

(2005) 02 AHC CK 0125
In the Allahabad High Court
Case No : F.A.F.O. No. 243 of 1992

United India Insurance Co. Ltd.

APPELLANT

Vs

Smt. Arunesh Bhatnagar and Others

RESPONDENT

Date of Decision : 04-02-2005

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 110D, 95(1), 95(2)
Motor Vehicles Act, 1988 — Section 149, 173, 174

Citation : (2005) 1 AWC 904

Hon'ble Judges : V.M. Sahai, J; O.N. Khandelwal, J

Bench : Division Bench

Advocate : A.B. Saran and Parmatma Rai, for the Appellant; K.K. Rizvi and H.N. Sharma, for the Respondent

Final Decision : Allowed

Judgement

O.N. Khandelwal, J.—This appeal has been preferred by Insurance Company u/s 110D of the Motor Vehicles Act, 1939 read with Section 173 of the Motor Vehicles Act, 1988, against the judgment and award dated 15.11.1991, passed by Motor Accident Claims Tribunal/XIIIth Additional District Judge, Moradabad in Motor Accident Claim Petition No. 73 of 1987, Smt. Arunesh Bhatnagar v. Kamal Kishore Tandon.

2. The claim petition was filed by respondents (widow, daughters and sons) of deceased S.C. Bhatnagar, an employee in B.H.E.L. with respect to an accident which took place on 1.6.1986 at 8.30 a.m. in Moradabad. The deceased, aged about 47 years was standing in the compound of Roadways Bus-stand and waiting for a bus. The bus owned by respondent No. 6 and driven by respondent No. 7 hit S.C. Bhatnagar and crushed him on account of which he died on the spot. After completing the formalities, the claim petition u/s 110A of the Motor Vehicles Act, 1939, was filed in December, 1986, claiming a compensation of Rs. 3,62,576.

3. Pappu, driver-respondent No. 7 filed his written statement and stated that he

was not driving the bus on that date. He denied all the allegations of the petition. The Insurance Company also contested the claim pleading that the petition is barred by time, Pappu was not the driver of the bus, the income of the deceased was wrongly shown, the petitioners are neither heirs nor dependents of the deceased. Besides, the vehicle involved in the accident had no valid registration and permit at the time of accident. It was also pleaded that the bus was overloaded and the Insurance Company is liable to the extent of coverage of policy and not beyond it.

4. Several issues were framed and it was held that the accident took place due to rash and negligent driving of the bus involved, petition is not barred by time and petitioners are heirs of the deceased. While dealing with the liability of the Insurance Company it was observed that the policy was a comprehensive one and against third party, therefore, the liability of the Insurance Company is unlimited and he is liable to pay the entire amount of compensation which comes to Rs. 1,46,832. Accordingly that sum was awarded in favour of the petitioner Nos. 1, 3, 4 and 5 along with 9% per annum interest from the date of filing of the petition, i.e., 4.12.1986 till the date of payment against the Insurance Company. Aggrieved by the judgment and award dated 15.11.1991, this appeal has been preferred by the Insurance Company.

5. We have heard Sri A. B. Saran, learned senior advocate assisted by Sri Parmatma Rai, learned counsel for the petitioner and Sri K. K. Rizvi, learned counsel appearing for respondent Nos. 1 to 5. Though the matter has been taken up in the revised list, Sri H. N. Sharma, learned counsel appearing for respondent No. 6 did not appear. Respondent No. 7 is a Driver. Learned counsel for the parties states that he is only a proforma respondent. This appeal was, therefore, taken up for final disposal.

6. The only point which was vehemently argued before us by the learned counsel for the appellant was that the liability of the Insurance Company was limited to the extent of Rs. 50,000 and the Insurance Company was not liable to pay the entire amount of compensation awarded by the Tribunal. We have considered submissions made by the learned counsel in this regard.

7. Section 95 (2) of the Old Motor Vehicles Act, 1939 says "Subject to the provisions of Sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident upto the following limits, namely :

"(a)

(b) Where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment,-

(i) In respect of persons other than passengers carried for hire or reward, a limit of Rs. 50,000 in all ;

(ii) In respect of passengers,-

....."

8. There is no doubt that this accident was caused by a passenger bus. It is also not disputed that the deceased was not a passenger. Therefore, in view of the aforesaid provisions, the deceased being "a person other than passenger", the Insurance Company was liable to pay a maximum sum of Rs. 50,000 while a compensation of Rs. 1,46,832 has been awarded against the appellant/ Insurance Company.

