(1995) 10 DEL CK 0039

Delhi High Court

Case No: None

United India Issurance Company	APPELLANT
Vs	
Smt. Kailash Rai	RESPONDENT

Date of Decision: Oct. 16, 1995

Citation: (1996) 1 ACC 251

Hon'ble Judges: M. Jagannadha Rao, C.J; A.D. Singh, J

Bench: Division Bench

Judgement

Anil Dev Singh, J.

This is an appeal filed by the Insurance Company against the judgment of the learned Single Judge in FAO 180/81 dated 19.7.1995 refusing to recall the judgment dated 14.7.1995 and also against the said order dated 14.7.1995 passed by the learned Single Judge. Assuming that a single appeal is maintainable against both the orders, we are of the view that in so far as the appellant Insurance Company is concerned, there is no merit in this appeal.

2. The deceased in this case was aged 52 years and died in an accident which took place on 25.2.1977. The claimants are the Mother, widow, 7 daughters and 1 son. The children were between 5 years to 25 years at the time when the claim was filed. The Motor Accident Claims Tribunal assessed the income of the deceased at Rs. 1000/- per month and family contribution at Rs. 677/- per month and applied a multiplier of 15 and arrived at a compensation of Rs. 1,20,000/- and made certain deductions. It finally arrived at a net figure of Rs. 1,02,051/-. Against the said award, the claimants filed FAO 180/81 in this Court which was a allowed by the learned Single Judge and the quantum was increased by taking various factors into account.

3. The deceased was conducting the restaurant business. The learned Single Judge considered the evidence in the case and assessed the income at Rs. 2000-per month and contribution to the family at Rs. 1500/- per month. There was not much argument in regard to the multiplier of 15 before the learned Single Judge. The learned Single Judge arrived at a compensation of Rs. 2,70,000/- with interest.

4. So far as the Insurance Company was concerned, it wanted its liability to be restricted to Rs. 50,000/- under the Motor Vehicles Act. The question then arises whether the liability was limited or was unlimited under the policy. The original policy was not produced either by the owner or by any party. The Insurance Company produced as carbon copy of the policy. The learned Single judge found that the carbon copy was meddled with and entries were made in ink and the word "unlimited" was struck off in ink. The learned Single judge was, Therefore, not inclined to go by the carbon copy produced before him. The following observations of the learned Single Judge extremely relevant:

I have perused the alleged carbon copy of the policy which indicated the total premium including the basis premium paid in respect of the Insurance of the vehicle. The perusal of the said copy clearly will show that the blanks have been filed at the subsequent stage as they are filled in ink at various places. The witness, as referred to above, has also stated that he had not seen the original policy. He was not concerned with the insurance policy. It was also correct that all the entries in the office copy brought by this witness were not the carbon impression and there were cuttings in the office copy and the word "unlimited" had been deleted in ink and the figure of Rs. 50,000/- was written by hand. The policy was not prepared by this witness. In this situation, it cannot be said that the policy produced was true copy of the original. The premium paid would show that it was not the At only'' policy and was a comprehensive policy'' on the basis of the premium paid as referred to in the tariff chart which was produced before me by the learned Counsel for the appellant. Therefore, the finding of the Tribunal that it is evident from the break up of the amount that no additional premium has been charged for covering unlimited liability on the part of the Insurance Company cannot be sustained in the absence of cogent evidence to prove the policy and other material to indicate that the liability is limited.

We are in entire agreement with the observation of the learned Single Judge. We fail to see how the Insurance Company can rely upon a carbon copy of the policy which contains several entries in ink. That would mean that it was not a true copy of the original.6. We cannot, Therefore, hold that the finding of the learned Single Judge that the liability of the Insurance Company was unlimited is not correct. As pointed out by the learned Single Judge, the word "unlimited" was deleted in ink in the carbon copy.

For the aforesaid reasons, the appeal fails and is accordingly dismissed.