

(1997) 05 P&H CK 0186

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 372 of 1985 and Cross Objection No. 19 of 1985 in First Appeal from Order No. 1154 of 1988

Mohan Lal Raghbir Singh and Others

APPELLANT

Vs

Balbir Singh and Others
 United India Insurance
Company Ltd. Vs Kamla Rani and Others

RESPONDENT

Date of Decision : 29-05-1997

Acts Referred:

Evidence Act, 1872 — Section 74, 77

Citation : (1998) 1 CivCC 219 : (1999) 96 CompCas 460

Hon'ble Judges : K. Sreedharan, C.J;T.H.B. Chalapathi, J;N.K. Sodhi, J

Bench : Full Bench

Advocate : R.S. Bindra, Umesh Wadhwa, J.C. Nagpal and K.S. Brar, for the Appellant; I.M. Suri, R.M. Suri, Deepak Suri, G.S. Dhillon, Praveen Goyal and Raman Mahajan, for the Respondent

Final Decision : Partly Allowed

Judgement

T.H.B. Chalapathi, J.—These two matters arising out of claims for compensation u/s 110 of the Motor Vehicles Act, 1939, were referred to a Full Bench as it was felt that there were conflicting opinions on the admissibility of the copy of the insurance policy in evidence and the onus to prove the terms of the policy.

2. In First Appeal from Order No. 1154 of 1988, the learned judges of a Division Bench of this court noticed the conflicting views taken by two different Division Benches in Jullundur Transport Co-operative Society Ltd. v. Mrs. Raj Wali [1989] 1 PLR 259 : [1989] ACJ 901 and The Oriental Fire and General Insurance Co. Ltd., Chandigarh Vs. Smt. Chandrawali and Others, in regard to the production of the copy of the insurance policy and the exhibition thereof by the court without any formal proof of the execution of the policy. The learned judges also observed that another point of "similar importance regarding the onus to prove the terms of the policy whether the onus is on the insured or on the insurance company" also arises. Therefore, their Lordships directed the papers to be placed before the

Hon"ble Chief justice for deciding the matter by a larger Bench.

3. In L, P. A. No. 372 of 1985, the Division Bench noticed the conflict in Jullundur Transport Co-operative Society Ltd. v. Mrs. Raj Wali [1989] 1 PLR 259 ; [1989] ACJ 901 , General Assurance Society Ltd. (now National Insurance Co. Ltd.) Vs. Avtar Singh and Others, Puran Chand Vs. Balbir Singh and Others, Puran Chand Vs. Balbir Singh and Others, , Azad Nakodar Bus Service v. Harbans Singh [1989] 2 PLR 485 ; [1989] ACJ 1165, Smt. Kako Devi and Others Vs. Gian Parkash Gupta and Others, and observed that there is a conflict in these decisions and the same is required to be settled by a Full Bench. Therefore, the Letters Patent Appeal was directed to be heard by the Full Bench along with the aforesaid First Appeal from Order No. 1154 of 1988. Thus, both the matters have been placed before us to resolve the conflict of the decisions noticed by the different Division Benches of this court.

4. First Appeal from Order No. 1154 of 1988 :

This appeal arises out of a claim petition in M.A.C.T. Case No. 271/31/53 of 1987/88 on the file of the Motor Accidents Claim Tribunal, Ludhiana, filed by the legal representatives of one Paramjit Singh, who died in a motor vehicle accident that took place on October 31, 1987, at about 3.30 p.m. while he was travelling in a tempo bearing No. PCN 9097. According to the claimants, a bus, bearing No. PJG 7199, driven by its driver, Didar Singh, respondent No. 5, in this appeal, struck the tempo on its right side causing multiple injuries to the deceased and the deceased died while undergoing treatment in C.M.C. Hospital, Ludhiana. The claimants claimed a compensation of Rs. 3 lakhs for the death of Paramjit Singh in the motor vehicle accident.

5. The insurance company with which Tempo No. PCN 9097 was insured, took the plea that the maximum liability of the insurance company is limited to Rs. 50,000 under the Motor Vehicles Act. The insurance company also raised some other pleas which are not relevant for the purpose of deciding this appeal. The parties to the claim petition adduced evidence and the copy of the insurance policy was marked as exhibit R-1 by the Tribunal on its being produced by the insurance company. On a consideration of the evidence on record, the learned judge of the Motor Accidents Claims Tribunal, Ludhiana, held that the accident took place as a result of composite negligence on the part of the drivers of both the vehicles resulting in the death of the deceased, Paramjit Singh. It awarded a total sum of Rs. 1,70,000 as compensation to the claimants for the death of the deceased with interest at 12 per cent. per annum from the date of filing of the claim petition and apportioned the compensation equally between the owners and drivers of the tempo and the bus and further directed that the insurance company, namely, the fifth respondent in the claim petition shall be liable to discharge the liability of the owner of the tempo, Gurdas Singh, who was the fourth respondent in the claim petition.

