

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: 16th April, 2010

Date of Order: 31st May, 2010

+ MAC. Appeal No. 914/2006 & CM Appl. No. 17314/2007

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31.05.2010

National Insurance Co. Ltd.

... Appellant

Through: Mr. Pankaj Seth, Advocate

Versus

Ashok Kumar Sar & Anr.

... Respondents

Through: Mr. Sujit Jaiswal, Advocate for R-1

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

The only question raised by the appellant in this appeal is whether the directions given by the learned Tribunal to the Insurance Company to pay the entire compensation amount and to recover the same from the owner were contrary to the settled legal position.

2. The appellant relied upon The New India Assurance Company Limited. V. C.M.Jaya & Ors.(2002) 2 SSC 278 and pleaded that this issue was set at rest by the Supreme Court as it held that in case of Insurance Company not taking any higher liability by accepting a higher premium for payment of compensation to a third party, the insurer would be liable to bear only limited burden under Section 95(2) of the Motor Vehicles Act, 1939 and would not be liable to pay the entire amount. The Tribunal in this case had awarded a

compensation of Rs.72,51,000/- to the injured who was crippled for rest of his life due to the accident and had to lose his service. However, the Tribunal observed that in its opinion the liability of the insurance company was limited but the insurance company would pay the entire amount to the injured and shall be entitled to recover the amount paid in excess of its liability from the insured.

3. The appeal is contested by the claimant, who has supported the order of the learned Tribunal. During arguments of the appeal, it was contended by the Counsel for the respondent that the tribunal wrongly held that the liability of the insurance company was limited and submitted that in fact the liability of the insurance company was unlimited and the entire amount of the compensation was payable by the insurance company and not by the owner as the insurance company had indemnified the owner for the entire liability. On the other hand Counsel for the appellant argued that the Tribunal has rightly held that the liability of the insurance company was only limited but the Tribunal went wrong in directing the insurance company to pay the entire amount and recover it from the owner.

4. The owner in this case has been ex parte even before the Tribunal and therefore there are no counter objections filed by the owner. However, while considering the issue whether the Tribunal rightly directed the insurance company to pay the entire amount of compensation to the injured, the issue of limited liability of the insurance company has also been raised. In view of this, the Tribunal's decision that the liability of the Insurance Company was limited is also required to be considered by this Court in the light of the facts already proved on record.

5. This Court held in *Neeta Trehan & Ors. v. Gopal Krishan & Ors.* FAO No. 257/1991 decided on 17.5.2010, that the liability of the Insurance company has to be affixed in accordance with the premium charged and the Insurance Company can take plea of limited liability only if it has charged premium for limited liability in terms of the statutory provisions and the tariff regulations provided by the Tariff Advisory Board. In *Neeta Trehan & Ors. v. Gopal Krishan* case this Court observed:

14. The issue arises whether this insurance cover obtained by the insured was limited to a liability of Rs.1,50,000/- being the minimum liability for which a vehicle was required to be insured by the owner or this premium covered wider liability. Counsel for the appellants has drawn my attention to the judgment in Veena Pruthi's case (supra) given by the Division Bench of this court where the Division Bench of this court held that if the premium was Rs.125/-, the liability would be limited to Rs.1,50,000/- and not unlimited. On the same logic it is stated that if the premium was Rs.240/- for class A(2) vehicle, the liability of insurance company would be limited to Rs.1,50,000/-.

15. Where obtaining of an insurance cover is made mandatory by statute, the contract is to be interpreted in the light of statutory provisions. In case of motor vehicles, obtaining of an insurance cover by the owners of vehicles is a statutory requirement. Thus, an insurance policy has to be interpreted keeping in view the statutory provisions and the rules of tariff as framed by the Advisory Board. Under the tariff rules, two separate tariffs are provided for 'Act Only Liability' and for 'Public Risk'. It cannot be said that the Advisory Board provided tariff for 'Act Only Liability' as a superfluous phenomenon. The Advisory Board was having in mind that where the owner wants to take an insurance policy covering the minimum liability under Section 95 of the Act, then the premium should be different. If the owner wants wider liability then the premium should be different and that is the reason that for 'Act Only Liability', a premium of Rs.200/- was provided and for 'Public Risk', a premium of Rs.240/- was provided. Public risk is a wider term and takes into account the entire risk faced by the owner for bringing vehicle on road. If there had been no compulsion under the Act to obtain an insurance policy, the only insurance cover which owner could have obtained from an insurance

company for covering public risk would have been this that he would pay Rs.240/- and get the public risk covered. If the Act would have not prescribed any limit, the public risk would naturally have been unlimited. The Act prescribed that every owner of vehicle should get insurance cover covering a minimum amount. Beyond that, the Act did not provide anything. It is under these circumstances that the Tariff Advisory Committee prescribed separate premium for 'Act Only Policy' and separate premium for a 'Public Risk Policy'. I, therefore, consider that the 'Public Risk' premium would cover unlimited amount of risk and would not cover a limited amount of risk.

