
(1964) 10 P&H CK 0030
In the Punjab And Haryana At Chandigarh
Case No : Civil Revn No. 143 of 1964

Diayali Bal and Others

APPELLANT

Vs

The Jupiter General Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 19-10-1964

Acts Referred:

Motor Vehicles Act, 1988 — Section 110, 110A, 96, 96(2)

Citation : AIR 1965 P&H 311 : (1965) 1 ILR (P&H) 479

Hon'ble Judges : D.K. Mahajan, J

Bench : Single Bench

Judgement

(1) This is a petitioner for revision and is directed against the order of the Subordinate Judge, Hissar dated the 20th of February, 1964, by which the following preliminary issue was decided in favour of the plaintiffs:

Is a suit liable to be stayed or incompetent as alleged in the preliminary objection by defendants 5 to 8?

The suit in which this preliminary issue was framed was filed by the Jupiter General Insurance Co. against Shri Lalu Ram, Shri Babu Ram Gupta R. Biyani, Mohan Arya Smt. Dayalibai Smt. Chander Kanta Ashwani Kumar and Anita. Defendant No. 5 is the mother of the deceased Captain O. P. Girdhar defendant No. 6 is his widow defendant No. 7 is the son and defendant No. 8 is the daughter Captain O. P. Girdhar met with an accident on the 15th of December, 1962. He was struck by a truck No. PNK-1223 and as a result of this collision he died. An application was made by defendants Nos. 5 to 8 to the Motor Accident Claims Tribunal Punjab u/s 110A of the Motors Vehicles Act. This application is No. 35 of 1963. In this application the Vanguard Insurance Co, Ltd and the Jupiter General Insurance Co., the plaintiff in the suit in which the preliminary issue has been framed were made parties. The Jupiter General Insurance Co. has raised the defence to the application before the Claims Tribunal to the effect that the insurance policy in question to which the cover-note dated the 12th of December, 1962, relates was obtained by fraud and conspiracy. The allegations

of conspiracy are that defendants 5 to 8 conspired with defendants Nos. 1 to 4 whereby defendant Nos. 1 to 4 whereby defendants Nos. 2 and 3 were instrumental in getting the cover-note and the policy of insurance issued and that all this happened after the accidents.

(2) On the basis of this very plea the Insurance Company has filed a suit in the Court of the Subordinate Judge 1st Class Hissar on the 24th of July, 1963, against the defendants already set out above. The suit is for a declaration and for cancellations of the insurance policy on the same grounds that have been taken by the company in defence to the application filed by defendants Nos. 5 to 8 before the Claims Tribunal Defendants Nos. 5 to 8 have raised the plea that the suit by the Insurance Company is not competent and that is what has given rise to the preliminary issue which has given rise to the preliminary issue which has been determined by the trial Court. The trial Court has decided this issue in favour of the Insurance Company and it will be proper to set out the relevant part of the decision in the very words of the learned Subordinate Judge--

"..... If the subject-matter in dispute in this case is triable by the Claims Tribunal constituted under the Motor Vehicles Act then the jurisdiction of the civil Courts would be barred. Section 110-F of the Motor Vehicles Act bars the jurisdiction of the civil court to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area. This argument is not without force and apparently this suit does not relate to any claim for compensation. In fact none of the parties in this case have claimed any compensation. The suit relates to the allegations made by the plaintiff insurance policy and the cover note in dispute contract of insurance was made between the plaintiff and defendant No. 1. The reliefs which have been claimed in the alternative also do not relate to any compensation. Section 110-F of Motor Vehicles act bars the jurisdiction of the Civil Court only to try cases in which claim of compensation has been made and which claim can be adjudicated upon the by the Claim Tribunal. As the instant case does not relate to any compensation it is held that civil court has jurisdiction to try this case."

(3) It is the aforesaid decision of the trial Court which is being challenged in this petition by defendant No. 5 Mst Dayalibai. The contention of the learned counsel for the petitioner is that the trial Court has no jurisdiction to entertain the suit in view of the provisions of S. 96 of the Motors Vehicles Act. Before examining this contention it will be proper to examine the scheme of the Motor Vehicles Act so far as it relates to a claim by a third party against the insurance companies. Chapter VII deals with insurance of motor vehicles against third-party risk. Section 93 is the definition section. Section against third-party risk. Section 95 lays down the requirement of policies and limits of liability Section 96 which is the section pressed into service deals with the duty of the insurers to satisfy judgment s against persons insured in respect of third party risks. The relevant part of this sections is as follows:

"96(1), If after a certificate o f insurance has been issued under sub-section (4)

of Section 95 in favour of the person by whom a policy has been effected judgment in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of Section 95 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy then notwithstanding that the insurer shall subject to the provisions of the section pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder as if he were the judgment-debtor in respect of the liability together with any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment unless before or after the commencement of the proceedings in which the judgment is given the insurer had notice throughout the Court of the bringing of the proceedings or in respect of any judgment so long as execution is stayed thereon pending an appeal and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made party thereto and to defend the action on any of the following grounds namely:

(a) That the policy was cancelled by mutual consent or by virtue of any provision contained therein before the accident giving rise to the liability and that either the certificate of insurance was surrendered to the insurer or that the person to whom the certificate was issued has made an affidavit stating that the certificate has been lost or destroyed or that either before or not later than fourteen days after the happening of the accident the insurer has commenced proceedings for cancellations of the certificate after compliance with the provision of Section 105; or (b) That there has been a breach of a specified condition of the policy being one of the following conditions namely:

(i) a condition excluding the use of the vehicle

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward or (b) for organised racing and speed testing or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a public service vehicle or a goods vehicle or

(d) without side-car being attached where the vehicle is a motor-cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed or by any person who has been disqualified for holding or obtaining a driving license during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war riot or civil commotion; or

(c) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular

(3) x x x x

(4) x x x x

(5) In this section the expression material fact" and material particular mean respectively, a fact or particular of such nature as to influence the judgment of a prudent insure in determining whether he will take the risk, if so, of what premium and on what conditions, and the expression "liability covered by the terms of the policy" means a liability which is covered by the policy or which would be so covered but for the fact that insurer is entitled to avoid or cancel or has avoided or canceled the policy.

(6) No insurer to whom the notice referred on in sub-section (2) or sub-section 2-A has been given shall be entitled to avoid his liability to any person entitle dot the benefit of any such judgment as it referred to in sub-section (1) or sub-section 2-A otherwise than in the manner provided for in sub-section

(2) x x x x"

(4) Section 98 casts a duty on a person against whom a claim is made to give information as to insurance. Section 103 sets out the effect of a certificate of insurance. Section 110 provides for the constitution of the Claims Tribunal and Section 110-A provides the procedure for the settings of the claim application and the award of compensation by the Claims Tribunal Section 110-C prescribed the procedure and powers of Claims Tribunals and section 110-D provides for appeals. Section 110-F bars the jurisdiction of civil court sand is in these terms:

"110F. Where any Claims Tribunal has been constituted for any area no Civil Courts been constituted for shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claim tribunal for that area and no injunction in respect of any action taken or to be taken by or before the claims Tribunal in respect of the claim for compensation shall be granted by the Civil Court."

It follows form the above provision that the legislature contemplated that the claims for compensation by any person who has sustain injury o by the legal representatives of a person who has died from a motor accident to by the agent duly authorised by the person injured or the legal representatives of the deceased have to be mad under this Act and have to be settled by a Claims Tribunal constituted under this act. It is settled rule of law that where Special Tribunals are created for dealing with specific matters those matters cannot be entertained by the ordinary civil Courts because the jurisdiction of such Court would be impliedly barred. However so far as the Motors Vehicles Act is concerned the jurisdiction of the civil courts is specifically barred by Section 11-F, occurring in Chapter VIII of the Motor Vehicles Act. It will be seen that the policy of this chapter is that all claims by third parties against the insured as well as the insurer are to be settled by a Special Tribunal i. e. the Claims Tribunal.

(5) Section 96(2) of the Act provides in what cases the insurer can avoid liability

under the cover-note or the insurance policy. Clause (c) of Section 96(2) enables insurer to avoid a policy on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material fact or a material particular has been defined in sub-section (5) of this section. In this situation it is the Claims Tribunal which can declare the policy to be void and the provisions of Section 110F will bar the suit which has been instituted for that purpose. The decision of the Court below to the contrary is clearly erroneous. The insurer cannot avoid his liability under the cover-note or the policy excepting as provide in Section 96(2) of the Act. To permit the insurer to avoid his liability by a separate suit would be so defeat the provision of Section 96 and Section 110 F, of the Motors Vehicles Act. It appears to me that the Court below completely lost sight of the substances of the matter. After having come to the conclusion, that, the pleas raised by the insurance company, in their defence to the claim petition, were the same as were raised by them in the suit, it was not open to the Court without coming to a finding that those pleas could not be properly entertained by the Claim Tribunal, to hold that the suit was maintainable. I am therefore clearly of the view that the courts below has acted without jurisdiction in entreating the suit.

(6) Mr. Ahuja's contention, that, in the suit what the insurance company is trying to prove is that defendants Nos. 5 to 8 were parties to the fraud where by the cover-note and the insurance policy were obtained and therefore the suit is maintainable as it is to avoid policy. This matter can be agitated before the Claims Tribunal. The ambit of Section 96(2)(c) read with sub-section (5) is wide enough to cover such a plea. Therefore it must be held that this is no argument in favour of the maintainability of a separate suit. The matter as of necessity must separate suit. The matter as of necessity must be tried by the Motor Accident Claims Tribunal and by no other Court.

(7) The only other submission of Mr. Ahuja, learned counsel for the insurance company, was, that the claimants should not be allowed to take the money in pursuance of the award of the Claims Tribunal. In the first instance no such award has been made so far and in the second instance, that is a matter which should be urged before the Claims Tribunal. I am not at this stage concerned with this matter and therefore this contention is also negatived.

(8) For the reasons given above this petition is allowed. The order of the trial Court is set aside and it is held that the present suit is not mountable. The petitioner shall be entitled to the costs of this petition.

(9) Petition allowed.