6. Aggrieved by the said award, the insurance company filed the aforesaid appeal.

7. In the grounds of appeal, the insurance company took the plea that its liability is limited to the extent of Rs. 50,000 under the Motor Vehicles Act per passenger and it was not proved that the deceased, Paramjit Singh, was a passenger of the tempo and the permitted capacity of the tempo was only nine, but about 15 persons were sitting in the tempo. Therefore, the insurance company is not liable to pay any compensation and its liability cannot exceed to more than Rs. 50,000 per passenger as provided under the Motor Vehicles Act, 1939.

8. The Tribunal on a consideration of the evidence on record held that the drivers and owners of both the vehicles were jointly and severally liable for causing the accident by their composite negligence. This finding is based on evidence on record. We have gone through the evidence and we do not find any grounds to disturb the same.

9. The insurance company took a plea that the tempo was allowed to carry only nine passengers but there were 15 passengers and the deceased was standing outside the tempo on its back. Therefore, it was not liable to pay any compensation. We are not able to agree with this contention of learned counsel for the insurance company. There is no acceptable evidence to show that the deceased, Paramjit Singh, was travelling in the tempo standing on its back side. Simply because more passengers were carried in the tempo than the permitted capacity, the liability of the insurance company did not cease to exist.

10. It has been held by the Bombay High Court in Joint R.T.O. Alwaye Vs. Joshi, that "the contravention of one or the other condition of the permit is not a contravention of the purpose for which the permit is issued. There is no contravention of Section 96(2) of the Motor Vehicles Act. The liability of the insurance company to satisfy the various claims is not in any way affected by carrying excess persons in the Matador."

11. On a consideration of the facts and circumstances of the case and the evidence on record, we are not able to interfere with the finding of fact arrived at by the Tribunal, namely, that the accident was the result of composite negligence on the part of the drivers of both the vehicles, namely, the tempo and the bus and that the claimants are entitled to a compensation of Rs. 1,70,000 and that the said sum is to be paid equally by the drivers and owners of the tempo and the bus as their liability is joint and several. The Tribunal directed that the appellant insurance company is liable to indemnify the liability of owner of the tempo namely the fourth respondent in the claim petition. The liability of the fourth respondent comes to Rs. 85,000, Learned counsel for the appellant insurance company contended that the insurance company is not liable to pay anything more than Rs. 50,000 as envisaged under the Motor Vehicles Act. Exhibit R-1 was the copy of the insurance policy marked by the Tribunal on being produced by the insurance company.

12. The points that are referred to the Full Bench are ;

(i) Whether the copy of the insured policy can be marked as an exhibit without

there being a formal proof of exhibition thereof ;

(ii) Whether the onus to prove the terms of the policy is on the insured or on the insurance company.

13. It is the contention of the insurance company that its liability under the insurance policy is limited to the extent of Rs. 50,000 as provided under the Motor Vehicles Act, whereas it is the contention of the owner of the tempo that the insurance company is liable to indemnify the entire liability fastened on him.

14. We shall now consider the question as to whether the copy of the insurance policy can be marked as an exhibit without there being any formal proof of exhibition thereof.

15. In *Malwa Bus Service (P.) Ltd. and Another Vs. Amrit Kaur and Others*, a learned single judge of this court observed as follows (page 608 of 66 Comp Cas) :

