
(1985) 11 GAU CK 0004
In the Gauhati High Court
Case No : M.A. (F) No. 51 of 1975

Bhagabat Kundu	Vs	APPELLANT
Debidutta Agarwalla and Another		RESPONDENT

Date of Decision : 22-11-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34
Motor Vehicles Act, 1939 — Section 110C, 95, 95(2), 96(2)

Citation : (1988) 64 CompCas 734

Hon'ble Judges : S.N. Phukan, J;K. Lahiri, J

Bench : Division Bench

Advocate : A.K. Bhattacharyya and A.K. Das and K.P. Sen, for the Appellant;
P.G. Barua and D. Goswami, for the Respondent

Final Decision : Allowed

Judgement

Lahiri, J.—The main question involved in the appeal u/s 110D of the Motor Vehicles Act, 1939, for short "the Act", is the limit of the liability of an insurer u/s 95 read with Section 110B of the Act. The question has been posed by the appellant, owner of the vehicle involved in the accident. The claimant-respondent No. 1 has prayed for interest by way of a cross-objection.

2. On December 19, 1973, Srimati Bhagabani Devi Agarwalla died in a motor accident for which truck No. ASZ 7746 owned by the appellant was solely and primarily responsible. The death occurred due to negligent driving of the truck driver. There is no wrangle at the bar that the truck was a " goods vehicle ", within the meaning of Section 2(8) of the Act and it was carrying some boxes at the relevant time. The policy of insurance also shows that it is a "goods vehicle". Smt. Bhagabani died in ghastly and appalling circumstances. Her husband, as claimant, instituted a case claiming compensation under the Act against the owner-appellant, and the " insurer " respondent No. 2. Notices of the claim were served on the parties including the insurance company. No objection was filed by respondent No. 2. The owner-appellant raised certain objections as to the

maintainability of the claim petition, the entitlement to compensation as well as the liability of the owner to pay the amount. The owner also took up the plea that the claim amount of Rs. 1 lakh was too high. Witnesses were examined by the contesting parties and documents were also filed. Learned District Judge-cum-Member, Motor Accidents Claims Tribunal, for short "the Tribunal" awarded Rs. 32,000 as compensation to the claimant but apportioned the compensation thus :

"Out of this amount, the insurance company is to pay Rs. 20,000 and the remaining amount of Rs. 12,000 is to be paid by Shri Bhagabat Kundu, the owner of the truck at fault "

3. Mr. A.K. Bhattacharya, learned counsel appearing for the appellant-owner, has raised the sole contention that "the insurer" was statutorily liable to pay the entire compensation of Rs. 32,000 awarded by the the Tribunal in terms of the policy of insurance covering such accidents and the Tribunal has gone wrong in prorating the compensation against the owner. The policy, coupled with the provisions of Section 95, make the insurer liable to pay the awarded amount which is far below the outer limit of liability of the insurer which has been statutorily fixed at Rs. 50,000. Mr. P. G. Barua, learned counsel for respondent No. 2, the insurer, faintly argues that the driver of the vehicle was not a licensed driver and accordingly respondent No. 1 was not liable to indemnify the insured. Secondly, Mr. Barua contends that the apportionment made by the Tribunal was just, proper and legal.

4. Let us proceed to consider the first contention. Mr. P. G. Barua, learned counsel, submits that the award is invalid as the defaulting driver had no valid driving licence and, therefore, under the terms of the policy, the insurer was not liable to pay any compensation and/or liable to satisfy the judgment-debt of the insured. We find the contention to be untenable. First, the insurer got the notice of the claim but did not appear and contest the claim in any form whatsoever. Secondly, there is no cross-objection filed by the insurer against the award or any part thereof. Thirdly, the point is taken at the hearing without filing any memorandum of appeal or petition. In our opinion, the insurer is not entitled to raise the objection before this court, under these circumstances. It is a case of disclaimer and relinquishment of their right to contest in the proceedings. Further, the rule of estoppel bars the entertainment of the plea. In the absence of a reasonable cause like non-receipt of notice of the claim case or some such cause, the party cannot be heard on the question for the first time after a lapse of over 11 years. Further, turning to the certificate of insurance marked annexure A, which forms part of the paper book, we find that "any person holding a licence to drive a vehicle or had held and was not disqualified for holding or obtaining such a licence, could drive the vehicle in question." There is no material to show that the driver had no licence to drive such a vehicle nor is there any material to show that he was not qualified for holding or obtaining a licence. The other limitations for the use of the vehicle are two-fold : First, that the vehicle could be

