(1968) 10 RAJ CK 0006

In the Rajasthan High Court

Case No : Civil Revision No. 167 of 1965

Jupiter Insurance Co. Ltd. APPELLANT

Vs

Mohammad Malik and Others RESPONDENT

Date of Decision : 11-10-1968

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, 151
Motor Vehicles Act, 1939 — Section 96

Citation : AIR 1969 Raj 315 : (1968) WLN 108

Hon'ble Judges : Jagat Narayan, J

Bench : Single Bench

Advocate : C.K. Garg, for the Appellant; P.C. Bhandari, for the Respondent

Final Decision : Allowed

Judgement

Jagat Narayan, J.—This is a revision application by the Jupiter General Insurance Co. Ltd., defendant No. 3 against an order of the Senior Civil Judge No. I, Jaipur City, refusing to allow it to defend the suit in the name of Shri Beharilal defendant No. 1.

2. The 10 year-old-son of the plaintiff was run over by a truck belonging to Beharilal and was killed on the spot on 14-7-59. The present suit for the recovery of damages was filed on 13-7-60 against Beharilal, the owner of the truck. Lallu, driver of the truck, the Jupiter General Insurance Co., the Insurer of the truck, and M/s. Prakash and Co. the financier who advanced money for the purchase of the truck. The Insurer and the financier filed separate written statements on 30-5-61.

Shri J. K. Gupta who appeared on behalf of defendant No. 3 also filed a power on behalf of Beharilal defendant No. 1. But no written statement was filed on his behalf. On 18-8-61 the Insurer filed an application to the court for permission to defend the suit on behalf of and in the name of defendant No. 1 No order was passed on this application. On 21-9-61 it was mentioned in the order-sheet that the suit was proceeding ex parte against defendant No. 1. The plaintiffs closed their evidence on 1-5-62, and 4-8-62 was fixed for the evidence of defendants Nos. 3 and 4. As no order had been passed on the application of defendant No. 3 dated 18-8-61 another application to the same effect was moved on 3-7-62.

The learned Senior Civil Judge did not pass any order on this application either. The Insurer thereupon sent for the Insured and got him to apply for the setting aside of the ex parte order on 30-7-62. This application was allowed by the learned Senior Civil Judge on 24-10-62. But the order was set aside in revision by this Court as no sufficient ground for non-appearance of defendant No. 1 was made out. Beharilal admittedly left for Nepal without giving any instructions to Shri J. K, Gupta because he knew that the damages would only be recovered from the Insurer. The insurance policy is for Rs. 20,000/- but a sum of Rs. 30,000/- has been claimed as damages and if any sum above Rs. 20,000/-is decreed the Insured would be personally liable to pay it.

3. The contention on behalf of the Insurer is that the Insured was negligent in defending the suit and it should be allowed to defend it in the name of the Insured as it is bound to meet the liability under the decree to the extent of Rs. 20,000/-. Reliance is placed on the decision in Vimlabai D. Vashishtha Vs. General Assurance Society Ltd., and Royal Insurance Co. Ltd. Vs. Abdul Mahomed Meheralli,

4. On behalf of the plaintiffs the decision of their Lordships of the Supreme Court in British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others, was referred to. In this decision the case of Royal Insurance Co. Ltd. Vs. Abdul Mahomed Meheralli, has been referred to, but the decision in it has not been disapproved. In para 16 of the judgment in British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others, it is mentioned that the Insurer has the right, provided he has reserved it by the policy, to defend the action in the name of the Insured. Such a right is conferred by condition No. 2 of the policy.

The Bombay cases referred to above have also taken the view that the Insurer cannot defend the suit in its own name except on the grounds mentioned in Section 96 (2) of the Motor Vehicles Act. But it has been held that if the Insured is negligent in defending the suit and a right has been reserved by the policy enabling the Insurer to defend the action in the name of the Insured then it should be allowed to do so under the inherent power of the court u/s 151 C. P. C. 5. This is a proper case in which such power should be exercised. I accordingly allow the revision application, set aside the order of the trial court dated 22-1-65 and permit defendant No. 3 to defend the suit in the name of and on behalf of defendant No. 1.

6. Shri J. K. Gupta was allowed to cross-examine the witnesses of the plaintiffs. The Insurer is permitted to file a list of witnesses on behalf of defendant No. 1. The written statement on merits has already been filed by defendant No. 3. This written statement shall be treated as being on behalf of defendant No. 1 also.

The suit will be decided after recording the statements of the witnesses on behalf of defendant No. 1 produced by defendant No. 3.

7. In the circumstances of the case, I direct that parties shall bear their own costs of this revision application.