
(1977) 07 AP CK 0023
In the Andhra Pradesh High Court
Case No : A.A.O. No. 202 of 1974

M. Vengamma and Others	Vs	APPELLANT
K. Duravasulu and Others		RESPONDENT

Date of Decision : 20-07-1977

Acts Referred:

Motor Vehicles Act, 1939 — Section 110, 95(2), 96(4)

Citation : (1980) 50 CompCas 264

Hon'ble Judges : Ramachandra Raju, J;Jeevan Reddy, J

Bench : Division Bench

Advocate : N. Venkatarayudu, for the Appellant; D.V. Reddipantulu, for the Respondent

Judgement

Jeevan Reddy, J.—One M. Somanna died in an accident, involving the Ambassador Car in which he was travelling, on 11-3-1970. The car was being driven in a rash and negligent manner and it went and hit a lorry, resulting in injuries to the deceased, leading to his instantaneous death. His legal representatives filed O. P. LNo. 43 of 1970, claiming a compensation of Rs. 30,000 on that account. The claim was made against the owner of the taxi-car (1st respondent) and against the Insurance Company (2nd respondent). While the 1st respondent remained ex parte, the 2nd respondent defended the action, contending that there was no negligence or rashness on the part of the driver of the taxi-car. It further denied the quantum of compensation claimed by the petitioners. The Insurance Company filed an additional counter stating that the taxi-car was licensed to carry only five passengers and that, in fact, it was carrying nine passengers at the time of the alleged incident and, therefore, the 2nd respondent is exonerated of any liability, in that behalf. In any event, it was pleaded that its liability is limited only to Rs. 4,000 under S. 95 (2) (b) of the Act and that, it cannot be made liable for any larger amount.

2. On the above pleadings, the Court below framed appropriate issues and, after receiving oral and documentary evidence, adduced by the parties, found (i) that,

the accident took place as a result of rash and negligent driving on the part of the driver of the taxi-car; (ii) the Insurance Company cannot be exonerated of its Statutory liability to pay compensation, merely because more than four passengers were travelling in the said taxi-car at the time of the accident; (iii) that, the Amendment Act (No. 56) of 1969, raising the limit of liability mentioned in S. 95 (2), is not with retrospective effect, and, therefore, the Insurance Company is liable only in a sum of Rs. 4,000; and (iv) that, the petitioners are entitled to a total compensation of Rs. 8,550. The said compensation was allocated between the several petitioners. The petitioners (claimants) have, therefore, preferred this appeal claiming enhanced compensation, and contending further that the liability of the Insurance Company is in an amount of Rs. 10,000 by virtue of the aforementioned Amendment Act.

3. The first question which we have to decide pertains to the quantum of compensation to which the appellants (claimants) are entitled. The Court below has awarded a total amount of Rs. 8,550. On the material placed before it, the Court below held that the monthly income of the deceased can be put at Rs. 150 and that, out of it, his contribution to the family (i.e., the petitioners-appellants) can be taken at Rs. 75 per month. The annual contribution towards the family thus came to Rs. 900. Then, it allocated the said amount among the several petitioners (claimants) and, having regard to their expected life-span, the Court below worked out the amount payable to them and then deducted an amount of 10% therefrom on the ground that the amount was being awarded in a lump sum. The contention of the learned counsel for the appellants is that, even on the basis adopted by the Court below his clients are entitled to a higher compensation. We are inclined to agree with him. If the monthly earnings of the deceased is taken at Rs. 150, the amount of contribution towards his family could not have been so low as Rs. 75 per month, having regard to the large number of members of the family. The deceased had both his parents alive, a wife, four sons and a daughter. Having regard to this number, we are inclined to enhance his contribution towards his family members by 50%. It would thus come to Rs. 112.50 Ps. month. The rest of the formula adopted by the Court below for working out the compensation has not been assailed before us. Adopting the said formula, therefore, we hold that the petitioners (appellants) are entitled to an enhancement of 50% on the contribution already awarded. The total amount payable to the appellants thus comes to Rs. 12,825. The petitioners (appellants) shall be entitled to interest on the said amount @ 6% per annum, from the date of filing of the O. P. in the Court below, upto the date of realisation.

