

2023:PHHC:164732

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-2292-1998 (O&M)
Date of Decision: December 21, 2023

United India Insurance Co. Ltd.

...Appellant

VERSUS

Rajiv Yadav and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.V.Ramswaroop, Advocate
for the appellant.

Respondents No.1 to 3 ex-parte.

ARCHANA PURI, J.

The present appeal has been filed by the insurance company to
assail the Award dated 13.06.1998 passed by learned Tribunal.

At the very outset, the essential facts, to be noticed are as
follows:-

That, initially, two claim petitions were filed; one for seeking
compensation, on account of injuries sustained by Shiv Chand, in a motor
vehicular accident; and another filed by Rajiv Chand (respondent No.1 in
present appeal) for seeking compensation, on account of damage caused to
his car bearing registration No.HR-26B-3297.

On 14.12.1994, Shiv Chand, driver of the car bearing
registration No.HR-26B-3297 was proceeding from Ballabhgar to his village

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along with Bhushan Singh. When the car reached near village Nimoth, a dump-truck bearing registration No.HR-29A-2086, being driven by Usman (respondent No.2 in the present appeal), in a rash and negligent manner, came from the opposite side and struck against the car, as a result of which, Shiv Chand had sustained injuries and car was also got badly damaged. Thereupon, two claim petitions, as stated aforesaid, were filed.

In reply, the driver as well as owner of the offending truck, denied the accident in question. However, the insurance company had taken various preliminary pleas and had also taken the plea that driver was not holding driving licence, at the time of accident. Besides the same, further it pleaded that even if its liability is proved, it is limited to the extent of Rs.6,000/- only, as far as, third party property is concerned.

On appraisal of the evidence, brought on record, both the claim petitions were disposed of, vide impugned Award, thereby, granting compensation to the extent of Rs.25,000/- to Rajiv Yadav, on account of damage caused to the car and Shiv Chand was granted compensation, to the extent of Rs.1,18,021/-. The liability was fastened jointly and severally upon all the respondents of the claim petitions.

Feeling aggrieved by the liability, so fastened, to be joint and several, on the whole amount of the compensation granted to Rajiv Yadav, the present appeal has been filed.

It should also be taken note of that the driver or owner/ claimant-Rajiv Yadav had not filed any appeal to assail the impugned Award, in any manner.

In the light of the aforesaid fact situation, so far as, the fact of

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accident and manner of taking place of the same, is concerned, the same does not warrant any further scrutiny.

In pursuance of the notice issued by the Court, none had made appearance on behalf of the respondents.

Keeping in the aforesaid fact situation, the sole issue, arises for consideration is with regard to the liability, so fastened, upon the insurance company.

At the very outset, learned counsel for the appellant contends that the insurance policy, is the limited policy and as per the policy conditions, the claim for the third party property damages, was limited upto Rs.6,000/- and therefore, in case of making insurance company liable to pay the compensation, it can be made liable to indemnify the loss, only upto the extent of Rs.6,000/-.

In the light of the submissions, so made, the question, which needs to be adjudicated is, as to whether, the insurance company can be made liable to pay entire amount of Rs.25,000/-, when the claim was made by the third party, whose property got damaged in the accident.

At this juncture, it is apposite to refer to Section 147(2) of the Motor Vehicles Act, as then existing, as herein given:-

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

(a) save as provided in clause

(b), the amount of liability incurred; (b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited

liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy, whichever is earlier.”

Before proceeding further, it is appropriate to make reference to the decision rendered in ***Komerval Gounder and others vs. Bajaj Allianz General Insurance Company, 2013(1) T.N.M.A.C. 120***, wherein, it was held that a statutory liability cannot be more than what is required under the statute and when such being the legal position, the limited statutory liability cannot be expanded to make it unlimited or higher. The relevant paragraph No.24 reads as under:-

24. The liability could be statutory or contractual. A statutory liability cannot be more than what is required under the Statute itself. However, there is nothing in Section 147 of M.V. Act prohibiting the parties from contracting to create unlimited or higher liability to cover wider risks. In such an event, the insurer is bound by the terms of the contract as specified in the insurance policy in regard to unlimited or higher liability as the case may be. In the absence of such premium or clause in the insurance policy, pursuant to the contract of insurance, a limited statutory liability cannot be expanded to make it unlimited or higher. If it is so done, it amounts to rewriting the Statute or the contract of insurance, which is not permissible.

