

(2014) 12 J&K CK 0026

In the Jammu And Kashmir High Court

Case No : LPAC No. 17 Of 2006, CMA No. 24 Of 2006, LPAC No. 18 Of 2006 and
CMA No. 25 Of 2006

Jagjeet Singh

APPELLANT

Vs

United Insurance Co. and Others

RESPONDENT

Date of Decision : 04-12-2014

Acts Referred:

Citation : (2015) 2 JKJ 566

Hon'ble Judges : M.M. Kumar, CJ;Tashi Rabstan, J

Bench : Division Bench

Advocate : Surinder Singh, Advocate, for the Appellant; Vishnu Gupta, for the
Respondent

Judgement

M.M. Kumar, C.J.â?"This order shall dispose of LPAC Nos. 17 and 18 of 2006 emerging from a common judgment rendered by the learned

Single Judge of this Court. One of the appeals has been filed by the Insurance Company, whereas the other has been filed by the owner of the bus

bearing registration No. JKP-8295. Facts are not in dispute. On 17.08.1986, deceased Mohd. Rafiq, a resident of town Bhalla took out his

motorcycle to travel to Doda. After travelling some distance from his home town Bhalla, he saw a bus bearing Registration No. JKP/8295

approaching from opposite side at a high speed. He tried his best to save himself by shifting on the narrow single road, but the bus hit him. He was

crushed below the right wheel of the vehicle along with his motorcycle. He could be removed from beneath the wheel of the bus only after lifting

the bus with the help of a jack. He succumbed to the injuries while being taken to the hospital at Doda. The Tribunal recorded its finding that

petitioner-Khair-ud-Din was the legal representative and dependent of the

deceased. The authenticity of the accident is not in doubt. It has further been found that the accident was caused on account of rash and negligent driving of the bus driver. It was further found that the salary of the deceased at the time of his death was Rs. 1322.40. He was found to be earning an average amount of Rs. 7000/- per month by granting increments and future promotions. By applying the multiplier of 20, the following award was passed for a total sum of Rs. 3.70 lacs minus the amount of interim compensation which stood paid to the dependent. The aforesaid amount was to be shared in the ratio as given under:

Parents Rs. 2 lacs plus one lac i.e., total 3 lac. Less by Rs. 33332/- as interim compensation already received in equal shares. Son will get Rs.

40,000/- plus 30,000/- i.e., total 70,000/- less by Rs. 16,666/- as interim compensation.

2. The amount was to be paid by the Insurance Company namely United India Insurance Company along with interest @ 7% per annum from the date of institution of the claim petition.

3. Against the aforesaid award, appeal was filed and the learned Single Judge vide judgment dated 05.05.2006 has held that the appellant-

Insurance Company was not entitled to contest the claim petition on the ground other than the one available to it under the Motor Vehicles Act

because the Insurance Company did not seek required permission of the Tribunal. It was further held that the question of quantum could also not

be raised by the Insurance Company as it did not fall within the permissible defenses available to an Insurer.

4. The learned Single Judge, however, castigated the Tribunal for fastening the whole liability on the Insurance Company on the ground that it had

failed to produce the original policy on record and it went on to hold that the view of the Tribunal was erroneous. The learned Single Judge held

that the contract of insurance is a contract of indemnity for tortfeasor. The tortfeasor was required to prove that it had entered into any such

contract whereby the indemnifier was liable to satisfy the liability incurred by such person. Therefore, it was the owner and not the Insurance

Company, which was obliged to produce the Insurance Policy and prove the liability of the Insurance Company. Therefore, non-production of

Insurance Policy in absence of absolute liability of the insurer, under law, would

not saddle the Insurance Company with any liability. Therefore, it proceeded to hold that the liability of the Insurance Company was limited and observed as under:

27. The question as to whether or not the liability of Insurance Company was limited is no longer res-integra and stands held concluded by various

judgments of Hon'ble Supreme Court of India. Some of these judgments are National Insurance Co. Ltd. v. Nathilal and others, reported as 1999

