
(1955) 04 P&H CK 0013

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No's. 81-D and 365-D of 1953 and 96-D of 1954

Itbar Singh

APPELLANT

Vs

P.S. Gill and Others

RESPONDENT

Date of Decision : 27-04-1955

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 1
Motor Vehicles Act, 1939 — Section 96(2)

Citation : AIR 1955 P&H 187

Hon'ble Judges : Khosla, J;Harnam Singh, J

Bench : Division Bench

Advocate : T.P.S. Chawla, for the Appellant; M.L. Madhok, Bhagwat Dayal and Ram Behari Lal, for the Respondent

Judgement

Harnam Singh, J.—By this order I dispose of Civil Revision No. 81-D of 1953, Civil Revision No. 365-D of 1953 and Civil Revision No. 96-D of 1954 which have been referred to this Bench for decision of the question of law arising u/s 96(2), Motor Vehicles Act, 1939, hereinafter called the Act.

2. In Civil Suit No. 605 of 1951 Captain Itbar Singh claimed decree for rupees 10,500/- against Wing Commander. P.S. Gill and Shrimati Tara Devi Dogra for injuries sustained by him in an accident in which car No. DLA 3347 was involved.

3. In paragraph 8 of the plaint it was stated that the insurers with whom car No. DLA 3347 and Wing Commander P.S. Gill were insured and the insurer with whom Squadron Leader Dogra was insured at the time of the accident were liable to satisfy the decree that may be passed in Civil Suit No. 605 of 1951.

4. Notices were sent to the insurers for the 2nd of April 1952, but the insurers did not appear in. Court on the date of hearing with the result that ex parte proceedings were ordered against them.

5. On 22-6-1952, ex parte proceedings against the insurers were set aside on payment of costs.

6. On 11-7-1952 Captain Itbar Singh applied that the written statement filed by the insurers may not be considered, for the insurers could not be implicated to be defendants in the suit and file written statement on merits.

7. In deciding the matter Shri Basant Lal, Sub-Judge, ordered :

"No doubt there is no specific order on the file making the insurers as parties to the case, but notices were sent to the insurers at the instance of the plaintiff and under Sub-section (2) of Section 96 of the Motor Vehicles Act of 1939, the insurers are entitled to be made parties to the case and to defend the action.

They will also be entitled to defend the suit on the grounds, i.e., their right to challenge the factum of the accident, the factum of the negligence and the quantum of damages etc."

8. In -- Sarupsing Mangatsing Vs. Nilkant Bhaskar, , Chagla C. J. (Bhagwati J, concurring) expressed the opinion that independently of Section 96(2) of the Act the insurance company cannot be made a party to the suit under Order 1, Rule 10, Civil P. C. and defend the action. In expressing that opinion, Chagla C. J. (Bhagwati J. concurring) observed :

"The jurisdiction of the Court to add parties to the suit is restricted to Order 1, Rule 10, and a person can only be added a party in two cases; one is when he ought to have been joined as plaintiff or defendant and is not so joined, and the other is when without his presence the questions in the suit cannot be completely decided Now, it is clear that there was no obligation upon the plaintiff to join the insurance company as a party defendant, there was no privity between the plaintiff and the Insurance Co. and the plaintiff was seeking no relief against the Insurance Co. Can it be said that the Insurance Co. would fall in the second category, or, in other words, can it be said that although the Insurance Co. was not a necessary party it was a proper party? There again it is difficult to see how it could possibly be urged that the question in the suit could not be completely decided in the absence of the Insurance Co. No issue arose" as between the plaintiff and the Insurance Co."

9. Section 96(2) of the Act provides :

"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 through 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 a party thereto and to defend the action on any of the following grounds, namely ;

* * *

10. From the words used in Section 96(2) of the Act it is plain that though the insurers are entitled to be made a party to a run-down action, the insurers

cannot defend the action on grounds other than those specified in Section 96(2) of the Act. For authority on this point AIR 1953 Bombay 109 (A) and -- "Royal Insurance Co. Ltd. v. Abdul Mahomed Mcheralli", (S) AIR 1955 Bombay 39 (B), may be seen.

