

(2005) 02 DEL CK 0056

In the Delhi High Court

Case No : LPA 505 of 1998

United India Insurance Co. Ltd.

APPELLANT

Vs

Smt. Phool Kaur and Others

RESPONDENT

Date of Decision : 15-02-2005

Acts Referred:

Citation : (2005) 4 ACC 705 : (2006) ACJ 572 : (2005) 125 DLT 707

Hon'ble Judges : B.C. Patel, C.J.;Sanjay Kishan Kaul, J

Bench : Division Bench

Advocate : K.L. Nandwani, for the Appellant; O.P. Goyal and R.K. Bachchan for Rs - 1 to 6 and Ajay Laroia, for R - 9, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Patel, C.J.—The appellant insurance company is aggrieved by the impugned judgment of learned Single Judge passed in FAO No. 50/1983 on 31.08.1988 on the issue of the extent of liability of the insurance company.

2. It is not necessary to go into details of the incident which resulted in the death of the deceased and the claim being filed by legal heirs under the Motor Vehicles Act, 1939 (hereinafter to be referred to as, "the said Act"). Suffice to say that the claim was made of Rs. 5 lakhs and in terms of the impugned judgment, the claimants have been held entitled to a sum of Rs. 2,16,000/- with interest @ 12% p.a. In terms of the impugned judgment, the appeal filed by the owner of vehicle was, however, dismissed.

3. The only controversy raised before us arises from the contention of learned counsel for the appellant that the liability of the insurance company ought to have been restricted only to the extent of Rs. 50,000/- u/s 95(2)(b)(ii) of the said Act.

4. This plea is based on the clause of the insurance policy, which is as under:

"" Limits of Liability :

Limit of the amount of the Company's Such amount as is necessary liability u/s II-1 (i) to meet the requirements of the Motor Vehicles Act, 1939. Limit of the amount of the Company's liability u/s II-1(ii) in respect Rs. 50,000/-"" of any one claim or series of claims arising out of one event.

The relevant portion of Section II is as under:

"" SECTION II. - LIABILITY TO THIRD PARTIES

1. Subject to the Limits of Liability the Company will indemnify the Insured against all sums including claimant's cost and expenses which the Insured shall become legally liable to pay in respect of

i) death of or bodily injury to any person caused by or arising out of the use (including the loading and/or unloading) of the Motor Vehicle.

ii) damage to property caused by the use (including the loading and/or unloading) of the Motor Vehicle.""

5. Learned counsel for the appellant contended that since there is an endorsement against the claim of liability on account of death or bodily injury to any third-party being restricted to meet the requirements of the said Act and the said Act provided foam amount of Rs. 50,000/-, no amount in excess of the same can be awarded. It is, thus, contended before us that the finding of learned Single Judge that there was an unlimited liability of the insurance company on account of their being a comprehensive policy cannot be sustained.

6. It is not disputed that the basic premium charged on the basis of tariff for such a policy would be Rs. 84/-, whereas in the present case, the premium charged is Rs. 1,911/- which is much higher. It was in these circumstances that the plea of the claimants and the owners was accepted that the extra premium was charged in order to cover the extra risk. It may be noticed that in this behalf that an attempt was made before learned Single Judge on behalf of the insurance company to canvas that the extra premium was charged in order to cover higher damages for vehicle, but this plea was rejected, especially in view of the fact that the same was urged for the first time before the Appellate Court and this was not the case built up before the Tribunal in any leadings. The witness of the insurance company RW-2, Mr. O.P. Seth did not state that the extra premium was charged to cover higher risk of the truck nor could he explain under what circumstances the extra premium was charged.

7. Learned counsel for the appellant seeks to rely upon judgment of the Supreme Court in National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, to contend that wherever an insurance policy contains an endorsement of a restriction on the liability in terms of the said Act, mere payment of higher premium would not justify the grant of a higher claim against the insurance company unless there is a specific agreement in that behalf. It is, however, to be noticed that in para 8 of the said judgment while discussing the same clause and the same endorsement, it has been noticed by the Supreme Court that ""The

details of the premium also indicate that no additional premium with regard to a case falling u/s II-1(i) was paid by the owner of the vehicle to the insurance company. It is only the vehicle which was comprehensively insured, the insured's estimate of value including accessories (I.E.V.) thereof having been shown as Rs.40,000/-."''

8. The aforesaid was based on the details of the premium paid as specified in para 7 of the aforesaid judgment.

9. It is, thus, apparent that the additional premium was explained while the said Explanation is absent in the present case. There is a vast difference between the basic premium, which would have been paid on the limited liability, which is only Rs.84/- as against the premium of Rs.1,911/- which has been actually paid. There was no case built up before the Tribunal of any comprehensive insurance of the vehicle, especially when the insured's estimate of value including accessories is Rs.50,000/- as specified in the policy and the limit of the amount u/s II-1(ii) is Rs.50,000/-.

10. In view of the aforesaid facts, keeping in mind the nature of evidence led and the plea raised, we are unable to accept the contention of learned counsel for the appellant that there was any error in learned Single Judge coming to the conclusion that the additional premium is on account of the comprehensive policy in respect of death or bodily injury to any person.

11. The cross-objections have also been filed by the claimants seeking enhancement of compensation on the ground that certain public documents were produced about the salary entitlement of the deceased for subsequent years. These documents are stated to aver been brought on record for the first time before the Appellate Court by filing an application under Order IXL Rule 33 read with Section 151 CPC. Learned counsel for the claimants, however, does not dispute that this application was never allowed. In any case, what has to be seen is the salary, which was being drawn by the deceased at the time of his demise and any reasonable prospect of increase by reference to that date. We, thus, do not find there is any error committed in the manner of computation of the compensation.

12. The result is that both the appeal and the cross-objections are dismissed leaving the parties to bear their own costs.

13. Some part of the compensation not released to the claimants is stated to be deposited in this Court and placed in an FDR. The same be released to the claimants along with the interest accrued thereon.