4. The next and main question that is canvassed before us and argued at some length, pertains to the extent of insurer's liability. In this case, the accident took place on 12-3-1970. The insurance policy in respect of the said vehicle was taken on 12-2-1970 for a period of one year. The insurance policy mentions that the liability of the Insurance Company in respect of an individual passenger is Rs. 4,000 only. The policy was in accordance with S. 95 (2) (b) (ii) (4), as it then stood. But, S. 95 (2) was amended by the Motor Vehicles (Amendment) Act No.

56 of 1969, and the limit of rupees 4,000 mentioned in the aforementioned sub-clause was raised to Rupees 10,000 for each individual passenger. The said Amendment Act came into effect on and from 2-3-1970. While the petitioners content that the said amendment entitles them to claim an amount of Rs. 10,000 from the Insurance Company, the latter contends that the said Amendment Act has no retrospective effect and that, according to the terms of the policy, it is liable only in a sum of Rs. 4,000 and nothing more. Counsel for the appellants relies upon a decision of a Bench of this Court in C. M. A. No. 253 of 1975, D/-17-6-1977 (Andh Pra), in support of his contention, while Sri D. V. Reddi Panthulu, the learned counsel for the Insurance Company relies upon the decisions of Karnataka and Delhi High Courts reported in The Premier Insurance Co. Ltd. Vs. Padma Srinivasan, and Manmohan Sarup Kaushal v. Melaram (1977 ACJ 140) (Delhi).

5. To decide the above question, it is necessary to refer to the relevant provisions in Chapter VIII of the Motor Vehicles Act. According to S. 94 of the Act, no person shall use or allow any other person to use a motor vehicle in a public place, unless it is covered by a policy of insurance, complying with the requirements of the said Chapter. Section 95, in so far as it is relevant and as amended by Amendment Act No. 56 of 1969, reads as follows:-

"S. 95 (1): - In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-

(a) is issued by a person who is an authorised insurer, or by a co-operative society allowed under S. 108 to transact, the business of an insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-sec. (2)-

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place,

(other sub-clauses omitted)

(iii) xx xx

(2) Subject to the proviso to sub-s. (1) a policy of insurance shall cover any liability incurred in respect of any one accident upto the following limits, namely-

(a) where the vehicle is a good vehicle, a limit of fifty thousand rupees in all, including the liabilities, if any, arising under the Workmen's Compensation Act, 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;

(b) where the vehicle is a vehicle in which passengers are carried for hire or

reward or by reason of or in pursuance of a contract of employment,-

(i) in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all;

(ii) in respect of passengers,-

(1) a limit of fifty thousand rupees in all where the vehicle is registered to carry not more than thirty passengers;

(2) a limit of seventy-five thousand rupees in all where the vehicle is registered to carry more than thirty but not more than sixty passengers;

(3) a limit of one lakh rupees in all where the vehicle is registered to carry more than sixty passengers; and

(4) subject to the limits aforesaid, ten thousand rupees for each individual passenger where the vehicle is a motor cab, and five thousand rupees for each individual passenger in any other case;

(c) save as provided in cl. (D), where the vehicle is a vehicle of any other class, the amount of liability incurred:-

(d) irrespective of the class of the vehicle, a limit of rupees two thousand in all in respect of damage to any property of a third party.

(3) omitted.

(4) A policy shall be of no effect for the purposes of this chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any conditions subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4-A) where a cover note issued by the insurer under provisions of this chapter or the rules made thereunder is not followed by a policy of insurance, within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe....."

6. It is relevant to note that before the amendment, the several limits contained in the various clauses of sub-s. (2) were at a lower level. In so far as the liability in respect of an individual passenger travelling in a motor-car is concerned, the limit was Rs. 4,000 which has been raised to Rs. 10,000 by virtue of the said amendment.