"Learned counsel for respondent No. 8, however, has made two submissions in defence. Firstly, he has submitted that the insurance policy has been brought on the record before the learned Tribunal as exhibit R-1 and a perusal of the same shows that the liability of respondent No. 8 was limited to such amount as is necessary to meet with the requirements of the Act. I, however, find that exhibit R-1 is only a copy of the insurance policy. It was tendered in evidence by the statement of the counsel at the stage of closing the case. Section 64 of the Indian Evidence Act, 1872, provides that documents must be proved by primary evidence except in the cases mentioned in Section 65. Section 65 *ibid* lays down that secondary evidence relating to a document may be given of its existence, condition or contents in the case where the original is shown or appears to be in the possession or the power of the person against whom the document is sought to be proved or of any person out of the reach of, or not subject to, the process of the court, or of any person legally bound to produce it and when after receipt of the notice mentioned in Section 66 thereof, such person does not produce it. Secondly, evidence of a document can also be produced where the original has been destroyed or lost or when the party offering evidence of its contents cannot, for any reason not arising from his own default or neglect, produce it in reasonable time or, where any of the other conditions specified in Section 65 exists. In the present case none of these conditions has been proved. Therefore, the copy of the insurance policy, exhibit R-1, was not admissible in evidence as the conditions of Section 65 of the Indian Evidence Act, 1872, were not met. The copy of the insurance policy, exhibit R-1, therefore, cannot be read in evidence."

16. The same view was expressed by a Division Bench of this court in *The Oriental Fire and General Insurance Co. Ltd., Chandigarh Vs. Smt. Chandrawali and Others*, in the following terms (page 85 of 68 Comp Cas) :

"The insurer was required u/s 66 of the Act to have previously given a notice to the owner to produce the original policy of insurance and on his failure to do so it

could have produced its copy under Clause (a) of Section 65 *ibid*. None of the steps as contemplated by the Code or the Act was, however, taken by the insurer. It could not, therefore, at a late stage of the proceedings simply shove in a copy of the policy of insurance and mark it as an exhibit through the statement of its counsel."

17. Relying on these decisions, learned counsel for the owner of the tempo contended that the insurance policy which was marked as exhibit R-I should not be looked into and the liability of the insurance company should not be limited to Rs, 50,000.

18. A different view was taken in the following cases :

In *Ajit Singh Vs. Sham Lal and Others*, it has been held as follows (page 956 of 59 Comp Cas) :

"Where the statutory provision in the question merely indicates the requirement about the policy and does not prohibit covering of greater risk by the insurer, it is the policy of the insurance company which could show the extent of the risk that the insurer had sought to cover. Where the insurance company for whatever reasons failed to bring on the record the policy of the insurance, it cannot be heard to say that it had agreed to indemnify the insured only to the extent indicated in the statutory provision in question. In this regard reference may be made to *Shyamlal v. New India Assurance Co. Ltd* [1979] ACJ 208 *United India Fire and General Insurance Co. Ltd. v. Pallamparty Indiramma* [1982] ACJ 521 and *Jugal Kishore v. Rai Singh* 1982 ACJ 503 ; [1986] 59 Comp Cas 340."

19. In *Puran Chand Vs. Balbir Singh and Others*, the decision in *Ajit Singh Vs. Sham Lal and Others*, was quoted with approval and it was further observed as follows (page 768 of 61 Comp Cas) :

"Obviously, the insured and the insurer are at loggerheads in this regard. The mandate of the Division Bench is clear. For whatever be the reasons which cause failure of the insurance company to bring on record the insurance policy, it cannot now be overlooked that the insurance policy had all the same been brought on the record and once it is on record and admitted in evidence, its terms cannot be lightly ignored."

20. In *Jullundur Transport Co-operative Society Ltd. v. Mrs. Raj Wali* [1989] 1 PLR 259 ; [1989] ACJ 901, it has been held that primarily it is the duty of the owner of the vehicle to produce the insurance policy and if he fails to do so, the insurance company should do so to cut short the litigation and help the court in doing justice between the parties. In the interest of justice and proper decision of a case, the court on appeal permitted the copy of the insurance policy to be read in evidence.

21. A single judge of this court in *Azad Nakndar Bus Service v. Harbans Singh* [1989] 2 PLR 485 ; [1989] ACJ 1165 , held as follows (page 1166) :

"The original policy of insurance is always with the insured owner of the vehicle and for undisclosed reasons it was not produced on record. u/s 95(2)(b)(ii) of the Motor Vehicles Act, 1939 (for short "the Act"), the liability of the insurance company at the relevant time per passenger was limited to Rs. 15,000 only. The insured on payment of higher premium can enlarge the liability of the insurer and a specific provision has to be made in the insurance policy that the insurer is under obligation to pay higher amount of compensation in the event of an accident and not the one specified in the statute. Ordinarily, the burden would be on the owner of the vehicle to plead and prove that there was a covenant in the policy of insurance enlarging the liability of the insurer. The insured is under obligation to make specific pleadings and prove the same by producing the original policy of insurance. This course was not followed by the owner of the vehicle. The submission now made cannot be sustained. The contention that the insurance policy, exhibit R-I, produced by the insurer is tampered with is without any basis . . .

