

(2001) 04 RAJ CK 0110

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 445 of 1994

United India Insurance Co. Ltd.

APPELLANT

Vs

Neela Devi and Others

RESPONDENT

Date of Decision : 26-04-2001

Acts Referred:

Motor Vehicles Act, 1988 — Section 95(2)(a)

Citation : (2003) ACJ 586 : (2001) WLC 574

Hon'ble Judges : J.C. Verma, J

Bench : Single Bench

Advocate : Ashok Mehta and Dinesh Kala, for the Appellant; Manish Bhandari, for the Respondent

Final Decision : Allowed

Judgement

J.C. Verma, J.—This misc. appeal has been preferred by United India Insurance Co. Ltd. against the award dated 20.12.93 passed by the Motor Accidents Claims Tribunal, Jaipur in Case No. 702 of 1991.

2. The claim application was filed by respondent Nos. 1 to 5 as legal heirs of the deceased Paras Raj Shah who was travelling in car No. RJT 8133 on 16.3.1982, when the truck No. MRL 3995 being driven by respondent No. 6 had struck the car resulting in the death of said Paras Raj Shah. He was Director in Prem Cables. The driver was proceeded ex pane, owner of the truck had appeared in the court, but later on absented.

3. The learned Tribunal had awarded an amount of Rs. 2,74,000 in favour of the claimant along with interest. The insurance company has filed the present appeal only on the ground that the maximum liability of the insurance company was restricted to an amount of Rs. 50,000 only and no enhanced liability could be fastened on the insurance company. The Tribunal was of the opinion that the policy as taken out by the insured was of comprehensive nature and, therefore, the insurance company was liable.

4. The only point being raised is about the liability of the insurance company and reliance is placed on National Insurance Co. Ltd. v. Jugal Kishore 1988 ACJ 270 (SC); New India Assurance Co. Ltd. v. Ram Lal 1988 ACJ 754 (SC); National Insurance Co. Ltd. Vs. Nathilal and Others, and single Bench judgment of Punjab & Haryana High Court in Baldev Singh Vs. Secretary, P.S.E.B. and Another,

Record was called for.

5. The insurance company has come up in appeal on the ground that even though there was a comprehensive insurance but the liability of third party risk was not covered and, therefore, u/s 95(2)(a) prior to amending Act, the insurance company was liable to the statutory liability, i.e., of Rs. 50,000 and for the proposition relies on the judgment of Supreme Court in National Insurance Co. Ltd. v. Jugal Kishore 1988 ACJ 270 (SC) and also another judgment of the Apex Court in New India Assurance Co. Ltd. v. Ram Lal 1988 ACJ 754 (SC).

6. Reliance is also placed on National Insurance Co. Ltd. Vs. Nathilal and Others, Rajan Vs. Sukumaran, and New India Assurance Co. Ltd. Vs. Smt. Shanti Bai and others,

7. The learned Tribunal had held that even though the insurance policy has been placed on record, but for the reason that it was not properly proved by the person who had issued the insurance cover, it is to be presumed that the insurance policy has not been proved as exhibited.

8. Counsel for the appellant states that both the parties were aware of the fact that this was the only insurance cover on which the reliance was being placed and as such observation of the Tribunal to the fact that the policy has not been proved is neither proper nor justified.

9. I agree with the submission made by the counsel for the appellant that once the insurance policy has been placed on record which otherwise is binding policy between the parties, it cannot be said that it has not been proved in accordance with law.

10. As per the settled law as discussed above, prior to the amendment in the Act, the insurance company is liable to the limited statutory liability only and, therefore, the award of the Tribunal so far as fixing of unlimited liability on the insurance company needs to be set aside.

11. For the reasons and discussions mentioned above, the misc. appeal is allowed, the liability of the insurance company is limited to Rs. 50,000 only. It is further ordered that whole of the amount shall be paid by the insurance company if already not paid, but the insurance company shall be entitled to recover the amount paid over and above its liability from the insured as has been held by the Hon'ble Apex Court in Oriental Insurance Co. Ltd. Vs. Cheruvakkara Nafeessu and Others, as under:

In the facts and circumstances of this case, we find that despite holding the

liability under the policy limited to the extent of Rs. 50,000, the Claims Tribunal and the High Court were not unjustified in directing the appellant company to pay the whole of the awarded amount to the claimants on the basis of the contractual obligations contained in clauses relating to the liability of the third parties and avoidance clause. However, the Claims Tribunal and the High Court were not justified in rejecting the right of the appellant company to recover from the insured the excess amount paid in execution and discharge of the award of the Tribunal.

12. The appeal is allowed as per the reasons and discussions mentioned above.