7. We may now refer to S. 96. Subs. (1), (2) and (4) are relevant for our purposes. Sub-s. (1) reads as follows:-

"S. 96. (1):- If, after a certificate of insurance has been issued under sub sec. (4) of S. 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 cl. (B) of sub-sec. (1) of S. 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 may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall subject to the provisions of this 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 amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments....."

8. Sub-sec. (2) specified the grounds upon which the Insurance Company can defend the action for an accident claim. It is not necessary for our purposes to set out the said sub-section. Sub-sec. (4) then reads as follows:-

"(4) If the amount which an insurer becomes liable under this Section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this Section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person."

9. Sections 97 and 101 protect third parties from the consequences of insolvency of the insured (owner of the vehicle). Section 110 onwards provide for the constitution, procedure, award and its implementation by the Motor Accidents Claims Tribunals.

10. The above provisions make it clear that no motor vehicle can be used in a public place unless it is covered by an insurance policy complying with the requirements of Chapter VIII. The requirements of an insurance policy and the limits of its liability are contained in S. 95. Section 95 (1) (b) makes it clear that an insurance policy, in every case, shall cover what is generally called the "third party risk", i.e., against any liability which may be incurred by the owner in respect of the death of, or bodily injury to any third person, or damage to his property, or to any passenger of a public service vehicle. Sub-sec. (2) provides for the limits of the liability in the case of certain specified categories of vehicles. Clause (a) in sub-sec. (2) deals with vehicles in which passengers are carried for hire or reward, including a motor-cab. Clause (c) is applicable to all other vehicles and there is no limit to the insurer's (Insurance Company's) liability. Clause (d) provides a limit in the case of damage to the property of a third party. Sub-sec. (4) provides that an insurance policy shall come into effect only on the issuance of a certificate of insurance. In fact, Sec. 103 provides that as between the insurance policy and insurance certificate, the latter prevails and is conclusive. Section 96 (1) makes the Insurance Company liable to discharge the liability created against the insured (owner of the vehicle) by any Court. The liability of the insurer is to discharge the said liability in a sum "not exceeding

the sum assured payable thereunder (under the policy)" as if the Insurance Company were the judgment-debtor. Sub-sec. (2) specifies the defences which alone are available to an Insurance Company against a third party claim. Sub-sec. 94) provides that, where the Insurance Company is made to pay a higher amount by virtue of the liability created upon it by S. 96, than the amount assured under the policy, the insurer shall be entitled to recover the excess from the person concerned.

11. The scheme of Chapter VIII thus discloses that it was primarily conceived in the interests of third parties. Every policy of insurance must, at the minimum, cover third party risk, and the Insurance Company is made liable to pay any amount awarded by the Motor Accidents Claims Tribunal subject, of course, to the limits prescribed by law. It is equally clear that but for the provisions in Chapter VIII, a third party could proceed only against the owner of the vehicle for compensation and/or damages in case of an accident. He could not have proceeded against the Insurance Company because there is no privity between him and the Insurance Company. It is Chapter VIII of the Act which creates a statutory connection between the third party and the Insurance Company, and it is because of the said provisions that a third party can now proceed against the Insurance Company also and recover the sum awarded directly from the Insurance Company-subject again, of course, to the limits prescribed by the Act. While making the Insurance Company so liable, the Act has also provided certain safeguards to it. It can defend a third party's act on any of the grounds mentioned in S. 96 (2), but not on any other ground. Even if the Insurance Company is entitled to cancel a policy or avoid its liability thereunder on any other ground vis-a-vis an insured, it cannot be exonerated from its liability towards third party on such ground. In other words, the grounds mentioned in S. 96 (2) are the only defences available to an Insurance Company against a third party claim. Section 96 (4), of course, again safeguards the interests of the Insurance Company, by providing that in cases where the Insurance Company is made by law to pay a sum higher than what it had undertaken to pay under the policy, it can recover the same from the insured.