ACJ 657; Jameskutty Jacob v. United India Insurance Co. and Ors., reported as 2006 (3) Supreme 47. It was held in yet another decision of the

Supreme Court of India reported as National Insurance Co. Ltd. v. Keshav Bahadur and Ors., 2004 ACJ 648, that insurer does not take any

higher liability by accepting higher premium; the liability is neither unlimited nor higher than the statutory liability fixed under Section 95(2) of the

Act. Even if a vehicle is the subject matter of comprehensive insurance and a higher premium is paid on that score, limit of the liability with regard

to third party risk does not become unlimited or higher beyond the statutory liability fixed. For this purpose, a specific agreement has to be arrived

at between the insured and the insurer, and separate premium has to be arrived at between the insured and the insurer, and separate premium has

to paid in respect of additional amount of liability undertaken by the insurer in that regard.

28 In view of the judgments of the High Courts and Supreme Court of India, the inevitable conclusion is that appellant in this case had been

erroneously saddled with the unlimited liability when it had to incur only statutory limited liability of Rs. 50,000/- (Rupees fifty thousand).

29 The award of the Tribunal is, accordingly, modified and the liability of the appellant is held to be limited to Rs. 50,000/- (Rupees fifty thousand)

along with interest accrued thereon.

5. Mr. Surinder Singh, learned counsel for the bus owner-insured has raised two issues before us:

(a) the Insurance Company failed to produce any policy on record which must result into fastening of whole liability on it; and

(b) the liability of the Insurance Company in any case is unlimited, therefore, the concept of-limited liability cannot be invoked by saddling the

obligation beyond a limited liability on the bus owner.

6. Learned counsel has then pointed out that the Insurance Policy was never produced before the Tribunal. It was for the first time produced before the learned Single Judge. This argument shall not detain us because a perusal of the record shows that CMA No. 242/2005 was filed for bringing on record a photo copy of carbon copy of the Insurance Policy in favour of the insured/bus owner. It is well settled that such a policy being certified by the Assistant Divisional Manager would be admissible in evidence if the principles laid down under Section 74 read with Section 77 of the Evidence Act were to apply. In that regard reliance has been rightly placed by Mr. Vishnu Gupta, learned counsel for the Insurance Company, on a Full Bench Judgment of Punjab and Haryana High Court rendered in the case of United India Insurance Company Ltd. Vs. Kamla Rani and Others, . In Para 33 of the judgment, the Full Bench has held as under:-

33. Under sub-clause (h) of Section 2(17) of the Code of Civil procedure, every officer in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty is a public officer. This definition can safely be taken in the ordinary sense to be the definition of a public officer. Therefore when the Government company is required to issue the certificate of insurance/policy of the insurance in the form prescribed by the Government and maintain the register of the policies and when the Government is empowered to issue directions to the insurance companies, it can safely be held that policies of insurance or certificate of insurance and cover notes issued by the companies in performance of their statutory duties can be classified as public documents within the meaning of Section 74 of the Evidence Act. When certificate of insurance/policy issued by the insurance company is a public document, the same can be proved by production of a certified copy under Section 77 of the Indian Evidence Act. We are, therefore, of the opinion that a certified copy of insurance policy produced by the insurance company which issued it is admissible in evidence without any formal proof of it. If the insured, i.e., the owner of the vehicle disputes the correctness of the said certified copy, it is for him to produce the original which will be in his custody only. We are, therefore, of the opinion that certified copy of insurance policy is admissible in evidence under Section 74 read with Section 77 of the Indian Evidence Act without any formal proof. We,

therefore, overrule the decisions in *Malwa Bus Service (P.) Ltd. and Another Vs. Amrit Kaur and Others*, and *Oriental Fire & Genl. Ins. Co. Ltd.*

v. *Chandrawali*, 1989 ACJ 419 (P & H)"".

(Emphasis added)

7. A similar view has been expressed by the Division Bench of this Court in the case of *Kewal Krishan and Others Vs. Smt. Krishna Devi and*

Others, , wherein it has been held that production of a certified copy of Insurance Policy by an Insurance Company could not be excluded on the

ground that no secondary evidence was adduced.