used only under a public carrier's permit granted under " the Act " and, secondly, it could not be used for organised racing or speed testing. There is no complaint about any breach of the conditions. There is no material to show that the driver did not hold any licence. Mr. Bhattacharya, learned counsel for the owner, submits that the driver had a valid licence and if challenged, the owner would have produced it. Mr. P. G. Barua merely shows a police report in the connected criminal case where it was alleged that the driver of the vehicle had no driving licence. However, it is merely an allegation and there is no material in support of the allegation made in the police report. In any view of the matter, there is no allegation or proof that the driver was "disqualified for holding or obtaining a motor vehicle licence or had never held any driving licence". Under these circumstances, the contention must be rejected. Further, in terms of the award, the insurance company has already paid Rs. 20,000 as directed by the Tribunal. There is no appeal nor even a cross-objection filed by the insurer-respondent No. 2. Situated thus, we hold that the plea cannot now be allowed to be raised in the appeal. We further hold that the insurer cannot repudiate its liability under the policy on the available materials. The contention fails.

5. The next and the most crucial question is the extent of liability of the insurer to indemnify the liability of the insured and/or the judgment debt of the insured. The nature and quality of the liability of the insurer under the policy and the extent of its liability are the main questions to be resolved. There is no dispute that u/s 110B of the Act, the Claims Tribunal, on determining the compensation, could "specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any one of them, as the case may be". The three basic components of an award are (i) the determination of the amount of compensation ;(ii) detailing the person or persons to whom compensation is to be paid ; and (iii) the specification of the amount or amounts to be paid by the insurer or owner or driver of the vehicle, involved in the accident, or by all or any one of them. The compensation has been determined at Rs. 32,000. The Claims Tribunal has specified the precise amount which shall be paid by the insurer and the owner. The appellant-owner contends that the insurer was liable to indemnify the entire award amount of Rs. 32,000 as, under the policy of insurance, the insurer was liable to indemnify up to Rs. 50,000.

6. A conspectus of Chapter VIII of the Act shows that the Claims Tribunal has been empowered to adjudicate tortious liabilities but the insurer, a non-tortfeasor, is made liable to pay the entire amount of compensation u/s 110B of the Act. The insurer has been statutorily named as indemnifier liable in law. The insurer may defend an action only on the limited grounds mentioned in Section 96(2) of the Act. The insurer can take up the defence that the policy has elapsed or that the policy has been cancelled or that there has been a breach of specified conditions of the policy including the plea that the vehicle has been driven by a person not duly licensed or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification and that the policy was void.

7. The sole question urged is that when under the policy of insurance, the insurer was liable to indemnify the owner of the vehicle and when the statutory limit of the liability u/s 95(2) of the Act was Rs. 50,000, there was no rationale for apportioning the payment of compensation between the insurer and the insured. In the instant case, the vehicle owned by the appellant-insured was covered by the certificate of insurance under cover note No. 2176. The annual premium was Rs. 2,146. The policy of the insurance as well as the certificate of insurance were issued in accordance with the provisions of Chapter VIII of the Motor Vehicles Act, 1939, vide page 81 of the paper book. The vehicle is a goods vehicle as defined in Section 2(8) of the Act. Section 95(2) of the Act provides the requirements of policies and the limits of liability. Section 95(2)(a) limits the liability of an insurer in respect of any one accident. Section 95(2)(a) is extracted hereinbelow :

" 95(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 :--

(a) where the vehicle is a goods vehicle, a limit of fifty thousand rupees in all, including the liabilities, if any, arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of or bodily injury to, employees (other than the driver), not exceeding six in number, being carried in the vehicle."