12. Now, the Amendment Act (No. 56) of 1969, which raised the limits mentioned in S. 95 (2), does not expressly say that the said amendment is retrospective. But, the question for our consideration is whether the said amendment in S. 95 (2) has the effect of automatically raising the limit of insurer's liability towards third party, notwithstanding the fact that the insurance policy contains a lower limit according with the unamended limit. In other words, whether the third parties are entitled to take benefit of the amended provision (higher limits of insurer's liability) notwithstanding the fact that the policy, which was issued before the amendment came into force, assures a lower sum.

13. Section 94 says that an insurance policy, complying with the requirements of Chapter VIII, is essential before a person can use a vehicle in a public place and S. 95 says that, in order to comply with the requirements of the said Chapter, a

policy of insurance must be a policy which is issued by an authorised insurer and insures the person or class of persons specified in the policy to the extent specified in sub-sec. (2) of Sec. 95 against any liability in respect of death of, or bodily injury to a third party. Sub-sec. (20) provides the limits which must necessarily be adopted by an insurance policy. In case of vehicles carrying passengers for hire or reward, or in pursuance to a contract of employment, the Act has fixed the total extent of liability, as well as the extent of liability towards each individual passenger. The object of prescribing the said limit is that no Insurance Company shall issue a policy assuring a sum lesser than the limits prescribed by S. 95 (2). It is equally obvious that, if any policy so stipulates a lesser amount, it cannot be deemed to be a policy issued in accordance with the provisions of the said Chapter; to be valid, it must necessarily be a policy consistent with and in accord with the limits prescribed by law. In other words, so far as the insurer's liability towards third parties is concerned, it is governed exclusively by the provisions of the Act, and not by any contract or policy of insurance between the insurer and the insured. The point can be illustrated like this: before the aforesaid Amendment Act, the liability towards each individual passenger travelling in a motor-cab was Rs. 4,000. Now, suppose the Insurance Company issued a policy providing only a sum of Rs. 2,000 towards each individual passenger in respect of a motor-cab; can it be said that in such a case the Insurance Company would not have been made liable for anything more than Rs. 2,000 because of the said stipulation of the policy, or whether in such a case the Court would have awarded the full limit of Rs. 4,000 against the insurer? In our opinion, the answer is obvious; and that is, that the Court will have to and shall award the amount to the full statutory limit. If that is so, we see no difficulty in holding that the Amendment Act automatically raises the limit of insurer's liability towards third parties, from the date of commencement of the said amendment. In this case, the accident took place after the coming into force of the Amendment Act, therefore, the Insurance Company's limit of liability will be Rs. 10,000 towards each individual passenger, as provided by S. 95 (2) (b) (ii) (4) of the Act. In such a case, the question may legitimately arise, what are the remedies of the Insurance Company with respect to the additional amount paid by it? In other words, while according to the policy in this case, it is only liable to pay Rs. 4,000 it is now made liable, by law, to pay a sum of Rs. 10,000. Such a situation is clearly contemplated and provided for by sub-sec. 94) of S. 96, which we have already set out above. The said sub-section, in terms, provides that where the insurer is by law made to pay a higher amount than the amount covered by the policy, it shall be entitled to recover the excess from the insured. The only provision which presented us with some difficulty in coming to this conclusion, is the one contained in sub-sec. (2) of S. 96. The said sub-section provides that, where a judgment has been given against an insured in respect of liability covered by a policy (under S. 95 (1) (b)), then the insurer is bound to pay to such a third party the decretal amount "not exceeding the sum assured payable thereunder" as if the insurer were the judgment-debtor. Prima facie, it would appear that the insurer's liability is only to pay the amount

mentioned in the policy, and nothing more. But, if such an interpretation is placed, sub-sec. (4) of S. 96 becomes otiose. We have, therefore, to harmonize the said words occurring in sub-sec. (1) of S. 96 with the other provisions and the scheme of the said Chapter. Once we hold,-as we have already done hereinbefore-that the insurer's liability towards third parties is governed exclusively by the provisions of law, and not by the terms of the contract, it would follow that the limits, if any, mentioned in the insurance policy with respect to the liability towards third parties shall automatically be deemed to have been modified with any modification in law. In other words, an amendment has the necessary effect of raising the limits of insurer's liability. The words "to the extent specified in sub-sec. (2)", occurring in S. 95 (1) (b) have to be understood and read as "to the extent specified from time to time in sub-sec. (2)". So read, the words aforementioned, occurring in S. 96 (1), will become consistent with the rest of the provisions and spirit of Chapter VIII.

