
(2002) 08 DEL CK 0227
In the Delhi High Court
Case No : L.P.A. No. 297 of 1998

United India Insurance Co. Ltd.

APPELLANT

Vs

Surekha Bakshi and Others

RESPONDENT

Date of Decision : 13-08-2002

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(2), 96(4)

Citation : (2004) ACJ 715 : (2002) 99 DLT 786

Hon'ble Judges : S.B. Sinha, C.J.; A.K. Sikri, J

Bench : Division Bench

Advocate : Vishnu Mehra, for the Appellant; Respondent No. 1 in person, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—This appeal arises out of a judgment and order dated 16.04.1998 passed by a learned Judge of this Court whereby and whereunder an appeal filed by the appellant herein questioning an Award made by the Motor Accident Claims Tribunal (hereinafter for the sake of brevity referred to as, "the Tribunal") was dismissed.

2. The deceased J.S. Bakshi was an Income Tax Officer. While going on a scooter with one Smt. Shashi Prabha Sehgal, who was riding on the pillion seat, an accident occurred when a three-wheeler scooter being driven by one Jasbir Singh in a rash and negligent manner collided with the scooter of the deceased. As a result of impact of the accident, the right leg of the deceased came under the wheel of the said three-wheeler scooter. He was removed to the hospital and ultimately he succumbed to his injuries on 08.05.1987.

3. The learned Tribunal on a application made by his heirs and legal representatives passed an Award of Rs. 3,60,000/-.

The defense of the appellant herein was that having regard to the provisions contained in Section 95(2)(b) of the Motor Vehicles Act, 1939 (hereinafter for the

sake of brevity referred to as, "the said Act"), its liability was limited to Rs. 50,000/-.

4. The "Policy" was not in dispute. It is also not in dispute that a sum of Rs. 48/- only was paid by way of premium. However before the learned Tribunal, the original policy was not produced, as according to the claimants therein the same had not been received. In any event, a carbon copy of the said policy was produced; from a perusal thereof, it appeared that a total sum of Rs. 138/- was charged by respondent No. 2.

A question arose as to what was the actual amount payable by way of premium for an "Act only Policy".

According to the claimant, a sum of Rs. 40/- was to be charged and an extra amount of premium was taken for covering a wider risk.

5. Before the learned Tribunal, both the parties relied upon a decision of the Apex Court in National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, The learned Tribunal held:-

"As per the case of the petitioner and respondent No. 1 for covering the case of act only liability, a sum of Rs. 40/- was prescribed under the schedule of Tariff and since in this case premium higher than the act only liability of Rs. 48/- has been charged, as such the liability to the public risk of third party in this case would be wider. A copy of the schedule of premium for motor insurance was relied upon by the counsel for the petitioner in this case and a photo copy of the same with relevant page No. 1 and page No. 18 & 19 were placed on record.

At page 1 of the schedule of tariff "Insurance covers available have been prescribed with Explanation as to what was to be covered by way of seeing of various covers provided under the head of (1) Own Damage Cover, (2) Liability to Public Risk for Third Party Cover, (3) Act only Liability Cover. Since in this case the disputed point is regarding the liability to the public risk or third party cover and act only cover is not disputed, as such both the terms as prescribed under schedule of Tariff is reproduced which reads as under:

"LIABILITY TO THE PUBLIC RISKS OR THIRD PARTY COVER- Indemnity to the insured against liability for claims by the public in respect of accidental personal injury or damage to property caused by or arising out of the use of the insured vehicle."

"ACT ONLY LIABILITY COVER-Indemnity to the insured against legal liability as under the Motor Vehicles Act, 1939, for claims by the public in respect of accidental personal injury or damage to property caused by or arising out of the use of the insured vehicle. Subject to the General Exceptions of the Policy."

From the perusal of the above two covers it is clear that in the case of liability to public risk for third party cover the insurance company is to indemnify the insured against liability for claims by the public in respect of an accident and in