11. In AIR 1953 Bombay 109 , Chagla C. J. (Bhagwati J. concurring) observed :

"Now, Section 96 was recently enacted and it casts a sort of vicarious liability upon an Insurance Co., and although the statute makes it obligatory upon the plaintiff to serve a notice through the Court upon the Insurance Co., if he wants to hold the Insurance Co. liable as if it were a judgment-debtor under the decree which he might obtain, the statute does not confer any right upon the Insurance Co. to defend the action on the same points in issue which the defendant would be entitled to defend. The right of the Insurance Co. to defend is restricted to the various matters set out in Section 96(2), and obviously the right of the Insurance Co. to be made a party to the suit is also restricted to those matters where it could put forward a defence."

12. In (S) AIR 1955 Bom 39, Chagla C. J. (Dixit J. concurring) observed :

"After the notice is served, the insurer has been given the right to be made a party to the suit and to defend the action on any of the grounds mentioned in Sub-section (2) of Section 96. It is in common ground that the Insurance company in this case does not want to defend the action on any of those grounds. Therefore, it is clear that it is not entitled u/s 96(2) to be made a party and to defend the action "in its own right".

13. Section 96(2) of the Act deals with third party procedure where a person not a party to the [suit would become liable to satisfy the decree passed in a run-down action.

14. In making rules u/s 122 of the Code of Civil Procedure, the High Court of Bombay has added rules 13 to 30 in Order VIII of the Code of Civil Procedure. Rules 23 to 30 added by the High Court of Bombay deal with third party procedure. Rule 23(3) of those rules provides :

"The third party shall as from the time of the service upon him of the notice, be a party to the suit with the same right in respect of his defence against any claim made against him and otherwise as if he had been duly sued in the ordinary way by the defendant."

15. On the subject of third party procedure the Madras High Court has added Order VIIIA to the Code of Civil Procedure. Rule 2 of Order VIIIA of the Code is identical with the Rule 23(3) cited above.

16. In my judgment the insurers cannot defend the action on grounds other than those specified in Section 96(2) of the Act.

17. In considering the principles underlying Section 96(2) of the Act, Chagla C. J. (Dixit J. concurring) said in Royal Insurance Co. Ltd. Vs. Abdul Mahomed

Meheralli,

"? ? ? the object of providing for a notice to the insurance company is really two-fold. One is to enable it to defend the action "in its own right and in its own name it is challenging the claim on any of the grounds mentioned in Section 96(2)". But the other purpose and object of the notice, which is equally important is to give intimation to the insurance company that an action has been started against the defendant so as to enable the insurance company to see that that action is properly defended and that the decree does not go against the defendant by default or that a decree is not passed collusively against the defendant. Therefore, when in this case a notice was served upon the insurance company, and when the insurance company found that the defendant had left India and was not likely to defend the action, it was open to the insurance company to come to Court and apply that it should be permitted "to defend the suit in the name of the defendant"."

18. For the foregoing reasons, I think that the order passed by Shri Basant Lal, Sub-Judge, giving the right to the insurers to defend the action on merits cannot be sustained.

19. In the result, I allow Civil Revision No. 81-D of 1953 by restraining the defence of the insurers to the matters specified in Section 96(2) of the Act. In all other respects, the order passed by the Sub-Judge on 29-1-1953 would stand.

20. In Civil Suit No. 192 of 1952 Shri Des Raj Dhamija, Sub-Judge, has found that the " grounds upon which an insurer can defend the suit in a run-down action are those specified in Sub-section (2) of Section 96 of the Act.

21. From that order Messrs. Vanguard Insurance Company Limited, have come up in revision to this Court u/s 115, Civil P. C.

22. For the reasons given in Civil Revision No. 81-D of 1953, I think that the judgment of Shri Des Raj Dhamija Sub-Judge, is correct.

23. In the result, Civil Revision No. 365-D of 1953 fails and is dismissed.

24. In Civil Suit No. 719 of 1953 Shri Birendar Singh Sub-Judge has found that the insurance company was not entitled to defend the suit except on defences specified in Sub-section (2) of Section 96 of the Act.

25. From that order the British India General Insurance Company, Limited, has come in revision to this Court.

26. For the reasons given in Civil Revision No. 81-D of 1953 I find that the order passed by Shri Bircndar Singh Sub-Judge, is not open to challenge.

27. In the result, Civil Revision No. 96-D of 1954 fails and is dismissed.

28. Parties in Civil Revision No. 81-D of 1953, Civil Revision No. 365-D of 1953 and Civil Revision No. 96-D of 1954 are left to bear their own costs in this Court.

29. lasurers in the several matters on showing sufficient cause may be permitted to defend the action affecting them on merits in the name of the original defendant or defendants as the case may be.

Khosla, J.

30. I agree.