(1989) 09 MP CK 0006

Madhya Pradesh High Court

Case No: M.A. No. 466 of 1988

New India Assurance Co. Ltd.		APPELLANT
	Vs	
Ram Kumar Tamarakar and Others		RESPONDENT

Date of Decision: Sept. 26, 1989

Acts Referred:

- Motor Vehicles Act, 1939 - Section 95, 95(2)(b)(ii)

Citation: (1990) ACJ 958

Hon'ble Judges: Gulab Chand Gupta, J

Bench: Single Bench

Advocate: R.P. Verma, for the Appellant; H.C. Kohli, for the Respondent

Final Decision: Dismissed

Judgement

Gulab Chandra Gupta, J.
This is insurance company''s appeal u/s 110-D of the Motor Vehicles Act, 1939 (hereinafter referred to as ''the Act''), challenging its liability under award dated 30th August, 1988 passed by Mr. M.M. Boari, Motor Accidents Claims Tribunal, Satna, in Motor Claim Case No. 9 of 1986.

2. The respondent No. 1, Ram Kumar Tamarakar, preferred a claim u/s 110-A of the Act for a sum of Rs. 50,000/-, on account of death of his son Rajesh Kumar, aged about 13 years, killed in an accident caused by bus No. MPS 5898 on Maihar-Satna Road on 3.7.1972. It was alleged by him that the said bus was insured by the appellant company for unlimited liability and was being driven in a rash and negligent manner. The appellant insurance company admitted that the bus was insured with it but denied that its liability was unlimited. According to it, its liability was limited to Rs. 5,000/- only for each passenger in view of Section 95 (2) (b) (ii) of the Act. The learned Tribunal, on the basis of the evidence adduced by the parties, came to the conclusion that the bus was being driven in a rash and negligent

manner and, therefore, claimant was entitled to compensation. The learned Tribunal also held that the insurance policy was not limited to risk covered by Section 95 (2) (b) (ii) of the Act but covered wider unlimited liability and, therefore, there was no justification for limiting the liability of the insurance company to Rs. 5,000/- only. That is how the appellant insurance company was made liable to pay the entire awarded amount of Rs. 50,000/-. It is this award which is impugned in this appeal.

3. The submissions of the learned Counsel for the appellant, in the main, are: (1) that the learned Tribunal misconstrued the provisions of Section 95 (2) (b) (ii) of the Act and unjustifiably held that they are not applicable. The decision of the Supreme Court in M.K. Kunhimohammed v. PA. Ahmedkutty 1987 ACJ 872 (SC), is relied upon to support the aforesaid submission. Referring to insurance policy, it is submitted that extra premium of Rs. 15/- for each passenger was not for covering unlimited liability but was intended to cover the risk u/s 95 (2) (b) (ii) of the Act in respect of passengers and, therefore, the award was illegal, and (2) the learned Tribunal committed mistake in accepting documents on 16.8.1988 when the parties had closed their evidence and arguments and the matter was listed for pronouncing the award. This procedure, according to the learned Counsel, violated the principle of natural justice. The learned Counsel for the respondent claimant, however, supported the award and submitted that it was the responsibility of the appellant insurance company to produce the insurance policy, which was not done. In the absence of insurance policy, it could not have advanced the submission as it is doing at present. The filing of documents on 16.8.1988 was, therefore, in the interest of the appellant. As regards the liability, it is submitted that the appellant company having charged extra premium of Rs. 15/- per passenger has undertaken unlimited liability and, therefore, award is legal and valid.

4. A perusal of the record of the Tribunal indicates that arguments were heard by the Tribunal on 3.8.1988 and case fixed for pronouncing award on 6.8.1988. On 6.8.1988 the learned Tribunal required the parties to make submissions regarding the Amendment Act No. 47 of 1982, as mentioned in the appellant''s written statement at page 3. The case was adjourned for this purpose to 22.8.1988. In between on 16.8.1988, the bus owner and driver filed an application along with 5 documents for which objection is taken now. The said application was returned with the direction that those should be presented on 22.8.1988. A copy was also given to the Advocate of the appellant insurance company. Order-sheet does not show that it was either objected to or any further opportunity sought to either lead evidence in rebuttal or file documents. On the contrary, order-sheet shows that arguments were addressed as required and case closed for award on 30.8.1988. In United India Fire and General Insurance Co. Ltd. Vs. Natvarlal and Others, a Full Bench of this court has held that: "Insurance company should in the interest of justice, without relying on the abstract doctrine of burden of proof, produce a true copy of the policy of insurance". This would be all the more necessary in those cases where the insurance company disputes the allegations of insured about the extent of liability covered by

the said policy. In this view of the matter, it was the obligation of the appellant insurance company to produce the insurance policy, which was not done. The respondents bus owner and driver have, by producing the policy, helped the appellant insurance company, in this regard. In the absence of policy, it would not have been heard to say that its liability was not unlimited. Since the entire case of the appellant company is based on the said policy, its objection in this regard cannot be sustained. This court in New India Assurance Co. Ltd. Vs. Madhya Pradesh State Road Transport Corporation and Others, , has taken a similar view of the matter and finds no reason to take any different view now. The submission regarding production of insurance policy and documents is, therefore, rejected.

