(1992) 07 P&H CK 0002

In the Punjab And Haryana At Chandigarh

United India Insurance Company Ltd. APPELLANT

Vs

Sarbjit Kaur and Others RESPONDENT

Date of Decision : 29-07-1992

Acts Referred:
Motor Vehicles Act, 1988 — Section 95(2)(ii)

Citation : (1992) 2 ACC 366

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

Bench : Single Bench

Judgement

V.K. Jhanji, J.—This appeal is directed against the order of the Motor Accidents Claims Tribunal, Hoshiarpur whereby claimants were held to be entitled to compensation of Rs. 2,69,000/-

2. Briefly, the facts are that on 6.7.1988, Sarjeet Singh was going on his cycle from house to village Chaggran, Tehsil and District Hoshiarpur, at about 6.30 P.M. When he reached in front of the shop of his uncle Sarwan Singh, he was called by his cousin Avtar Singh. Sarjeet Singh stopped on extreme left side of the Kacha portion of the road and started talking with Avtar Singh. In the meantime, a mini bus bearing No. PAB S036 came from behind. The bus was coming from Chabewal side and going to Hoshiarpur at a fast speed. As per the case of the claimants, the mini bus was being driven rashly and negligently by its driver Bhupinder Singh and according to them, the bus went out of the control of the driver and as such it struck against the cycle of Sarjeet Singh from behind. As a result thereof, Sarjeet Singh was thrown at a distance of about 12 metres. He received multiple injuries and was taken to the hospital where he was declared dead. In the claim petition, compensation of Rs. 4,00,000/- for the death of Sarjeet Singh was claimed. The Motor Accidents Claims Tribunal awarded Rs. 2,69,000/- to the claimants. United India Insurance Company who was impleaded as a respondent, in its written statement took up the plea that the liability of the Insurance Company is only limited to the extent of Rs. 50,000/- and the remaining amount is to be paid by the owners of the bus. The Motor

Accidents Claims Tribunal, on the basis of the Insurance Policy, Exhibit R-1, found that the Insurance Company is liable to pay the entire amount and thus the plea of the Insurance Company was negatived. This appeal has been preferred by the Insurance Company.

3. The only point raised in this appeal is that the liability of the Insurance Company as per Insurance Policy, Ex. R.1 is limited to only Rs. 50,000/-.

4. I have gone through the insurance policy with the help of learned Counsel for the parties. The policy shows that there are two types of premium for comprehensive insurance. One is meant for own damage and the other is for third party. No additional premium is shown to have been paid for increasing the third party liability and, therefore, the liability of the Insurance Company is limited according to Section 95(2) (ii) of the Motor Vehicles Act. The statutory limit in such a case is only Rs. 50,000/- and, therefore, the liability of the Insurance Company is to the extent of statutory limit which in this case is only Rs. 50,000/-. The Hon''ble Supreme Court in National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, has dealt with the comprehensive policy covering third party risk. It was held therein as under:

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 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.

5. In view of this settled position the Insurance Company is not liable to pay more than the statutory limit i.e. Rs. 50,000/-. Learned Counsel for the claimants has made a pointed reference to para 14 of the judgment of this Court as reported in 1990(1) P.L.R. 483 (Smt. Kako Devi etc. v. Gian Parkash Gupta etc.) to contend that the liability of the Insurance Company in the case in hand is unlimited. I have gone through the judgment carefully and I find that in the said case according to the policy exhibited in that judgment in the column of limits of liability, a sum of Rs. 50.000/- was mentioned with regard to the damage to the property caused by the motor vehicle but no such limit was mentioned against the column dealing with the "liability arising from death or bodily injury" arising out of the use of the motor vehicle, However, in the present case, against the column of additional premium for increased third party risk, no additional premium is shown to have been paid. As already noticed, according to the policy, Ex .R. 1 liability of the Insurance Company is not unlimited but is limited to the extent of Rs. 50,000/-. So far as the policy in the present case is concerned, the

liability of the Insurance Company is limited to the extent of Rs. 50,000/-

6. As a result of the above discussion, this appeal is allowed, the order of the Motor Accidents Claims Tribunal, Hoshiarpur is modified to the extent that the Insurance Company is held liable to pay Rs.50,000/- to the claimants and the remaining amount can be recovered from other respondents. No costs.