remaining respondents?driver and owner of the offending bus, for the remaining claim.

5. The learned Tribunal held that the accident occurred on account of rash and negligent driving of the bus by respondent No. 2 Hamidulla. Compensation of Rs. 79,100 was assessed. The respondent Nos. 2 and 3 as well as the appellant were held jointly and severally liable to pay the amount of compensation, as above.

6. The learned Counsel for the appellant insurer submitted that the policy issued by the appellant insurer was statute policy as no extra premium was charged. It was, therefore, submitted that the liability of the appellant was limited to the extent of Rs. 15,000 only. It was further submitted that the parties had compromised in the "Lok Adalat" in which it was clearly stipulated between them that the appellant insurer would only be liable to the extent of Rs. 15,000, which it agreed to pay to the claimant-respondent No. 1. It was submitted that in view of the compromise as above, the liability of the appellant insurer after payment of the above amount, came to an end.

7. Learned counsel for the claimant-respondent No. 1, however, supported the impugned award and submitted that the Tribunal was justified in holding the appellant insurer jointly and severally liable for the payment of whole of the amount of compensation. The learned Counsel for respondent No, 1 also submitted that the appellant in the reply filed by it in the Claims Tribunal did not raise specific plea of its limited liability nor did it produce the copy of insurance policy. It was, therefore, submitted that the appellant could not be permitted to raise the plea of limited liability in this appeal.

8. It is undisputed that the appellant is the insurer of the offending vehicle and had issued an insurance policy with regard to the offending bus, as is clear from the reply filed by the appellant in the Claims Tribunal. It also appears that in the reply to the claim petition, the appellant insurer did not raise specific plea regarding its limited liability. However, it appears from the record of the Tribunal that the policy of insurance was filed by the appellant.

9. It further appears that the matter was referred to the "Lok Adalat" and the appellant and claimant-respondent No. 1 had compromised. In the compromise petition, it was stated by the claimant-respondent No. 1 as well as the appellant that the liability of the appellant insurer was limited to the extent of Rs. 15,000 and that the appellant was willing to pay the said amount to the claimant. Accepting the said compromise, award dated 10.9.1989 was passed by the "Lok

Adalat" holding that the appellant insurer was liable to pay the sum of Rs. 15,000. It was also stipulated between the claimant and appellant insurer that appellant insurer would not be liable to pay any additional sum to the claimant-respondent No. 1. It was further averred therein that the claimant-respondent No. 1, however, could proceed as against the remaining respondents to recover additional amount of compensation, besides the aforesaid amount of Rs. 15,000 payable by the appellant insurer.

10. Though, it is true that it was not specifically pleaded in the reply filed on behalf of appellant insurer that the policy issued by it was a statute policy as no extra premium was charged by it, yet at the subsequent stage, when the matter was referred to the "Lok Adalat", in the compromise petition, it was averred by appellant insurer that its liability was limited to the statutory limit of Rs. 15,000. The claimant-respondent No. 1 was also a signatory to the compromise petition and was thus fully aware of the stand as above taken by the appellant insurer that its liability was limited to the statutory limit. In fact, claimant was also agreeable to the above proposition and award as against the appellant insurer was also passed in the "Lok Adalat" in terms of the compromise as above.

11. Learned counsel for the claimant-respondent No. 1, however, submitted that specific plea by the appellant should have been raised by the appellant insurer and without doing so, the appellant could not now raise this plea in appeal regarding its limited liability. The learned Counsel for claimant-respondent No. 1 in the above context relied upon a Division Bench judgment of this Court in Dhanraj and Another Vs. Jeewan Singh and Others, (MP), wherein it has been held that the plea of limited liability has to be duly established by production of necessary evidence. It was held that taking the plea in the written statement and filing the photocopy of the cover note is not enough. Pleadings are to be proved in the manner envisaged in the law of evidence.

12. In the instant case, as noticed earlier, though specific plea was not raised by the appellant in its reply; yet the plea as above was taken by it in the compromise petition, and the same was also admitted by the claimant-respondent No. 1. Therefore, there was admission by the claimant that the liability of the appellant was limited. From the perusal of policy document, Exh. P-28, filed in the Tribunal it would appear that under the caption "liability" the limit of the company's liability u/s II(i) in respect of any one accident was stated thus: Such amount as is necessary to meet the requirements of the Motor Vehicles Act, 1939. Therefore, it is clear that the appellant though in its reply did not specifically state that its liability was limited, but the above stand was stated in compromise petition and thus the claimant-respondent No. 1 was fully aware of the above stand of the appellant insurer, that its liability was limited.

13. In National Insurance Co. Ltd. v. Jugal Kishore 1988 ACJ 270 (SC), the Supreme Court observed that in all cases where the insurance company wishes to take a defence that its liability is not in excess of the statutory liability it should file a copy of the insurance policy along with its defence. It was further

observed that it is the duty of the party which is in possession of a document which would be helpful in doing justice in the cause to produce the said document and such party should not be permitted to take shelter behind the abstract doctrine of burden of proof.

