

(2002) 05 JH CK 0012

Jharkhand High Court

Case No: LPA No. 415 of 1997 (R)

Oriental Insurance Company Ltd.

APPELLANT

Vs

Nirmala Toppo and Others

RESPONDENT

Date of Decision: May 2, 2002

Acts Referred:

- Motor Vehicles Act, 1988 - Section 147

Hon'ble Judges: M.Y. Eqbal, J; H.S. Prasad, J

Bench: Division Bench

Advocate: G.C. Jha, for the Appellant; S.N. Lal and B.K. Dubey, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

M.Y. Eqbal, J.

This appeal is directed against the judgment dated 19.8.97 passed in M.A. No. 555/93 (R), whereby the learned single Judge allowed the appeal in part and reduced the amount of compensation.

2. Miscellaneous Appeal No. 555/93 (R) was filed by the Insurance Company against the judgment and award passed by 6th Additional Judicial Commissioner-cum-Motor Vehicle Claims Tribunal, Ranchi in Claim Case No. 102/88. It appears that a claim petition was filed for grant of compensation on the ground of death of Raju Lawrence Toppo, who was hit by Bus No. BPN 5317 while going on motorcycle. The case of the complainant was that at the time of accident Raju Lawrence was serving as an Assistant in the Office of A.P.O. South Eastern Railway, Bokaro and was getting a salary of Rs. 1200/-The owner of the bus filed written statement stating, inter alia, the bus in question was insured with the Oriental Insurance Company under a comprehensive policy of insurance being No. 31635/3/0/MV/7376/ 87 (comprehensive) and, therefore, the amount of compensation would be payable by the Insurance Company. The Insurance Company also contested the case by filing

written statement stating, inter alia, that the liability of the Insurance Company was limited as per provisions u/s 95(2)(b-1) of the Motor Vehicles Act. The Claims Tribunal assessed the compensation at Rs. 2,16,000/-. The Tribunal further held that claimants are entitled to Rs. 1,28,000/- together with 12% interest and the entire amount is payable by the Insurance Company because the vehicle was insured with it with unlimited liability. Aggrieved by the said judgment and award the Insurance Company preferred an appeal before this Court being MA No. 555/93 (R) challenging the quantum of compensation and also the extent of liability of the Insurance Company. The learned single Judge reassessed the compensation and held that claimants would be entitled to compensation of Rs. 1,18,000/-. However, the learned single Judge has not recorded any finding on the issue of the extent of liability of the Insurance Company. Hence this appeal.

3. Mr. G.C. Jha, learned counsel appearing for the appellant, preferred Ext. A, certificate of Insurance and submitted that the policy in question was a policy having limited liability and the passenger liability was restricted to Rs. 15,000/-. Learned counsel further submitted that the Tribunal has committed serious error of records in holding that the owner of the vehicle paid additional premium of Rs. 2,858/-. For better appreciation, para 9 of the judgment of the trial Court is reproduced hereinbelow :--

"9. It is not disputed that on the date of accident the vehicle No. BPN 5317 was insured with Oriental Insurance Company O.P No. 2. Ext. A is the certificate of insurance which shows that additional premium of Rs. 2,858/- has been paid by the owner of the vehicle and so the liability of the insurance company is unlimited. So, I find and hold that the O.P. No. 2 is liable to make payment of the amount of compensation to the, claimants."

4. We have perused Ext. A. the certificate of insurance, which shows that the vehicle was having the carrying capacity of 52 passengers and a premium of Rs. 12/- for each passenger i.e., total Rs. 624/- was paid by the owner of the vehicle. It is also mentioned in the certificate that passenger's liability was Rs. 15,000/-. There is nothing mentioned in the policy that the owner of the vehicle paid the additional premium of Rs. 2,858/- for coverage of unlimited liability. Perhaps the Tribunal has committed error of record in holding that the additional premium was paid at Rs. 2,858/- but from the certificate of insurance, it appears that even no additional premium for coverage of unlimited liability to 3rd party was paid by the insured. The learned single Judge has not discussed in the judgment the validity of the award passed by the Tribunal, so far as the appellant-Insurance Company is concerned.

5. In the case of [New India Assurance Co. Ltd. Vs. Smt. Shanti Bai and others](#), the Supreme Court following the decision of [National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others](#), observed :--

"In the present case, the premium

which has been paid is at the rate of Rs. 12/- per passenger and is clearly referable to the statutory liability of fifteen thousand rupees per passenger u/s 95(2)(b)(ii) of the Motor Vehicles Act, 1939. In the present case, there is no special contract between the appellant-Company and respondent No. 4 to cover unlimited liability in respect of an accident to a passenger. In the absence of such an express agreement, the policy covers only the statutory liability. The mere fact that the insurance policy is a comprehensive policy will not help the respondents in any manner. As pointed out by this Court in the case of [National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others](#), comprehensive policy only entitled the owner to claim reimbursement of the entire amount of loss or damage suffered up to the estimated value of the vehicle. It does not mean that the limit of liability with regard to third party risk becomes unlimited or higher than the statutory liability. For this purpose, a specific agreement is necessary which is absent in the present case. Reference in this connection may also be made to the case of [M.K. Kunhimohammed Vs. P.A. Ahmedkutty and Others](#). The appellant-Company is, therefore, entitled to succeed to the extent that it has been directed to pay to respondents 1 to 3 any amount in excess of Rs. 15,000/-."

6. In the case of National Insurance Co. Ltd. v. Nathilal and Ors., (1991) 1 SCC 552, while considering a similar question, the Apex Court again following the ratio of Jugal Kishore's case, held :--

"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."

7. We, therefore, allow this appeal in part and hold that out of the total compensation awarded by the learned single Judge, the Insurance Company-appellant will be liable to pay a sum of Rs. 50,000/- and the rest of the amount shall be payable by the owner of the vehicle.