the case of "Act Only" liability cover the insurance company is to indemnify the insured against the legal liability as under the M.V.A. 1939 for claims by the public in respect of accident. Since as per page 18 of the Tariff which is relevant in this case since T.S.R. No. DER 6697 was a motorized rikshaw. As per this schedule of tariff a sum of Rs. 40/- was to be charged as premium by the insurance company for covering Act Only liability and in case the cover was to be issued for liability to the Public Risk the amount prescribed is Rs. 48/- which is actually been charged in this case. Perusal of the Proposal Form in original Ex. PW-2/1 placed by respondent No.2 in the case file goes to show that as per column 10 of this proposal form there were three options for which the insurance cover was to be issued i.e. (a) Comprehensive, (b) Third Party, (c) Act only which is in consonance with page I of the Schedule and tariff. In this case, the scope of cover required which was actually taken by the owner of the T.S.R. was third party and not Act Only liability and that is why it was specifically mentioned in the column of particulars of vehicle to be insured as third party which means third party cover and accordingly a sum of Rs. 48/- was charged by the insurance company. If the intention of the parties to the insurance cover would have been to cover the liability of the insurance company confining to the Act Only, in that case the insured would have taken the Act Only liability cover only and in that case a sum of Rs. 40/- is charged by the respondent No. 2. In this case by charging more than the Act Liability of Rs. 40/-, to Rs. 48/- the insurance company has given a wider cover, which is proved in Clause II of page one of the tariff i.e. "Liability to Public Risk or Third Party cover". Since in the column of definition as to the scope of coverage has to the liability of the public risk in page one of the schedule, no limitation to this effect that the liability of the insurance company would be as under the Motor Vehicles Act 1939 has been prescribed, as such I find force in the arguments of the counsel for petitioner and of the respondent No. 1 that the liability in this case of the insurance company was wider than Act Only Liability. Since a premium more than Act Only Liability has been charged in this case, as such it would amount to entering an agreement between the insured and the insurer that the liability of the insurance company in this case would be more than the legal liability as under the Motor Vehicles Act, 1939 and as such in view of the discussions made above I hold that the liability of the insurance company in this case would be wider and not restricted to the legal liability as per the Act Only which means the entire compensation amount together with interest would be payable by the respondent No. 2 insurer of T.S.R. No. 6697. The learned counsel for respondent No. 2 has not been able to explain as to what was the wider coverage issued by them by charging a premium more than the Act Only Liability cover which is the case here.

[emphasis supplied]"

6. In the appeal the sole question, which was argued, was regarding the interpretation of the provisions of Section 95 (2)(b) of the said Act and the Indian Motor Tariffs (Schedule of Premium) issued by the appellant.

7. The learned Single Judge agreed with the findings of the learned Tribunal. The learned Single Judge was of the opinion that a wider interpretation should be given to the said provision. It was pointed out that it may amount to a discrimination in the matter of payment of compensation, as in the event a person is hit by a private vehicle, the amount of compensation would be unlimited one, but if a person on the road is hit by a commercial vehicle, the liability would be only Rs. 50,000/-.

8. The learned Single Judge referring to various judgments including *New Asiatic Insurance Co. Ltd. Vs. Pessumal Dhanamal Aswani and Others*, held:-

"From what the Supreme Court has said and as quoted above, it is apparent that what Mr. Moorjani contends appears to be a plausible interpretation. For support reference can be made to the observation of Apex Court in the case of *New Asiatic Insurance Co. Ltd. Vs. Pessumal Dhanamal Aswani and Others*, where the Court said "Thus the contract between the insured and the company may not provide for all liabilities which the company has to undertake vis-a-vis the third party, in view of the provisions of the Act. We are of the opinion that once the company had undertaken liability to third parties incurred by the persons specified in the policy, the third party's right to recover any amount under or by virtue of the provisions of the Act is not affected by any condition of the terms of the policy, it is reasonable to conclude that proviso (a) of para 3 of Section 11 is a mere condition affecting the rights of the insured who effected the policy and the persons to whom the cover of the policy was extended by the company, and does not come in the way of the third parties" claim against the company on account of its claim against a person specified in para 3 as one to whom cover of the policy was extended." The appellant for this reason also cannot resist the claim of the respondents (claimants of before the Tribunal) or urge the question of limited liability against the third party on account of additional premium having been paid in this case and the policy covering wider risk."

9. Mr. Mehra, the learned counsel appearing on behalf of the appellant, would submit that a bare perusal of the provisions of Section 95(2)(b) of said Act would clearly show that third-party liability of the appellant would be to the extent of Rs. 50,000/- only. For the purpose of a special contract, the learned counsel would contend, an additional premium is required to be paid, which had not been done in the instant case.

Drawing our attention to the certificate of insurance, the learned counsel would contend that, it would appear Therefore that a separate column exists for increase of the third-party limits and as the said column was blank, it cannot be said that an extra premium was paid in relation thereto.