Furthermore, reliance was placed upon the aforesaid observations, in the decision rendered by the Hon'ble Madras High Court (Madurai Bench) in ***New India Assurance Co. Ltd. vs. Kathali Narasingaperumal and other, decided on 11.11.2020***.

In this backdrop, reverting to the case in hand, it is pertinent to mention that Rajiv Yadav-respondent No.1, is the owner of the ill-fated car bearing registration No.HR-26B-3297 and thus, he is a third party and he made a claim for damage of his car, in a motor vehicular accident. In these

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circumstances, it is also further pertinent to mention that in the written statement, as reproduced aforesaid, the insurance company had pleaded about its liability to be limited to Rs.6,000/- only, so far as, third party property is concerned.

To so establish, even the insurance company had examined RW-1 Partap Singh, Branch Manager, United India Insurance Company, who had categorically stated about the insured having paid a total premium of Rs.1402/- only and this policy was issued in respect of vehicle bearing registration No. HR-29A-2086. It is a truck and its policy was meant for carrying business, meaning thereby, it was for commercial use. Further, he also deposed that the total amount of Rs.1402/-, included the amount of Rs.1245/-, which is for the Act, Rs.90/- for one driver, one cleaner and four labour and Rs.67/- is for service tax. He also further categorically stated that this insurance policy covered the risk of property damage of third party, only to the extent of Rs.6,000/-, being an Act of policy. The insured had not paid any extra premium for getting the wider indemnity, in respect of third party damage. This witness proved the copy of the insurance policy Ex.R1, copy of cover note Ex.R2 and also proved the copy of the receipt of premium paid to the extent of Rs.1402/-.

The testimony of the aforesaid witness, as such, was not considered by learned Tribunal, in correct perspective. Rather, the finding recorded by learned Tribunal, with regard to the insurance policy to be of unlimited liability, so far as, damage to third party property was concerned, is erroneous. In this regard, reference is made to the cover note, copy whereof Ex.R2. It clearly states about the premium to be paid to the extent

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of Rs.1402/-, which contained the recitals of the premium to the extent of Rs.1245/- for the Act and Rs.90/- for one driver, one cleaner and four labour. Rs.67/- is the service tax and the total of the same is Rs.1402/-.

In this regard, also reference is made to the India Motor Tariff Regulations, which states about the premium payable for the base insurance is Rs.1245/-, which is as existing in the aforesaid cover note and the insurance policy. From the receipt Ex.R-3, it is evident that only amount of Rs.1402/- was paid. Meaning thereby, there was no further contract for having a wide indemnity cover. In this regard, also it should be considered that in the terms and conditions of the insurance policy, the condition No.1, reads, as herein given:-

- 1. Subject to the limit of liability as laid down in the Motor/Vehicles Act the Company will indemnify the insured in the event of accident caused by or arising out of the use of the Motor Vehicle anywhere in India against all sums including claimant's costs and expenses which the insured shall become legally liable to pay in respect of death or bodily injury to any person and/or damage to any property of third party.*

However, in the light of the same, as observed aforesaid, receipt is only for the amount of Rs.1402/-, meaning thereby, no further amount was paid, on account of further contract for availing wider indemnity. It is also not the case of the respondents that there exists contract between the insurer and the insured to cover unlimited or higher liability risk.

So, in the light of the above-settled legal position, this Court is of the view that the appellant-insurance company, is liable to pay only Rs.6,000/- as compensation, to the claimant-Rajiv Yadav, even though, learned Tribunal had awarded a compensation of Rs.25,000/-. In so far as,

the remaining amount is concerned, respondent No.1-claimant has the option to collect the same from the driver and owner of the vehicle i.e. respondents No.2 and 3 of the offending truck.

In the eventuality of the insurance company, having already paid the awarded amount, it shall have the liability to recover back the residue amount, beyond Rs.6,000/-.

In view of the aforesaid terms, the present appeal stands allowed.

December 21, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No