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17. It is urged by the counsel for the insurance company that for covering unlimited liability, an additional premium of Rs.100/- was to be paid for class A(2) vehicles as is given in paragraph 11 of the tariffs Ex. RW 1/6. A perusal of Ex. RW 1/6 would show that while prescribing additional premium for each kind of vehicle, the additional premium is payable for property damage and not for personal injury. The personal injury has been written as unlimited. It is only quantum of property damage which keeps on rising with the increase in premium and additional premium of Rs.100/- is to be paid when additional risk for property damage to be covered. Thus, Rs.100/-, additional premium, has nothing to do with the risk to life of third parties.

18. There is another aspect to be kept in mind. When an owner approaches insurance agent for insurance, he is told what would be the tariff payable by him and on payment of tariff, an insurance certificate or cover note is issued. The contract of insurance, thus, stands concluded on receipt of tariff/premium in terms of the tariff schedule as laid down by Advisory Board. Insurance policy is subsequently mailed to owner by insurance company. If insurance company unilaterally inserts a clause in the policy which is contrary to tariff regulations, such a clause is not binding. All insurance policies are in the shape of one standard performa used for different kinds of coverage. If while sending insurance policy to owner the company official does not score off non-applicable clauses or inserts a limited liability clause which is contrary to the tariff charged from owner, such a clause is not binding.

19. *I, therefore, consider that the liability of insurance company in this case was unlimited and not limited since the insured had paid tariff/premium of Rs.240/- for liability to 'Public Risk' and not Rs.200/- for 'Act Only Liability'.*

6. A perusal of trial Court record in this case would show that the fact of TSR, in question, being insured was not disputed before the Tribunal. Copy of tariff regulations was placed on record. The fact that the premium of Rs.48/- was charged in this case is also undisputed since the certificate of insurance issued by the insurance company was proved on record as Exh. RW-1/1. The tariff regulations in respect of TSR i.e. passenger carrying motorized rickshaws used for hire or reward under Class B-3 are as under:

Class B (3) : Passenger Carrying Vehicles – Motorized Rickshaws used for Hire or Reward

Cubic Capacity	Own Damage	Liability to the Public Risks	Act Only Liability
Not Exceeding 50 cc	Rs.28/-	Rs.36/-	Rs.30/-
Not Exceeding 75 cc	Rs.50/-	Rs.36/-	Rs.30/-
Not Exceeding 350 cc	Rs.80+0.55% on IEV	Rs.48/-	Rs.40/-
Not Exceeding 750 cc	Rs.105+0.55% on IEV	Rs.72/-	Rs.60/-
Exceeding 750 cc	Rs.163_0.55% on IEV	Rs.72/-	Rs.60/-

7. The TSR had capacity of 175 cc thus it was covered within the Class B(3) under following table:

Cubic Capacity	Own Damage	Liability to the Public Risks	Act Only Liability
Not Exceeding 350 cc	Rs.80+0.55% on IEV	Rs.48/-	Rs.40/-

8. It is undisputed that the premium charged for third party risk was Rs.48/- and that is how the total premium charged in this case was Rs.349/-. Since the premium for "Act Only" was Rs.40/- and not Rs.48/- it cannot be said that the liability of the insurance company was limited to the amount

stated in the Motor Vehicles Act. Since the Insurance Company had charged premium for third party coverage under the heading of liability to public risk and had separately charged premium for driver and passengers and charged separate basic premium, the plea taken by the insurance company that its liability was limited to pay Rs.50,000/- was a baseless plea and the Tribunal wrongly came to the conclusion that the liability of the insurance company was limited to only Rs.50,000/-

9. I, therefore dismiss the appeal filed by the Insurance Company and consider that the Insurance Company is liable to pay the entire award amount to the injured. The insurance company is directed to pay the balance award amount within period of 08 weeks.

The appeal is decided accordingly.

May 31, 2010
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SHIV NARAYAN DHINGRA, J.