In the instant case, it was for the insured to produce the original policy of insurance. Having failed to do so, it is not open to it to urge that the duplicate insurance policy produced by the insurance company was not properly proved. The duplicate insurance policy was tendered in the evidence on August 26, 1987, before the Tribunal. No objection was raised at that time, I am afraid if the objection regarding mode of proof can be raised at the belated stage. Moreover, this objection is not available to the insured since the original policy of insurance was in its possession. The insurance company specifically pleaded in the written statement that its liability was limited to the extent of Rs. 15,000 for each passenger. The plea taken by the insurance company was proved by producing duplicate insurance policy and copy of the tariff rule, exhibit P-2."

22. In Jai Singh and Another Vs. N.A. Subramaniam and Another, a Full Bench of this court took the view as under (page 661 of 58 Comp Cas) :

"Section 110C specifically provides that in holding an enquiry on the claim application made before it u/s 110B, the Claims Tribunal, may subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit. Thus, it is abundantly clear that the Tribunal is free to follow any procedure which it considers expedient in the interest of justice. In other words, the Tribunal is at liberty to follow any procedure that it may choose to evolve for itself so long as the said procedure is not arbitrary, is consistent with the rules of natural justice and does not contravene the positive provisions of law. When such a wider power exists in the Tribunal, then there will absolutely be no justification to restrict the exercise of that power on the ground that the Legislature impliedly intended to do so by not applying all the provisions of the Code (Code of Civil Procedure). In order to do justice and to achieve the purpose for which it has been constituted, a Tribunal would have inherent powers to apply all or any of the provisions of the CPC on the principles of justice, equity and good conscience."

23. Similarly the Andhra Pradesh High Court in Krishan Reddy v. K. Ramu-lamma [1995] ACJ 1097 has held that the Claims Tribunal is empowered to evolve its own procedure and for the purpose of dealing with a claim application it can resort to any provisions of the CPC on the principles of justice, equity and good conscience.

A Division Bench of the Madras High Court in Oriental Insurance Co. Ltd. Vs. Jalaja and Others, held as under :

"An insurance company which is carrying on business of insurance is not expected to fabricate documents. Unless some material is produced before the court to suspect the bona fides of the insurance company, the court cannot readily draw an inference that the copy of the policy produced by it as a true copy is not a genuine one, particularly when the provision in the Act of 1939 was that the maximum liability of the insurance company with regard to third party risk was Rs. 1,50,000. The policy does not mention any specific amount. The limitation clause merely refers to the Act and says that such amount as is necessary to meet the requirements of the Act. When that is the relevant clause, we have no doubt whatever about the genuineness of the copy of the policy produced by the company."

24. It was further held in that case that the non-production of the original policy by the owner (of the vehicle) can only lead to an adverse inference against the owner of the vehicle and not against the insurance company. The claimants could have well taken summons to the owner of the vehicle to produce the original policy.

25. It is pertinent to point out that the apex court in National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, , has observed as follows (page 853 of 63 Comp Cas) :

"Before parting with the case, we consider it necessary to refer to the attitude often adopted by the insurance companies as was adopted even in this case, of not filing a copy of the policy before the Tribunal or even before the High Court in appeal. In this connection, what is of significance is that the claimants for compensation under the Act are invariably not possessed of either the policy or a copy thereof. This court has consistently emphasised that it is the duty of the party which is in possession of a document which would be helpful in doing justice in the cause to produce the said document and such party should not be permitted to take shelter behind the abstract doctrine of burden of proof. This duty is greater in the case of instrumentalities of the State such as the appellant who are under an obligation to act fairly. In many cases even the owner of the vehicle for reasons known to him does not choose to produce the policy or a copy thereof. We, accordingly, wish to emphasise that in all such cases where the insurance company concerned wishes to take a defence in the claim petition that its liability is not in excess of the statutory liability it should file a copy of the insurance policy along with its defence. Even, in the instant case, had it been

done so at the appropriate stage, the necessity of approaching this court in civil appeal would in all probability have been avoided. Filing a copy of the policy, therefore, not only cuts short avoidable litigation but also helps the court in doing justice between the parties. The obligation on the part of the State or its instrumentalities to act fairly can never be overemphasised. "

26. There cannot be any dispute that the Tribunal established under the Motor Vehicles Act is not governed by the rules or procedure envisaged by the CPC and the Evidence Act. The Tribunal is entitled to evolve its own procedure to meet the ends of justice based on the principles of justice, equity and good conscience.