9. The Tribunal while discussing Issue Nos. 3 and 4 had observed that it was a comprehensive policy and extra charges were paid by the owner for 66 passengers, therefore, the Insurance Company had admitted unlimited liability. The view taken by the Tribunal that merely because the policy was a comprehensive one, the liability of Insurer is unlimited, is not correct. It is not the case of the owner or claimants that extra premium has been paid to make the Insurer liable beyond the limit prescribed u/s 95 (2) (b) of the Old Motor Vehicles Act. The term "comprehensive" cannot be taken to mean unlimited liability because it refers to different types of liability and not the extent of liability in financial terms.

10. The case of National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, has been cited before us in which it has been held that it is open to insurer to take policy covering higher risk and for this purpose specific agreement and payment of separate premium is necessary. In case the vehicle is comprehensively insured a higher premium than for "an act only policy is payable depending on the estimated value of the vehicle. Such insurance entitles the owner to claim reimbursement of the entire amount of loss or damage suffered upto the estimated value of the vehicle calculated according to the rules and regulations framed in this behalf. Comprehensive insurance of the vehicle and payment of higher premium on this score however, do not mean that the limit of the liability with regard to third party risk becomes unlimited or higher than the statutory liability fixed under Sub-section (2) of Section 95 of the Motor Vehicles Act. For this purpose a specific agreement has to be arrived at between the owner and the insurance company and separate premium has to be paid on the amount of liability undertaken by the insurance company in this behalf. Likewise, if risk of any other nature for instance, with regard to the driver or passengers, etc., in excess of statutory liability, if any, is sought to be covered it has to be clearly specified in the policy and separate premium paid therefor. This is the requirement of the tariff regulations framed for the purpose.

11. There is nothing to indicate that any extra premium was paid by the vehicle owner with regard to third party risk, therefore, the view taken by the Tribunal that the liability of the Insurance Company is unlimited on account of comprehensive insurance, cannot be accepted and is rejected.

12. In National Company Ltd. v. Brijpal Singh and Anr. 2003 (50) ALR 522, a Division Bench of this High Court while discussing the provisions of Chapters XI

and XII and Section 174 of the Motor Vehicles Act, 1988, had observed that u/s 149 of the aforesaid Act the Insurer is liable to pay to the person entitled to the benefit of the decree, a sum not exceeding the sum assured thereunder as if he was the judgment-debtor.

13. Another Bench of this High Court in *New India Assurance Co. Ltd. v. Shimla Devi and Ors.* 2002 (4) ALR 604 , expressed the view that even if there was breach of condition subject to which the Insurance policy has been issued, the deceased being a third party the Insurer was bound to discharge the statutory liability cast upon it under the provisions of the Motor Vehicles Act and pay the amount of compensation determined to be the just compensation by the Tribunal and thereafter it could, in case there was any breach of terms and conditions indicated hereinabove, recover the amount from the Insurer either in full or to the extent paid in excess, as the case may be. Reference to the decisions of the Apex Court in Civil Appeal No. 7359 of 2000, *Oriental Insurance Co. Ltd. v. Cheruvakkara Nafeessu and Ors.*, decided on 14.12.2000, *New Asiatic Insurance Co. Ltd. Vs. Pessumal Dhanamal Aswani and Others*, and *Amrit Lal Sood and Another Vs. Smt. Kaushalya Devi Thapar and Others*, was made whereby the Insurance Company was made liable to pay the entire awarded amount to the claimants and upon making such payment, the appellant/Insurer was made entitled to recover the excess amount from the insured by executing the award to the extent of such excess as per Section 174 of the Motor Vehicles Act, 1988. The same view has been reiterated by Hon"ble Supreme Court in *National Insurance Company v. Baljeet Kaur* 2004 (1) AWC 565 (SC) : 2004 (1) SCCD 190 : 2004 (54) ALR 549.

14. No other point was either argued or pressed before us.

15. In the result, the appeal is allowed holding that the appellant-Insurance Company will pay the entire awarded amount to the claimants and upon making such payment the Insurance Company will be free to recover the excess amount from the vehicle owner by executing the award against him in accordance with the provisions of Section 174 of the Motor Vehicles Act, 1988. The impugned award is modified accordingly.

16. Parties to bear their own costs.