8. The proviso to Sub-section (1) is not relevant for the purpose of this case. Where the vehicle is a goods vehicle, the limit of the liability of an insurer to indemnify the insured against any liability of the insured on the death of any person, arising out of the use of the vehicle in a public place, is up to Rs. 50,000. As between the insurance policy and the insurance certificate, the latter prevails and it is conclusive. The certificate of insurance is annexure A. It is thus seen that the owner took out a policy of insurance as required under Chapter VIII of the Act. The policy of insurance is an instrument in writing, by which the insurer, in consideration of a premium, is engaged to indemnify the insured against a contingent loss by making him a payment in compensation, whenever the event may happen by which the loss is to accrue. There was a valid policy of insurance and the owner was the policy-holder and paid a pretty high premium to the tune of Rs. 2,146 per annum. It is a "Liability insurance", i.e., insurance which covers actions or suits against the insured for such damages as injury to or death of, amongst others, third parties. It is that form of insurance which indemnifies against liability on account of injuries to the person or property of another. The certificate of insurance clearly shows that it was liability insurance under Chapter VIII of the Act. Therefore, by the policy, the insurer was liable to indemnify the insured against liability of injuries or death of a third person up to the limit set out in Section 95 of the Act. In one accident, the insurer is liable to indemnify the insured to the extent of Rs. 50,000 and not more. Beyond the said amount, the insurer cannot be made liable to indemnify the insured. This is the position that emerges on a scrutiny of the certificate of insurance read with Section 95(2)

(a) of the Act. When the compensation awarded is Rs. 32,000, i.e., far below the outer limit of the liability of the insurer, the question of apportionment of the amount among the insured and the insurer cannot arise. At least, there is no reason why the owner having insured the vehicle and entitled to be indemnified by the insurer under the terms of the policy should be saddled with any liability. The object and purpose of taking an insurance was to get protection or to be indemnified against the liabilities and nothing else. There must be some cause or reason not to make the insurer liable up to the limit of its liability or there must be some reason to make the insured partly liable notwithstanding the fact that the awarded amount was far below the limit of the liability of the insurer. The owner insured the vehicle and paid premium to make sure or secure a guarantee. There must be some plausible ground to reduce the Statutory as well as contractual liability. If the amount would have been above Rs. 50,000, the balance could have been directed to be paid by the insured or the driver. Section 95(5) of the Act makes it clear that notwithstanding anything contained elsewhere in any law, the insurer shall be liable to indemnify the insured or other persons specified in the policy in respect of any liability which the policy purports to cover. The policy being one u/s 95 of the Act, the limit of the liability of the insurer was to the tune of Rs. 50,000. There is no just cause to reduce the liability of the insurer to Rs. 20,000. In our opinion, when the compensation is within the limits covered by the policy read with Section 95 of the Act, it is the insurer who is liable to indemnify the entire amount awarded by the Claims Tribunal. In the event of the award going beyond the statutory limit and/or the policy of insurance, the amount in excess may be directed to be paid by the insured and/or the driver of the vehicle, for, otherwise, to insure for the contingencies becomes illusory or nugatory. In the instant case, the amount of compensation being below Rs. 50,000, the insurer was statutorily liable to indemnify the insured. The insurer is liable to indemnify the insured for the amount of compensation awarded for which the insured had a valid policy of insurance. There is no palpable reason to make the owner partly liable to the extent of Rs. 12,000. We are of the opinion that the insurer is liable to pay the entire amount of compensation awarded. While reaching the conclusion, we have followed the rule laid down by the Supreme Court in *Padma Srinivasan Vs. Premier Insurance Company Limited*, We have also relied on *Smt. Narmada Choudhury and Others Vs. Motor Accident Claims Tribunal and Others*, *Ghisalal Durgadutta v. Smt. Bina Das* [1984] 1 GLR 32 and *Ratneswari Borani v. Gauri Shankar Agarwalla* [1983] ACJ 767.

