National Insurance Co. Ltd., New Delhi

Vs

Jugal Kishore and Others

Civil Appeal No. 3677 of 1984

(E.S. Venkataramiah, N.D. Ojha JJ)

09.02.1988

JUDGMENT

OJHA, J. –

1. This appeal by special leave has been filed by the National Insurance Company Ltd., New Delhi, against a judgment of the Delhi High Court in an appeal under Section 110-D of the Motor Vehicles Act, 1939 (hereinafter referred to as the 'Act').

2. Necessary facts may be stated herein in a nutshell. Shri Jugal Kishore, respondent 1 was, on June 15, 1969, driving a three-wheeler scooter when the met with an accident with bus No. DLP-3699, driven by Shri Rai Singh, respondent 2 and owned by M/s Delhi Janata Co-operative Transport Society Limited, respondent 3. He sustained injuries consequent upon which he made a claim for compensation before the Motor Accident Claims Tribunal, Delhi against respondents 2 and 3 and the appellant which was the insurer of the bus aforesaid. The claim of respondent 1 was contested by the appellant and also by respondent 3 but proceeded ex parte against respondent 2. The Tribunal awarded compensation in the sum of Rs. 10,000 recoverable jointly and severally from the appellant and respondent 3. Aggrieved by the award of the Tribunal respondent 1 preferred an appeal before the High Court of Delhi and asserted that the amount of compensation awarded by the Tribunal was inadequate. His appeal was allowed by the High Court and the award was modified. The High Court awarded a sum of Rs. 1,00,000 as compensation to respondent 1 with interest at 9 per cent per annum from the date of institution of the claim till realisation with costs against the driver as well as the owner of the bus as also against the appellant, Insurance Company.

3. Before granting special leave this Court required the appellant to deposit Rs. 1,00,000 namely the amount of compensation awarded by the High Court and permitted respondent 1 to withdraw the same Special leave was granted on September 14, 1984 by the following order of this Court :

> Under the orders of this Court the appellant has deposited Rs. one lakh which is the amount of compensation awarded to the claimants. The claimants have withdrawn the amount without furnishing security.

Special leave granted on condition that in the event of reversal of the decision of the High Court, the said amount shall not be refunded by the claimants. Stay of further execution of the award confirmed.

4. It has been urged by the learned counsel for the appellant that in view of the statutory provision contained in this behalf in clause (b) of sub-section (2) of Section 95 of the Act as it stood on the

date of accident namely June 15, 1969 which happens to be prior to March 2, 1970, the date of commencement of Amending Act 56, of 1969, no award in excess of Rs. 20,000 could have been made against the appellant. Before dealing with the submission we may point out that the policy under which the bus aforesaid was insured had not been filed either before the Tribunal or before the High Court. A photostat copy of the policy has, however, been filed in this Court and learned counsel for the respondents did not have objection in the same being admitted in evidence. Clause (b) of sub-section (2) of Section 95 of the Act as it stood at the relevant time read as under :

> 95(2) Subject to the proviso to sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely :
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> (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, in respect of persons other than passengers carried for hire or reward, a limit of twenty thousand rupees; and in respect of passengers a limit of twenty thousand rupees in all, and four thousand rupees in respect of an individual passenger, if the vehicle is registered to carry not more than six passengers excluding the driver or two thousand rupees in respect of an individual passenger, if the vehicle is registered to carry more than six passengers excluding the driver;

5. On the plain language of the aforesaid clause (b) which applies to the instant case it is apparent that the liability of the appellant could not be in excess of Rs. 20,000. Learned counsel for the respondents, however, urged that notwithstanding the provision contained in this behalf in clause (b) aforesaid it was open to the insurer to take a policy covering a higher risk than contemplated by the aforesaid clause (b) and consequently the said clause had to be read subject to the terms of the policy which was taken in the instant case. We find substance in this submission in view of the decision of this Court in Pushpabai Purshottam Udeshi v. M/s. Ranjeet Ginning and Pressing Co. (1977 ACJ 343 : (1977) 1 SCC 745 : AIR 1977 SC 1735) where it was held that the insurer can always take policies covering risks which are not covered by the requirements of Section 95 of the Act.

6. We have accordingly perused the photostat copy of the policy to ascertain whether risk for any amount higher than the amount of Rs. 20,000 contemplated by clause (b) aforesaid was covered. Our attention was invited by learned counsel for the respondents to the circumstance that at the right hand corner on the top of page 1 of the policy the words "Commercial Vehicle Comprehensive" were printed. On this basis and on the basis that the premium paid was higher than the premium of an "act only" policy it was urged by the learned counsel for the respondents that the liability of the appellant was unlimited and not confined to Rs. 20,000 only. We find it difficult to accept this submission. 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 a vehicle to get it comprehensively insure. In case, however, it is got comprehensively insured a higher premium than for an "act only" policy is payable depending on the estimated value of the vehicle. Such insurance entitles the owner to claim reimbursement of the entire amount of loss or damage suffered up to the estimated value of the vehicle calculated according to the rules and regulations framed in this behalf. 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 to 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. Coming to the photostat copy of the policy in the instant case it would be seen that Section II thereof deals with liability to third parties. Sub-section (1) minus the proviso thereto reads as hereunder :

> (1) Subject to the Limits of Liability the Company will indemnify the insured against all sums including claimant's cost and expenses which the insured shall become legally liable to pay in respect of -
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> (i) death or bodily injury to any person caused by or arising out of the use (including the loading and or unloading) of the motor vehicle
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> (ii) damage to property caused by the use (including the loading and/or unloading) of the motor vehicle.