14. In Full Bench decision of this Court in *United India Fire & Genl. Ins. Co. Ltd. v. Natvarlal* 1988 ACJ 956 (MP), it was observed that the question as to whether a policy of insurance covers or does not cover liability in excess of that fixed by the statute would not normally arise before the Tribunal unless it is made an issue. It was also noted that there was a conflict of decision on the question as to who should plead and prove that the liability of the insurance company is in excess of the statutory limit. It was further observed that while impleading the insurance company, the claimant is enabled by law to know the exact terms of the policy, even though he was not a party to the contract of indemnity. If claimant, however, fails to inspect the policy of insurance and to allege that the insurance policy covers liability in excess of the statutory limit, the matter should not be decided on technicalities of pleadings, in view of the peculiar circumstances, in which an insurer is impleaded in an action for compensation. It was also observed therein that without relying on the abstract doctrine of burden of proof, the insurance company should produce a true copy of the policy of the insurance. If the insurance company fails to do so, the Tribunal should direct the insurance company to produce the same. Accordingly, it was observed in the said decision that where the insurance company concerned wishes to take a defence in the claim petition that its liability is not in excess of the statutory liability, it should file a copy of the insurance policy along with its defence and on its failure to do so, Tribunal should direct the insurance company to file such a copy.

15. In the instant case, it is clear that the copy of the insurance policy was filed in the record of the Claims Tribunal by the appellant. It also had specifically stated that its liability was limited to the extent of Rs. 15,000 in the compromise petition filed by it before the "Lok Adalat". Therefore, the appellant is not springing surprise when it says that its liability is limited. It is true that the appellant should have raised a specific plea in the above regard in its reply to the above effect and should have pleaded that it had limited liability to the extent of Rs. 15,000, as provided u/s 95(2)(b)(ii) of the Act. However, the appellant's plea as above cannot be ignored on the technical ground that the same was not raised in its reply. Since the appellant had placed on record of the Tribunal the policy document and had also raised specific plea in the compromise petition, that its liability was limited to the extent of statutory limit, the above plea should have been taken into consideration by the Tribunal.

16. It may be noticed that in *New India Assurance Co. Ltd. Vs. Smt. Shanti Bai and others*, (SC), the Apex Court observed that if policy covered legal liability for accident to passengers, the same is referable to the statutory liability of Rs. 15,000 per passenger u/s 95(2)(b)(ii) of the Act, in the absence of any special contract.

17. In *Amrit Lal Sood and Another Vs. Smt. Kaushalya Devi Thapar and Others*, (SC), there was a collision between two vehicles. One of the vehicles was a car and other was a goods carrier. A gratuitous passenger was travelling in the car and got injured in the accident. The car was insured under a comprehensive policy. Claim was awarded to the gratuitous passenger travelling in the car. The High Court, however, exonerated the insurance company from liability to pay compensation. The Apex Court in the said case held that the expression "any person" in the insurance policy would include a gratuitous occupant of the car and so far as gratuitous passengers are concerned, there is no limitation in the policy as such and, therefore, under the terms of the policy insurer is liable to pay the amount of award in favour of the claimant.

18. In *New India Assurance Company v. C.M. Jaya*, (1999) 2 SCC 47, the two-Judge Bench of the Apex Court noticing apparent conflict in the three-Judge Bench decision of that court in *New India Assurance Co. Ltd. Vs. Smt. Shanti Bai and others*, (SC) and *Amrit Lal Sood and Another Vs. Smt. Kaushalya Devi Thapar and Others*, (SC), referred the following question to the larger Bench:

The question involved in these appeals is whether in a case of insurance policy not taking any higher liability by accepting a higher premium, in case of payment of compensation to a third party, the insurer would be liable to the extent limited u/s 95(2) or the insurer would be liable to pay the entire amount and he may ultimately recover from the insured.

19. Answering the reference, the five-Judge Bench of the Apex Court in *New India Assurance Co. Ltd. Vs. C.M. Jaya and Others*, (SC), observed that there was no conflict on the question raised in the order of reference between the decision of two cases of *New India Assurance Co. Ltd. Vs. Smt. Shanti Bai and others*, (SC) and *Amrit Lal Sood and Another Vs. Smt. Kaushalya Devi Thapar and Others*, (SC). It was further observed that there was consistency on the point that in case of an insurance policy not taking any higher liability by accepting a higher premium, the liability of the insurance company is neither unlimited nor higher than the statutory liability fixed u/s 95(2) of the Act. The decision in *Charity Commissioner, Maharashtra Vs. Niranjana and Ors*, and in *National Insurance Co. Ltd. Vs. Nathilal and Others*, (SC), were referred to and the view expressed in the case of *New India Assurance Co. Ltd. Vs. Smt. Shanti Bai and others*, (SC), was held to be correct and the reference was answered as under:

In the case of insurance company not taking any higher liability by accepting a higher premium for payment of compensation to a third party, the insurer would be liable to the extent limited u/s 95(2) of the Act and would not be liable to pay the entire amount.

20. In the instant case, also it does not appear that the appellant charged any extra premium. Therefore, the appellant cannot be fastened with the liability to pay compensation beyond the statutory limit.

21. Accordingly, the appeal is allowed. The amount of compensation as awarded by the learned Tribunal is maintained. However, it is directed that the appellant insurer would only be liable to pay the amount of award to the extent of statutory limit of Rs. 15,000 (rupees fifteen thousand). The remaining amount of award shall be payable by the owner and driver, i.e., the respondent Nos. 2 and 3. The other terms of the award regarding payment of interest, etc., shall remain unaffected. The impugned award stands modified to the above extent.