

PETITIONER:
M/S. ROAD TRANSPORT COMPANY

Vs.

RESPONDENT:
BHAN SINGH AND ANOTHER

DATE OF JUDGMENT: 22/07/1998

BENCH:
G.T. NANAVALI, SYED SHAH MOHAMMED QUADRI

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

NANAVALI, J.

Leave granted.

All these appeals arise out of the judgment of the Patna High Court in Civil Review Applications Nos. 4 to 10 of 1997 filed by the appellant. The appellant wanted the High Court to review its judgment passed in the appeals filed by it against the common judgment and separate awards given by the Additional Claims Tribunal Hazaribagh (hereinafter referred to as the Tribunal) in the motor accident claims cases filed by the claimants-respondents.

On 12.10.73, a passenger bus of the appellant met with an accident because of rash and negligent driving by its driver. 35 passengers travelling in that bus died. In all nine claim cases were filed before the Tribunal. Two cases were dismissed and in the remaining seven cases the Tribunal awarded different sums of money by way of compensation and ordered that in each case out of the total amount payable to the claimants Rs.5,000/- shall be paid by the insurance company and the rest shall be paid by the appellant.

The appellant feeling aggrieved by the amount of compensation and the finding that the insurance company was liable to pay only Rs.5,000/- per passenger and Rs.75,000/- in all preferred appeals before the High Court. Two contentions were raised before the High Court. It was contended that the insurance policy was a comprehensive policy and, therefore, the insurance company was legally liable to pay the whole amount of compensation and limiting its liability to Rs.5,000/- per passenger and Rs.75,000/- in all was contrary to the Motor Vehicles Act, 1939. The second contention was that the appellant had paid additional premium of Rs.300/- and, therefore, limiting liability of the insurance company to Rs.75,000/- in all was not justified. The High Court rejected both these contentions. Relying upon the decision of this Court in National Insurance Co. Ltd. vs. Jugal Kishore (1988) 1 SCC 626 the High Court held that even where the owner of a vehicle gets it comprehensively insured 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 that 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 or risk of any other nature becomes unlimited or higher than the statutory liability fixed under sub-section (2) of Section 95 of the Act. It also held that the additional premium of Rs.300/- was paid as it was a passenger bus having capacity of carrying 50 passengers. It held that there was no special contract between the appellant-company and the insurance company to cover unlimited liability in respect of the passengers. In support of this view it also relied upon the decision of this Court in New Indian Assurance company Limited vs. Shanti Bai (1995) 2 SCC 539. Taking this view the High Court dismissed all the appeals.

The appellant thereafter filed review petitions before the High Court on the ground that the insurance policy was misread or misinterpreted by the High Court as it failed to appreciate that extra premium of Rs.300/- was paid over and above the basic premium of Rs.615/- which covered the Act liability. The High Court did not agree with this contention raised by the appellant and dismissed the review petitions.

Only point raised in these appeals is whether the High Court was right in holding that, under the insurance policy, the insurance company was liable to indemnify the insured only to the extent of Rs.5,000/- per passenger and Rs.75,000/- in all. It was submitted by the learned counsel that the appellant had paid additional premium of Rs.300/- and, therefore, the extent of liability of the insurance company was unlimited and should not have been restricted to Rs.5,000/- in respect of any one person and Rs.75,000/- in all. The learned counsel for the insurance company disputed that any additional premium was paid with a view to cover higher than the 'Act liability'. It was contented on its behalf that the insurance policy was comprehensive with respect to the vehicle only and additional payment of Rs.300/- was really made because the vehicle was a passenger bus having registered capacity to carry 50 passengers. The said additional premium of Rs.300/- was not for the purpose of covering unlimited or higher liability in respect of death of or bodily injury to any passenger.

As the vehicle involved in this case was a passenger bus in which passengers were carried for hire or reward the provisions contained in Section 95(1)(b)(ii) read with Section 95(2)(b)(ii) became applicable. At the relevant time Section 95(2) was as under

"95(2) Subject to the proviso to sub-section (i), a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely-

(a).....

(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;

(ii) in respect of passengers, (1) a limit of fifty thousand rupees in all where the vehicle is registered to carry not more than fifty passengers;

(2) a limit of seventy-five

thousand rupees in all where the vehicle is registered to carry more than thirty but not more than sixty passengers;

(3) a limit of one lakh rupees in all where the vehicle is registered to carry more than sixty passengers; and

(4) subject to the limits aforesaid, ten thousand rupees for each individual passenger where the vehicle is a motor car, and five thousand rupees for each individual passenger in any other case."

The renewed policy for the relevant period was filed before the Tribunal by the appellant and also by the insurance company. The relevant part of that policy read as under:

"In consideration of the payment of the Renewal Premium amount of Rs.721.20. (Rupees Seven hundred twenty one and paise twenty only.) as per details below, the within mentioned policy is hereby renewed for a further period of 12 months from 4.10.1973 to 3.10.1974 subject to the terms, conditions warranties as per Original Policy and endorsements thereon.

SCHEDULE
PARTICULARS OF MOTOR VEHICLE

Regist- ration Mark & Number	Make of body	Cubic Capacity	Year licen- se of Goods	Carry- Passenger Tons excluding Driver	Capa- city of Passenger including Driver	insured's estimate of value Including accesso- ries there- on Rupees
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EBRW-8040	T.HV Bus	..	1970	50		Rs.40,000
COMPREHENSIVE RISK S. & RISK, FIFTY PASSENGERS' RISK & L.L.						
TO PAID DRIVER, CLEANER & CONDUCTOR UNDER W.C. ACT ONLY COVERED.						