14. An identical question had arisen before another Bench of this Court, consisting of Alladi Kuppaswami and Amareswari, JJ. in C. M. A. No. 253 of 1975, d/- 17-6-1977 (Andh Pra). But, the counsel appearing for the Insurance Company had conceded in the case that the liability towards third parties is governed by the statutory provisions contained in S. 95 (2) (b), and not by the terms of the policy. On that basis, it was held that the liability towards third parties is as per the amended limits (i.e., higher limits). Though the point was not put in issue, we are of the opinion that the decision of the said Bench accords with and supports our view.

15. Counsel for the Insurance Company, however, contended that since the Amending Act does not contain any words giving retrospective operation to the said Amendment Act, it should be construed only as prospective and that, the policies issued before the said Amendment Act shall continue to be operative for the period for which they are issued, notwithstanding the said amendment in law. It is also argued that the Insurance Company had fixed and collected a lesser premia having regard to the lower limit of risk undertaken by it, and that after the coming into force of the Amendment Act, it was neither under any obligation to, nor did it actually demand and collect the difference in premia payable in accordance with the enhanced limits of risk. It is also brought to our notice that the insurance premia has been revised upwards in the light of the Amendment Act prescribing higher limits of risk. Reliance is placed upon the decisions of the Karnataka and Delhi High "Courts, reported in *The Premier Insurance Co. Ltd. Vs. Padma Srinivasan, and Manmohan Sarup Kaushal v. Mela Ram* 1977 ACJ 140 in support of the said proposition. In our opinion, the said contention is misplaced. The rule against retrospectivity would be relevant if the rights of parties to a contract are sought to be retrospectively interfered with. We have already emphasised the distinction between the insurer's liability towards the insured, and its liability towards third parties. While the former is based on a contract, the latter (i.e., liability towards third parties) is purely a creature of statute and is governed by the provisions of law for the time being in force. By

giving effect to the Amendment Act in respect of liabilities arising after the coming into force of the Amendment Act, in favour of third parties, we are not disturbing the contractual rights of the parties. The liability of the owner is not enhanced, nor is any real prejudice caused to the insurer. The insurer can always recover the excess payment from the insured (owner). All that is happening is that the Insurance Company has to pay to the third party in the first instance and then recover it from the owner (insured). The decision of the Karnataka High Court in *The Premier Insurance Co. Ltd. Vs. Padma Srinivasan*, is however exclusively based upon the said presumption against retrospectivity. It was observed therein (at p. 189):-

".....In the present case, the liability is determined by the terms of Ex. P-9, the Certificate of Insurance. It states that the liability is limited to that under Chapter VIII of the Motor Vehicles Act, 1939. It means that the liability was limited to Rs. 20,000 according to S. 95 (2) as it then stood. If retrospective effect is given to the amendment Act, it will have the effect of enhancing the liability of the insurer to Rs. 50,000. In other words, it affects adversely the existing obligation of the insurer under the terms of the contract entered into by the insurer with the insured. There are no express words giving retrospective effect to the amendment of S. 95 (2) of the Motor Vehicles Act.....Hence the amendment must be held to apply only to policies of insurance or liabilities of the insurer created after the date the amendment came into effect, viz., 2-3-1970....."