7. The Schedule to the policy indicates the limits of liability and the amounts of premium paid. The limits of liability are indicated as hereinbelow :

> #Limits of Liability :Limit of the amount of the Company's Such amount as itliability under Section 11-1(1) in necessary to meetrespect of any one accident the requirements of the Motor Vehicle Act, 1939Limit of the amount of the Company'sliability under Section 11-1(11) inrespect of any one claim or series ofclaims arising out of one event Rs. 20,000The premium paid on the other hand is shown as below :Premium .. .. Rs. 415.00Add 1/2 per cent on IEV .. .. Rs. 200.00Add for 53 passengers @ of Rs. 2.50 .. Rs. 132.50Add for Driver & Conductor .. .. Rs. 10.00 ------- 757.50 -------##

8. A perusal of the policy, therefore, indicates that the liability undertaken with regard to the death or bodily injury to any person caused by or arising out of the use (including the loading and or the unloading) of the motor vehicle falling under Section II(1)(i) has been confined to "such amount as is necessary to meet the requirements of the Motor Vehicles Act, 1939". This liability, as is apparent from clause (b) of sub-section (2) of Section 95 of the Act, was at the relevant time Rs. 20,000 only. The details of the premium also indicate that no additional premium with regard to a case falling under Section II(1) (i) was paid by the owner of the vehicle to the insurance company. It is only the vehicle which was comprehensively insured, the insured's estimate of value including accessories (IEV) thereof having been shown as Rs. 40,000. In this view of the matter the submission made by learned counsel for the respondents that the appellant had in the instant case undertaken an unlimited liability does not obviously have any substance. The liability under the policy in the instant case was the same as the statutory liability contemplated by clause (b) of sub-section (2) of Section 95 of the Act namely Rs. 20,000. An award against the appellant could not, therefore, have been made in excess of the said statutory liability.

9. Learned counsel for the appellant then urged relying on the decision of this Court in British India General Insurance Co. Ltd. v. Captain Itbar Singh (AIR 1959 SC 1331) that in view of sub-section (6) of Section 96 of the Act no insurer to whom the notice referred to in sub-section (2) thereof has been given, is entitled "to avoid his liability" to any person entitled to the benefit of any such judgment as is referred to in sub-section (1) thereof otherwise than in the manner provided for in

sub-section (2). On this basis it was urged that the appellant was not entitled to assert that its liability was confined to Rs. 20,000 only inasmuch as this is not one of the defences specified in sub-section (2) of Section 96 of the Act. We find it difficult to agree with this submission either. Firstly, in paragraph 12 of the report of this very case it has been held that sub-section (2) of Section 96 in fact deals with defences other than those based on the conditions of a policy. Secondly, from the words "to avoid his liability" used in sub-section (6) of Section 96 it is apparent that the restrictions placed with regard to defences available to the insurer specified in sub-section (2) of Section 96 are applicable to a case where the insurer wants to avoid his liability. In the instant case the appellant is not seeking to avoid its liability but wants a determination of the extent of its liability which is to be determined, in the absence of any contract to the contrary, in accordance with the statutory provision contained in this behalf in clause (b) of sub-section (2) of Section 95 of the Act. In the instant case since as seen above the appellant did not undertake in the policy any liability in excess of the statutory liability the award against it could be only in accordance with the said statutory liability.

10. Before parting with the case, we consider it necessary to refer to the attitude often adopted by the Insurance Companies, as was adopted even in this case, of not filing a copy of the policy before the Tribunal and even before the High Court in appeal. In this connection what is of significance is that the claimants for compensation under the Act are invariably not possessed of either the policy or a copy thereof. This Court has consistently emphasised that it is the duty of the party which is in possession of a document which would be helpful in doing justice in the cause to produce the said document and such party should not be permitted to take shelter behind the abstract doctrine of burden of proof. This duty is greater in the case of instrumentalities of the State such as the appellant who are under an obligation to act fairly. In many cases even the owner of the vehicle for reasons known to him does not choose to produce the policy or a copy thereof. We accordingly wish to emphasise that in all such cases where the Insurance Company concerned wishes to take a defence in a claim petition that its liability is not in excess of the statutory liability it should file a copy of the insurance policy along with its defence. Even in the instant case had it been done so at the appropriate stage necessity of approaching this Court in civil appeal would in all probability have been avoided. Filing a copy of the policy, therefore, not only cuts short avoidable litigation but also helps the court in doing justice between the parties. The obligation on the part of the State or its instrumentalities to act fairly can never be over-emphasised.

11. In the result, this appeal succeeds and is allowed to this extent that the liability of the appellant is fixed at Rs. 20,000 together with interest as allowed by the High Court. In view of the order of this Court dated September 14, 1984 quoted above, however, it is held that even if the total liability of the appellant falls short of Rs. 1,00,000, it shall not be entitled to any refund out of the sum of Rs. 1,00,000 which was deposited by it and withdrawn by the claimant-respondent in pursuance of the said order. The decree of the High Court as against the driver and the owner of the vehicle namely respondents 2 and 3 is, however, maintained and all sums in excess of Rs. 1,00,000 which has already been withdrawn by the claimant-respondent as aforesaid shall be recoverable by him from respondents 2 and 3 only. There shall be no order as to costs.

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