It has been pointed out that as far as merely a sum of Rs. 48/- was paid by way of premium, a sum of Rs. 90/- was paid by way of L.L. to three (3) passengers, as the vehicle in question was three-wheeler scooter.

In the aforementioned situation, the learned counsel would contend that the

learned Courts below were not correct in holding that an extra premium had been paid for covering a wider risk.

The learned counsel would, Therefore, contend that the liability of the appellant is limited only to a sum of Rs. 50,000/-. Reliance in this connection has been placed on Smt. Manjushri Raha and Others Vs. B.L. Gupta and Others, New India Assurance Co. Ltd. Vs. Smt. Shanti Bai and others,

10. The certificate of policy is in the following terms:-

Policy No. 040700/24/1/11424/86 Insured's Estimated Value of vehicle Non-electrical Accessories Electrical & Electronic Accessories Total I.E.V.

Rs. Rs. Rs. Rs. T.P. only

SCHEDULE OF PREMIUM

A. Own Damage Rs. B. Liability to Public Risk Rs.

BASIC PREMIUM BASIC PREMIUM

Add: 3% extra on Electrical or Electronic fitting as per END IMT. 71 Add: for L.L. to passengers as per END IMT. 13 - 3@30/- 48.00 90.00

Limit per passenger Rs ... Limit per accident Rs... As per M.V. Act, 1939

Add : for L.L. to paid driver and/or Cleaner as per END IMT. 16

Add:% on Total I.E.V. Add for increased T.P. Limits Section II 1 (i) Unlimited. Section II 1 (ii) Rs.....

Add : for.....

Less : % for voluntary Excess As per END IMT. 1)

Add for Riot & Strike 0.25% of Total I.E.V. as per END IMT. 21 Less : 10% Spl. Discount

Add:.....

Less :.....% No Claim Bonus Less : 10% Special Discount

Comprehensive Premium (A + B)

[Rounded off to the nearest Rupee)

138/-

11. We may notice that the amount in question was directed to be deposited with the Registrar of this Court by an interim order dated 17.08.1998 and vide another interim order dated 27.11.1998 the contesting respondents herein were allowed to withdraw the said amount.

We may also notice that this appeal was dismissed by a Division Bench of this Court holding:-

"MACT awarded Rs. 3.60 lakhs to respondents on account of death of one Mr. J.S. Bakshi, an Income Tax Officer who was killed in a road accident. Appellant company took the plea of limited liability which was rejected. The company then filed this Appeal. But Appellant did not obtain a stay. It was directed to deposit the decretal amount which was allowed to be withdrawn by court order dated 27.11.1998.

Today none appeared. May be company had reconciled to the award having been already satisfied, rendering this appeal infructuous in the process. It is accordingly dismissed for non-prosecution."

Thereafter, two applications bearing C.M. Nos. 438 of 2002 and 439 of 2002 were filed by respondent No. 1 herein for condensation of delay and restoration of the said appeal respectively.

By an order dated 08.04.2002, a Division Bench of this Court condoned the delay and restored the appeal to its original number.

12. We may also notice that neither any notice was served upon respondent No. 5 herein, the owner of the vehicle nor any step was taken by the appellant herein to serve the notice upon respondent No. 5. We will have, Therefore, to proceed on the basis that no notice had been served upon respondent No. 5.

13. Even if we agree with the submission of the learned counsel for the appellant, this Court could pass an order to the effect that whereas the liability of the appellant herein is limited to Rs. 50,000/- only, the balance sum of Rs. 3,10,000/- together with interest would be payable by owner of the said three-wheeler scooter. For the aforesaid purpose, respondent No. 5 was required to be heard. As no notice had been served on respondent No. 5, in our opinion, even if we accept the contention of the appellant, no such order can be passed.

14. In this view of the matter, the contention raised by the learned counsel for the appellant, in our opinion, cannot be gone into. The appellant had already deposited the amount in question, which has been withdrawn by respondent Nos. 1 to 4. In the aforementioned situation, we refuse to exercise our discretion inasmuch the remedy of the appellant would be to take recourse to the provisions of Sub-section (4) of Section 96 of the said Act to recover the balance amount from respondent No. 5. The respondent No. 1 to 4, in our opinion, cannot suffer owing to a fault on part of the appellant herein in not serving notice upon the respondent No. 5, despite given directions therefore.

15. This appeal is, Therefore, dismissed with the aforementioned observations being no order as to costs.