16. But, as we have emphasized hereinbefore, there is no real enhancement in the liability of the insurer, since the insurer can, in law, recover the excess payment from the owner. Moreover, the liability of the insurer towards third parties is not based upon, nor is governed by the terms of the policy. It does not matter what amount the parties to the policy stipulate. The limits prescribed by law operate and govern the extent of the insurer's liability, so far as third parties are concerned, irrespective of any stipulation between the insurer and the insured. It must be noted that the Karnataka High Court has not referred to or considered the effect of S. 96 (4), which gives a right to the insurer to recover the excess amount paid by it, from the owner. So far as the decision of the Delhi High Court, reported in *man Mohan Sarup Kaushal v. Mela Ram* (1977 ACJ 140) is concerned, the learned single Judge, while agreeing with the reasoning of the decision of the Karnataka High Court referred to above, held that in the case before him it was not proved that the Insurance Company has not collected the extra premium and has not issued the additional cover-note (by amending the policy), after the coming into force of the Amendment Act. In other words, it was not proved before the learned Judge that the Insurance Company did not raise the limit of its risk from Rs. 20,000 to Rs. 50,000 in accordance with the Amendment Act. The insurance policy also was not produced before him. In those circumstances, the learned Judge observed:-

".....Therefore, the question whether the insurance policy had

covered the increased risk or not, is a question of fact which has not been established. I am not agreeable to remand the case for admitting the additional evidence in respect of the policy. The reason is under S. 94 there is a statutory bar against a person using a motor vehicle at public place unless and until there is in force in relation to the vehicle a policy of insurance complying with the requirements of Chapter 8 and as after 2nd march, 1970 the offending vehicle was in use (and no suggestion has been given that the vehicle was being used without any insurance policy) the Court was entitled to presume that on and from 2nd March, 1970 when the amending Act came into force, the insurance policy in respect of the vehicle conformed to the requirements of the law and insured the risk upto Rs. 50,000; no evidence to the contrary has been produced on the file to rebut the presumption. Moreover, the insurance company is entitled to recover from the owner of the vehicle the excess amount it is made to pay for the accident. This was envisaged by the contract of insurance and the insurance company will be free to pursue its remedy for the purpose. It is, therefore, too late in the day to remand the case for re-trial for filling the lacuna in the case. Consequently, I have declined to do so. The result is that the appeals of the insurance company must fail....."

17. This decision thus recognizes the insurer's right to collect the higher premia in view of the increase in its liability and to issue an increased risk note. It would be within its rights to do so. But any omission on its part to do so, cannot and should not make any difference to its statutory liability. It needs to be stressed that if the amendment in law is not applicable to the policies already issued, then it is un-understandable under what authority can an insurer demand the higher premia and why should it do it at all?

18. In the case before us, of course, the insurance policy has been produced, and it does not show that it was amended and additional premia collected after and in pursuance to the Amendment Act. But, the policy in this case contains the following significant clause:-

"Nothing in this policy or any endorsement hereon shall affect the right of any person indemnified by this policy or any other person to recover an amount under or by virtue of the provisions of the Motor Vehicles Act 1939, S. 96.

But the insured shall repay to the Company all sums paid by the Company which the Company would not have been liable to pay but for the said provisions....."

19. The above clause in our opinion, clearly makes the terms of policy subject to the provisions of S. 96 of the Act, and more particularly in the case of liability towards third parties. We have, however, already expressed our view in that behalf even without reference to the said clause in the policy. For the said reasons, we are not in agreement with the principle and reasoning of the decisions of both Karnataka and Delhi High Courts. In our view, the limit of the insurer's liability towards third parties is as fixed by the Amendment Act i.e., in a

sum of Rs. 10,000 in this case. Accordingly, the Insurance Company shall pay a sum of Rs. 10,000 (Rupees ten thousand only) out of the total compensation of Rs. 12,825 awarded by us, with interest. The balance of compensation can be recovered by the appellants (claimants) from the owner of the vehicle, i.e. the 1st respondent in the O. P.

20. The appeal is, accordingly, allowed but, in the circumstances of the case, we direct the parties to bear their own costs in this appeal.

21. Appeal allowed.