

National Insurance Co. Ltd.

Vs

Nathilal

Civil Appeal No. 6959 of 1994

(K. Venkataswami, A.P. Misra JJ)

15.12.1998

JUDGMENT

-
K. VENKATASWAMI, J. –

1. This appeal is preferred by the appellant - Insurance Company against the judgment and order dated 10.12.93 of the Rajasthan High Court in Civil Misc. Appeal No. 394/93.

Brief facts are the following :-

Respondents 1 and 2 filed a Claim Petition under Section 110-A of the Motor Vehicles Act, 1939 claiming damages in sum of Rs. 6,50,000/- for the death of their son, Akhilesh Kumar, aged about 22 years. The deceased Akhilesh Kumar was travelling in a Jeep bearing No. RST-1286 along with three other adults and two children from Jaipur to Sawai Madhopur when the accident took place on 4th/5th May, 1998 at about 1.15 a.m. Before the Motor Accident Claims Tribunal (for short 'Tribunal') the appellant took a stand that its liability was restricted to sum of Rs. 15,000/- under the policy. The said stand of the appellant was not accepted by the Tribunal and by its Award dated 27.2.93 it held that the liability of the appellant was unlimited and awarded a compensation in a sum of Rs. 2,44,000/- with interest at the rate of 12% per annum. Aggrieved by the Award of the Tribunal, in particular, the finding that the Insurance Company's liability was unlimited, the appellant-Insurance Company preferred an appeal to the Rajasthan High Court. The High Court affirmed the view taken by the Tribunal and the present appeal against the order of the High Court has been filed by special leave. The only ground, which weighed with the Tribunal as well as with the High Court, that one column was left blank in the Insurance Policy and, therefore, the case of the Insurance Company was that its liability was limited, cannot be accepted. A perusal of the Insurance Policy, which has been exhibited through the witness examined on behalf of the Insurance Company, clearly shows that the Policy was in respect of seven passengers and one driver. The premium under Part-B of Schedule of Premium paid as against the seven passengers at Rs. 12/- per passenger was shown as Rs. 84/- and an additional sum of Rs. 8/- for the driver. In addition to this, a premium of Rs. 180/- was paid towards liability to public risk. As against unlimited liability column, no premium was paid as is evident from the policy. The mere fact that the column against unlimited liability was not filled, will not automatically lead to the inference that the liability was

unlimited in the absence of any special premium paid towards that claim.

2. This Court in *National Insurance Co. Limited, New Delhi v. Judgal Kishore and others, A.I.R. 1988 SC 719* while considering a similar case, held as follows :-

"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 Cl.(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 insured. In case however, it is got comprehensively issued 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-sec. (2) of S. 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 of 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.

(Emphasis supplied)

3. In the light of the above ratio laid down by this Court and in view of the fact that no extra premium was paid towards unlimited liability as is clear from the Policy produced before the Tribunal, the judgment and order of the Tribunal affirmed by the High Court cannot be sustained and are, accordingly, set aside. The liability of the Insurance Company is limited to Rs. 15,000/-. The Award of the Tribunal will accordingly stand modified insofar as the liability of the appellant-Insurance Company is concerned.

This Court by an order dated 24.10.94, while granting interim stay, directed the appellant-Insurance Company to deposit the entire Award money in the Tribunal. It further permitted the claimant to withdraw a sum of Rs. 50,000/- out of such deposit. The balance amount was directed to be invested in a Long Term Deposit in a scheduled bank. The appellant-Insurance Company is permitted to withdraw the amount in deposit with accrued interest in view of its success in this appeal. The amount paid to the claimant, pursuant to the order of this Court, shall not be recovered from the claimant but the appellant can recover that amount from the owner of the vehicle. The appeal is, accordingly, allowed with no order as to costs.