STAGE CARRIAGE

Premium : basic	Rs.626.00
Less 10% N.V.R.	Rs. 11.10
	Rs.614.90
S. & R. risk	Rs.100.00
50 passengers' risk	Rs.300.00
L.L. to drvr. clnr. condtr.	Rs. 15.00
	Rs.1029.29
Less 30% N.C.B	Rs. 308.70
	Rs. 721.20.

Dhanbad
8th Oct. 1973

sd/-
BRANCH MANAGER"

Endorsement No.13 which also formed a part of the policy was as under:

"Endorsement No.13 attaching to and forming part of Policy No. N DHV-27465

Legal Liability to passengers excluding liability to Accidents for employees of the Insured arising out of and in the course of their employment.

In consideration of an additional premium of Rs.300/- and notwithstanding anything to the contrary contained in section. II I@ but subject otherwise to the terms exceptions

conditions and limitations of this Policy the company will indemnify the insured against liability at law for compensation (including law cost of any claimant) for death of or bodily injury to any person other than a person excluded under section II-I(b) being carried in or upon or entering or mounting or alighting from the Motor Vehicle but such indemnity is limited to the sum of Rs.5,000/- in respect of any one person and subject to the aforesaid limit in respect of any one person to Rs.75,000/- in respect of any number of claims in connection with the Motor Vehicle arising out of one cause."

Section 95(1)(b)(i) provides for compulsory insurance against any liability which may be incurred by the insured in respect of the death of or bodily injury to any person. Section 95(1)(b)(ii) provides for compulsory insurance against the death or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place. Section 95(1)(b)(ii) being a specific provision made in respect of passengers of a public service vehicle, obviously that provision becomes applicable and not the general provision contained in Section 95(1)(b)(i), when the insured incurs liability in respect of the passengers travelling in his public service vehicle. Before the Tribunal and the High Court also the appellant had claimed the protection of Section 95(1)(b)(ii). Therefore, Mr. Ranjit Kumar, learned counsel for the appellant, cannot now be permitted to bring the appellant's case under Section 95(1)(b)(i) on the ground that it is wide enough to include a passenger as the word used therein is 'any person'. Even otherwise also this contention has no substance. Therefore, the liability of the insurance company will have to be determined in terms of Section 95(2)(b)(ii). It is not in dispute that at the relevant time Section 95(2)(b)(ii) limited the liability of the insurance company to Rs.5,000/- each passenger and Rs.75,000/- in all, where the vehicle was registered to carry more than 30 but not more than 60 passengers.

The next submission was that the appellant had paid additional premium of Rs.300/- to cover liability higher than the limited liability fixed by Section 95(2). It was submitted by Mr. Ranjit Kumar that the policy being a comprehensive policy it covered all the statutory liabilities and the additional premium of Rs.300/- was paid for covering liability higher than the statutory liability in respect of passengers. The insurance policy, relevant part of which has been set out above, shows that it covered the following risks: (1) comprehensive risk, (2) S&R risk, (3) passenger risk and (4) legal liability in respect of paid driver, cleaner and conductor under Workmen's compensation Act. For the comprehensive risk the appellant had paid Rs.626/- as basic premium. Ordinarily the insurance policy does not cover strike and riot risk and, therefore, to cover that risk also the insured had paid additional premium of Rs.100/-. To cover 50 passengers' risk the insured had paid Rs.721.20 as additional premium. If the comprehensive risk covered all other risks as contended by the appellant then the policy would not have mentioned separately the S&K risk and passenger risk. Not only that they have been separately mentioned but separate amounts were paid by way of premium for covering those risks. Thus the basic premium of Rs.626 paid for the comprehensive risk was obviously in respect of the bus and not in respect of other risks as contended by the learned counsel for the respondent insurance company. A fair reading of the insurance policy discloses that the basic premium of

Rs.626/- though paid for comprehensive risk was not intended to cover all the statutory liabilities but it was really intended to cover the entire loss or damage to the vehicle. As observed by this Court in Jugal Kishore's case "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 not comprehensively insured 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 up to the estimated value of the vehicle calculated according to the rules and regulations as framed in this behalf."

The insurance company had charged a premium of Rs.300/- towards passengers' risk. It works out at Rs.6/- per passenger. As per the Indian Motor Tariff applicable on the date of accident by charging a premium of Rs.6/- per passenger the liability of the company per passenger was Rs.5,000/- only. The Indian Motor Tariff which regulates a premium and liability of insurance company is framed by the Tariff Advisory Committee, a statutory body set up under the Insurance Act. The additional Premium of Rs.300/- was thus paid to cover the statutory liability for 50 passengers as the vehicle insured was a passenger bus having registered capacity of carrying 50 passengers. Endorsement No.13 which was attached to and formed part of the policy and which we have set out above also makes it clear that it was in consideration of an additional premium of Rs.300/- that the insurance company had undertaken to identify the insured against his liability in respect of passengers to the extent of Rs.5,000/- for each passenger and Rs.75,000/- in all. It is, therefore, not possible to accept the contention raised on behalf of the appellant that the additional premium of Rs.300/- was paid for covering higher than the statutory liability. There was no special contract to cover unlimited liability in respect of the passengers.

As we do not find any substance in any of the two contentions raised on behalf of the appellant these appeals are dismissed. However, in view of the facts and circumstances of the case there shall be no order as to costs.