IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 559 OF 1994

M/S NATIONAL INSURANCE COMPANY LTD.
VERSUS
EXECUTIVE ENGINEER,LATUR & OTHERS.
...
Advocate for Appellant : V N Upadhye
Advocate for Respondents : G G Suryawanshi For R No. 3
...

CORAM : S.V.GANGAPURWALA,J.

DATED : 15TH OCTOBER, 2015

ORDER :-

The damages for the vehicle to the extent of Rs.20,000/- is awarded. Against that the present appeal is filed.

2] Mr.Upadhye, learned counsel submits that u/s 147(2) of the Motor Vehicles Act, liability of the present appellant is limited to Rs.6000/-. The learned counsel submits that the tribunal has not considered the said aspect of the matter and has held the insurance company liable to the extent of Rs.20,000/-. According to the learned counsel, liability of the present appellant cannot be more than the statutory limit as laid down under the statute. The learned counsel relies on the judgment of the Apex Court in the case of **New India Assurance Co. Ltd. V/s Smt.Shantibai and other reported in (1995) 2 SCC 539.**

3] I have considered the submissions. The policy is admitted by the insurance company. The Apex Court in para 7 in the above referred case has observed as under :

"7] Section 95 forms part of Chapter VIII of the Motor Vehicles Act, 1939 which deals with insurance of motor vehicles against third party risks. under Section 95, in order to comply with the requirements of this Chapter, a policy of insurance must be a policy which, inter alia, insures the person or classes of persons specified in the policy to the extent specified in sub section (2). Under Section 95(1)(b)(i)(sic), the insurance policy must cover the death or bodily injury to any passenger of a public service vehicle, caused by or arising out of the use of the vehicle in a public place. Sub section (2)(b) provides as follows :

"Sections 95(1) : x x x x

(2) Subject to the proviso to sub section (1), a policy of insurance shall cover any liability incurred in respect of any one accident upto the following limits namely -

(a) x x x x

(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 person other than passengers carried for hire or reward, a limit of fifty thousand rupees in all ;

(ii) In respect of passengers, a limit of fifteen thousand rupees for each individual passenger,"

These were the provisions at the relevant time. These provisions were interpreted by the Court in the Case of National Insurance Co. Ltd. New Delhi V. Jugal Kishore, (1988) ISCC 626 : (AIR 1988 SC 719). This Court observed that even though it is not permissible to use a vehicle unless it is covered at least under an 'act only' policy, it is not obligatory for the owner of the vehicle to get it comprehensively insured, a higher premium is payable depending on the estimated value of the vehicle. Such insurance entitles the owners 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. It has further observes as under (para 6 of AIR) :

> "Comprehensive insurance of the vehicle and payment of higher premium on this score, however, does 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."
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> In the present case, therefore, a comprehensive policy which has been issued on the basis of the estimated value of the vehicle of Rs.2,50,000/- does not automatically result in covering the liability with regard to third party risk for an amount higher than the statutory limit. "

4] It is observed by the Apex Court that it is not obligatory for the owner of a vehicle to get it comprehensively insured, a higher premium is payable depending on estimated value of the vehicle.

5] The policy is not before the Court. The insurance company has not produced the policy. The policy is admitted by the insurance company. In absence of the insurance policy, contention of the appellant cannot be considered. Even record does not show that the policy of insurance was produced before the tribunal.

6] In light of above, contention of the appellant cannot be considered. Appeal as such is dismissed. No costs.

[S.V.GANGAPURWALA,J.]

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