5. Next and important question is about the extent of liability of the appellant company. The Supreme Court decision in M.K. Kunhimohammed Vs. P.A. Ahmedkutty and Others, clarifies the meaning of Section 95 (2) (b) (ii) of the Act. The said judgment makes it clear that the said provision prescribed the statutory liability of the insurance company which must be covered in all cases. The court also clarified that the amount mentioned in the said provision indicated the maximum statutory liability under it. This judgment, however, is not the authority for the broad proposition that nothing more than aforesaid liability can be covered. It is now well settled that the insurer and insured can, by agreement in this behalf, enhance the limit of the liability to any extent agreed between them. Indeed this legal position is not doubted by the appellant insurance company. Under the circumstances, if the appellant had covered a risk wider than statutory limit prescribed u/s 95 (2) (b) (ii) of the Act, it would not be able to avoid its liability in the instant case. Under the circumstances it may be considered whether the insurance policy in the instant case actually covers any higher risk than prescribed under the aforesaid provision?

6. A perusal of the insurance policy indicates that the appellant company has, besides the basic premium, charged extra premium of Rs. 15/- for each of the 52 passengers. In the column dealing with limits of liability, it is mentioned that the liability in respect of any accident extends to "such amount as is necessary to meet the requirements of Motor Vehicles Act, 1939". This, according to the learned Counsel for the respondent, clearly indicates that the insurance company has accepted the liability to insure the owner of the bus to such an amount as is necessary to meet the requirements under the Motor Vehicles Act, 1939. Though the learned Counsel for the appellant vehemently submitted that extra premium of Rs. 15/- per passenger was intended to cover only the risk prescribed u/s 95 (2) (b) (ii) of the Act, the same cannot be accepted in view of the fact that the aforesaid provision contains statutory liability which must be covered. There is no evidence on record to indicate that payment of Rs. 15/- though termed as extra is compulsory premium. It cannot, therefore, be co-related to the liability under the aforesaid provision. Then if it was so, the liability clause of the policy would have been differently worded. Instead of covering the liability to "such amount as is necessary to meet the requirements of the Motor Vehicles Act", a sum of Rs. 5,000/- or simply Section 95 (2)

(b) (ii) of the Act would have been mentioned. It is, therefore, not possible to accept that the policy does not cover the entire risk and is limited to statutory liability u/s 95 (2) (b) (ii) of the Act. in Anupama and Others Vs. Laxmanrao and Others,), a somewhat similar policy was interpreted by a Division Bench of this court in this very manner. In the said case also the insurance company had taken extra premium of Rs. 15/- per passenger and had similarly covered the liability to "such amount as is necessary to meet the requirements of the Motor Vehicles Act, 1939". The Division Bench was of the opinion that the insurance policy covered the entire risk and its liability was not limited to the statutory liability u/s 95 (2) (b) (ii) of the Act. The following passage from the said judgment being important and relevant is reproduced herewith for ready reference:

If under the policy Exh. A-13 the insurance company wanted to restrict its liability in the present case to the extent as contemplated by Section 95 of the Motor Vehicles Act, the words ''such amount as is necessary to meet the requirements of the Motor Vehicles Act, 1939'' would have been worded differently thereby specifically stating that even in respect of third parties, even though extra premium is charged for passengers, the liability would be restricted as mentioned in Section 95 of the said Act. The very words ''such amount'' and ''requirement'' itself contemplate that it is a mandatory requirement under the terms of the present policy. That apart from the statutory liability in the present case the insurance company is also liable to fulfil the requirements covered by the provisions of the Motor Vehicles Act itself and payment of compensation awarded by the Tribunal under the provisions of the said Act being a requirement of the said Act, that liability is covered by the words ''such amount'' especially when u/s II ''Liability to third parties'' the company has specifically agreed that the company will indemnify the insured against all sums including claimant''s costs and expenses which the insured shall become legally liable to pay, subject to the provisions as mentioned therein, which are not attracted to the facts of the present case.

In view of the aforesaid, it must be held that the appellant insurance company has covered a larger risk than prescribed u/s 95 of the Act and for this reason, it cannot disown its liability. Indeed, it is also the view of the Branch Manager of the appellant insurance company as contained in his communication to the Senior Divisional Manager dated 18.3.1988, a photocopy of which has been filed along with the insurance cover.

7. The learned Counsel for the appellant, however, submitted that in view of the decision of the Supreme Court in National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, , the policy could not be interpreted to cover any higher risk than u/s 95 (2) of the Act. This decision affirms the earlier decision of the Supreme Court in Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, which had ruled that the parties can always take policy covering risks which are not covered by the requirements of Section 95 of the Act.

The court also explained the distinction between ''the Act only'' policy and ''comprehensive risk'' policy and held that the ''Act only'' policy would not cover any risk higher than provided in Section 95 (2) of the Act. The court, on examination of the policy in the said case, held that though it was comprehensive, it did not cover ''comprehensive risk'' but only comprehensively insured the vehicle. The court, therefore, held that every comprehensive policy will have to be appreciated for ascertaining the extent of coverage by it. It must, therefore, be held that this decision will yield different results in different cases depending on the contents of the insurance policy. It is, therefore, not possible to accept that all comprehensive policies cover risks only to the extent mentioned in Section 95 (2) of the Act.

8. In view of the discussion aforesaid the appeal is found to be devoid of substance and is dismissed with costs. Counsel''s fee Rs. 500/-in favour of respondent claimant. Since the operation of the impugned award had been stayed by this court, as a result of which the claimant could not obtain the benefit of the amount of Rs. 50,000/- awarded in his favour, this amount would carry interest at the rate of 12 per cent per annum from the date of filing of this appeal, i.e., 24.11.1988 till realization.