9. The next question is about the payment of interest as claimed by the claimant-respondent No. 1 in his application stating that he was denied his right to get interest on the amount. Indeed, the Tribunal has omitted to award any cost or interest. There is no bar or prohibition imposed by the Act and the Rules framed under the Act to award interest. The civil court could award interest u/s 34 of the Code. The dispute which is now determined by the Claims Tribunal was earlier tried by the civil court and the jurisdiction is now transferred to the Tribunal to

determine just and fair compensation. In the absence of a provision to the contrary, it must be assumed that along with the transfer of power and jurisdiction, all the necessary powers of the civil court including those u/s 34 of the CPC were so transferred to the Tribunal. In *Bishan Devi v. Sirbaksh Singh* : [1980]1SCR300 , their Lordships awarded interest in a motor accident claim case. There is no dispute that on and from the date of the accident, the claimant was entitled to compensation. The compensation was his personal property, and, as he was deprived of the payment, as such, in equity the claimant is entitled to interest. The right to receive interest takes the place of the right to retain the compensation with the person liable to make the payment and making use of it. This view finds support in *Inglewood Pulp and Paper Co. Ltd. v. New Brunswick Electric Power Commission* AIR 1928 PC 287; [1928] AC 492 . This apart, on simple commercial basis, the claimant is entitled to interest on compensation. If it had been paid at the appropriate time, the claimant could have made use of the amount. When the payment was not made at the appropriate time, the claimant was entitled to interest. In *Mahant Narayana Dasjee Varu and Others Vs. Board of Trustees, The Tirumalai Tirupathi, Devasthanam*, it has been held by the Supreme Court that the interest is an integral part of mesne profits and has, therefore, to be allowed in the computation of mesne profits itself. In *Hukumchand Gulabchand Jain Vs. Fulchand Lakhmichand Jain and Others*, , the Supreme Court has held that a trustee using the trust fund in his individual capacity is liable to pay interest. In reaching the conclusion that the claimant is entitled to interest, we rely on *Birch v. Joy* [1852] 3 HLC 565, *Swift and Co.* [1925] AC 520, *International Railway Co. v. Niagara Parks Commission* AIR 1941 PC 114 : [1941] AC 328 , *Firm Madanlal Roshanlal Mahajan Vs. Hukumchand Mills Ltd., Indore*, , *T.N.K. Govindarajulu Chetty Vs. Commissioner of Income Tax, Madras*, and *Laxmichand Vs. Indore Improvement Trust, Indore and Another*, On the authority of *Bishan Devi* : [1980]1SCR300 , alone we hold that the claimant is entitled to interest. The amending law makes it obligatory on the party to make on the spot payment. However, if the payment is not made on the spot and contested, interest is to be awarded u/s 110C from the date of the institution of the claim. The claim was instituted on January 7, 1974. A sum of Rs. 20,000 has already been paid by the insurer, and as such we direct that the insurer shall pay interest at 12% per annum on Rs. 12,000, the balance amount, from the date of the award till the amount is paid to the claimant (respondent No. 1, Shri Devidutta Agarwalla).

10. In the result, the appeal is allowed. The award is modified. For the reasons alluded to, we hold that the insurer-respondent No. 2 is liable to pay the entire amount of compensation, that is, Rs. 32,000, awarded by the Tribunal. The appellant-owner shall not be liable to pay any amount towards compensation. We also award that the insurer, respondent No. 2, pay interest at 12% per annum on the balance amount of Rs. 12,000 from the date of award till the amount is paid to the claimant-respondent No. 1, husband of the deceased, Bhagabani Devi Agarwalla. However, we make no order as to costs.