(1988) 04 GAU CK 0009

Gauhati High Court

Case No: MA (F) No. 57 of 1978

National Transport	APPELLANT
Vs	
Smt. Saraswati Nag and Another	RESPONDENT

Date of Decision: April 12, 1988

Acts Referred:

- Motor Vehicles Act, 1939 - Section 95(2), 96(4)

Citation: (1990) 68 CompCas 241

Hon'ble Judges: B.L. Hansaria, Acting C.J.; J. Sangma, J

Bench: Division Bench

Advocate: A.R. Banerjee, for the Appellant; J.M. Choudhury, H.K. Deka and A.K. Choudhury, for the Respondent

Final Decision: Allowed

Judgement

Hansaria, Actg, C.J.

This appeal arises out of an award passed by the learned Member, Motor Accidents Claims Tribunal, Kamrup, Gauhati, by which the appellant has been asked to pay a sum of Rs. 21,500 as compensation to the widow and two daughters of Tusar Kanti who died in an accident which took place on August 18, 1971, at about 6 p.m. The total compensation granted was, however, Rs. 71,500 out of which a sum of Rs. 50,000 was made payable by the insurer and the remaining amount, by the appellant. The insurer also preferred an appeal before this court which was the subject-matter of MA(F) No. 63 of 1978 and was dismissed by this court on February 5, 1988.

2. This appeal is by the owner of the vehicle. The only point urged by Shri Banerjee, on behalf of the appellant, is that the entire amount of Rs. 71,500 is payable by the insurer. This has been contested by Shri Choudhury appearing for the insurer.

3. The insurer has been asked to pay a sum of Rs. 50,000 only because of the following provision finding place in Section 95(2)(b)(i) of the Motor Vehicles Act, 1939

(hereinafter referred to as "the Act"). We may read that se.ction :

"95. Requirements of policies and limits of liability. --(1) . . .

(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-- . . .

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

4. Before proceeding further, it may be stated that the victim was travelling in a rickshaw at the relevant time and a city bus bearing registration No. ASK 8754 had knocked him down. The case is, therefore, covered by the aforesaid provision of law. According to Shri Banerjee, the aforesaid provision fixes a limit which has to find a place in every policy. To put it differently, a policy cannot be issued which would limit the liability of the insurer in a case of the present nature below Rs. 50,000, the result of which is that if, in any case, compensation is awarded up to Rs. 50,000, the insurer has to pay the full amount. The aforesaid provision has, however, not put a ceiling on the amount which a policy can cover. Shri Choudhury has not denied this legal proposition. The important question is what would happen if the policy is not brought on record to show whether the insurer had undertaken to indemnify the insured above Rs. 50,000 also. Shri Choudhury contends that the policy not being on record, there was nothing to show that it agreed to indemnify the insured beyond the statutory limit of Rs. 50,000. Shri Banerjee submits that it was the burden of the insurer to produce the policy to satisfy the mind of the learned Tribunal that the policy did not visualise payment of any amount above Rs. 50,000. In this connection, learned counsel has drawn our attention to the plea taken by the insurer in para 9 of its written statement that it has "limited liability under the law".

5. When the case was heard on March 26, 1988, learned counsel of both the sides had referred to various decisions of different High Courts on the subject. The High Courts of Rajasthan, Allahabad and Himachal Pradesh had taken a view (see Automobiles Transport (Rajasthan) P. Ltd. v. Dewalal [1977] ACJ 150 (Raj) ; Desraj v. Ram Narain [1981] 51 Comp Cas 138 (All) and Hamirpur Co-operative Transport Society Ltd. v. Kaushalya Devi [1983] ACJ 70 (HP) , which would support the contention of Shri Choudhury that it is for a person who claims that under the contract of insurance, the insurer had taken to indemnify the insured for a higher sum than the one fixed by the statute, to make available the policy for the perusal of the Tribunal. On the other hand, Shir Banerjee had relied on certain decisions of the Punjab and Haryana High Court : Ajit Singh Vs. Sham Lal and Others, (which referred to Shyamlal v. New India Assurance Co, Ltd. [1979] ACJ 208 (MP) ; United India Insurance Co. Ltd. v. Pallamparty Indiramma [1982] ACJ 521 (AP) ; Jugal Kishore Vs.

Rai Singh and Others, New India Assurance Co. Ltd. v. Charan Kaur [1986] ACJ 243 (P&H) ; General Assurance Society Ltd. (now National Insurance Co. Ltd.) Vs. Avtar Singh and Others, and Nishat and Malwa Bus Service P. Ltd. v. Smt. Inder Kaur [1989] 66 Comp Cas 574 (P&H), which have held that as the law has not prohibited covering of risk greater than that statutorily fixed, where the insurance company for whatever reasons fails to bring on record the policy of insurance, it cannot be heard to say that it had agreed to indemnify the insured only to the extent indicated in the statutory provision.

6. The above shows that there is a cleavage of opinion among the different High Courts of India on the subject under examination. After the hearing was over and the judgment was under preparation, Shri Choudhury, learned counsel for the insurer, was very fair in bringing to my notice (by coming to my chamber in the company of Shri Banerjee) a very recent decision of the Supreme Court in National Insurance Co. Ltd. v. Jugal Kishore [1988] 63 Comp Cas 847(j&k), in para 10 of which it has been stated as below (at page 853) :

"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, the 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 overemphasised.

7. The law having been laid down as above, there is no manner of doubt now that where the insurance company wishes to take a defence in a claim petition that its liability is not in excess of the statutory limit, it is the insurer which has to file a copy of the insurance policy along with its defence. As in the present case, no such policy was filed either before the learned Tribunal or even before this court, we hold that the insurer has failed to satisfy our mind that it was only liable to pay a sum of Rs.

50,000, and not the entire awarded sum of Rs. 71,500. We, therefore, direct the insurer to pay the remaining amount of Rs. 21,500. May we state here that if it would be found that, in fact, the insurer is not liable to pay the entire amount under the policy, it shall be entitled to recover the excess from the insured because of what has been provided in Section 96(4) of the Act.

8. In the result, we allow the appeal by directing the insurer to pay the further amount of Rs. 21,500. This amount shall be paid within a period of 6 (six) weeks from today. It shall carry interest at the rate of 6% per annum as awarded by the learned Tribunal. On the failure of the insurer to deposit the amount within the aforesaid period, interest shall become chargeable at 12% per annum from today till realisation. This sum of Rs. 21,500 shall be deposited, in the name of each of the two minor daughters on whose behalf also the widow had claimed compensation, with a scheduled bank and the amount shall be withdrawn for the expenses of the minor with the approval of the District Judge, Kamrup, Gauhati. This account will be operated by their mother, Smt. Saraswati Nag.