8. Mr. Surinder Singh learned counsel for the appellant has further submitted that the liability of the Insurance Company is absolute and

unlimited. However, according to Mr. Vishnu Gupta, learned counsel for the Insurance Company, the onus to prove that the liability was unlimited

was on the insured and not on the Insurance Company. Placing reliance on the provisions of Section 95(b)(ii) of the Motor Vehicles Act, 1937,

Mr. Gupta has argued that the liability of the Insurance Company has a cap of 50,000/- and the same view has been taken by the Full Bench of

Punjab and Haryana High Court in *Kamla Rani's case* (supra). Our attention has been drawn to para 37 of the judgment which is extracted below

in extenso:

37. Thus, according to the terms of the policy, liability of the insurance company is limited to meet the requirements of Section 95 of the Motor

Vehicles Act, 1939. The accident in this case took place on 22.3.1978. There is no dispute that at the time when the accident took place, the

liability of the insurance company under sub-section (2) of Section 95 of the Act was limited to Rs. 50,000/-. Thus reading Section 95(2) of the

Act with the terms of the policy, Exh. R-1 as extracted above, the liability of the insurance company has to be limited only to Rs. 50,000/-. It is for

the applicant-insured to show that the insurance company undertook an unlimited liability in respect of the death of a passenger. The proviso of

section II of the terms of the policy will apply to clauses I(i) and I(ii). Therefore, under clause (c) as extracted above, the liability of the insurance

company was limited to the statutory amount as fixed under Section 95(2) of the Act. We are, therefore, of the opinion that the learned Single

Judge rightly limited the liability of the insurance company to Rs. 50,000/- only.

Therefore, the Letters Patent Appeal filed by the owners of the vehicle is liable to be dismissed.

(Emphasis added)

9. When we apply the principles laid down in aforementioned judgments, it become patent that the liability of the Insurance Company is limited as

provided by the explanation to Section 95(2) of the Motor Vehicles Act, 1939. In that regard reliance may be placed on a Constitution Bench

Judgment of Hon'ble the Supreme Court rendered in the case of New India Assurance Co. Ltd. Vs. C.M. Jaya and Others, . On account of

conflicting view in some earlier judgments, their Lordships noticed the question of law in the following words:

The question involved in these appeals is whether in a case of insurance policy not taking any higher liability by accepting a higher premium, in

case of payment of compensation to a third party, the insurer would be liable to the extent limited under Section 95(2) or the insurer would be

liable to pay the entire amount and he may ultimately recover from the insured. On this question, there appears to be some apparent conflict in the

two three-Judge Bench decisions of this Court-(1) New India Assurance Co. Ltd. Vs. Smt. Shanti Bai and others, and (2) Amrit Lal Sood v.

Kaushalya Devi Thapa, 1998 ACJ 53 (SC)"".

10. Answering the aforesaid question their Lordships held in Para 11 of the judgment that the view taken by the three-Judge Bench in the case of

Shanti Bai (supra) was the correct view. It was, thus, held that in the case of Insurance Company not taking any higher liability by accepting a

higher premium for payment of compensation to a third party, the insurer would be liable to the extent of limited liability under Section 95(2) of the

Act and would not be liable to pay the entire amount. The other question concerning production of Insurance Policy has also been answered by the

Full Bench of Punjab and Haryana High Court and a Division Bench of this Court in favour of the Insurance Company. In view of the above,

LPAC No. 17/2006 filed by the insured-bus owner is dismissed. However, LPAC No. 18/2006 filed by the Insurance Company is partially

allowed. It is held that the Insurance Company shall be liable to satisfy the award to the extent of limited liability and rest of the amount shall be

payable by the insured-bus owner Jagjeet Singh. As the amount has already

been paid to the claimant-third party by the Insurance Company, the balance amount beyond the limited liability be paid by the insured-bus owner Jagjeet Singh within a period of two months from today. Both the appeals along with CMA's stand disposed of.