27. In *Ranjit Singh and Another Vs. Miss Pooja Madan and Others*, a learned single judge of this court took the view that once a duplicate copy of the insurance policy is tendered by the insurance company and is admitted in evidence, the objection to the mode of proof is not available to the owners of the vehicle as the original policy was with them in order to sustain the plea that the liability of the insurance company is unlimited, they ought to have produced and proved it.

28. The provisions relating to insurance and claims for compensation have been enacted not with a view to prevent the business of insurers but with a view to protect the members of the community travelling in motor vehicles or using the roads from the risk attendant upon the users of motor vehicles on the roads. It is, therefore, all the more necessary that the insurance companies should take pains to ascertain the correct facts and help the court in arriving at a quick and proper decision, The insurance company is not to be a private litigant whose aim is to defeat the claims of a private party. It is their duty to place correct facts before the court.

The word "policy" may be used to describe any contract of insurance however informal or any document containing the terms of insurance contract may be treated as a policy or if a contract of insurance is created by any binding means that is a policy for all intents and purposes. It includes an instrument evidencing a contract to pay annuity upon human life and in relation to motor vehicle insurance besides any other liability that may accrue. It has been held in *British Equitable Assurance Co. Ltd. v. Bailey* [1906] ACC 35 that a policy is exclusive record of the contract of insurance. As observed by the Supreme Court in *State of Maharashtra and Others Vs. Kanchanmala Vijaysing Shirke and Others*, the jurisprudence of compensation for motor accident must develop towards a liberal approach because of mounting highway accidents.

29. u/s 94 of the Motor Vehicles Act, 1939 (section 146 of the Motor Vehicles Act, 1988), no person shall use or cause or allow any other person to use the motor vehicle in a public place unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of Chapter VIII of the Motor Vehicles Act, 1939 (Chapter XI of the Motor Vehicles Act, 1988). Thus, it is obligatory on

the part of the owner of the vehicle to take out a policy of insurance before putting the motor vehicle in use. It is a statutory liability. The business of general insurance was nationalised in the year 1972 under the provisions of the General Insurance Business (Nationalisation) Act, 1972. Under the said Act, all the business of general insurance including the motor vehicle insurance business shall be regulated by a Government company. u/s 97 of the said Act, the Central Government shall form a Government company known as "General Insurance Corporation of India" for the purpose of superintending, controlling and carrying on the business of general insurance. Thus, it is clear that the Government of India has taken over general insurance business including motor vehicle insurance business. Therefore, after the coming into force of the General Insurance Business (Nationalisation) Act, 1972, all the business of general insurance came under the monopoly of the Central Government. u/s 35 of the said Act, the provisions of the Insurance Act, 1938, are made applicable to the policies issued by the General Insurance Corporation of India.

30. Every policy issued is required to be registered in the records. Every insurance company shall maintain the record and under the General Insurance Business (Nationalisation) Act, 1972, the Central Government has got the power to issue directions and the Central Government also have got the power to control the business of the Corporation and other officers of the companies are declared to be public servants within Section 2(21) of the Indian Penal Code.

31. As observed above, the Motor Vehicles Act, 1939, makes it obligatory on the part of the owner of the motor vehicle to insure the vehicle u/s 94 of the Act. Section 95 provides the requirements of policies and limits of liability. u/s 95(4) of the Act, the policies shall be of no effect for the purposes of Chapter VIII 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 any other prescribed matters. Under Sub-section (5) of Section 95 of the Act, a person issuing a policy of insurance shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons. u/s 103 of the Act, when a certificate of insurance is issued, it is deemed to have been issued to the insured person conforming in all respects with the description and particulars stated in the said certificate. Section 106 of the Act makes it obligatory on the part of the person driving the motor vehicle to produce the certificate of insurance when required by any police officer authorised by the State Government. Section 107 of the Act empowers the State Government to make rules requiring the owner of any motor vehicle to produce evidence that there is in force the necessary policy of insurance for the use of the vehicle. Section 111 of the Act empowers the Central Government to make rules providing for the making of the application for issuance of certificate of insurance and other related matters. Under the Motor Vehicles (Third-Party Insurance) Rules, 1946, framed u/s 111 of the Act, the certificate of insurance shall be

issued in Form A set out in the Schedule to the rules. Rule 5 provides that every policy in the form of a cover note to be issued by an insurer shall be in Form-B set out in the Schedule to the rules. These rules also provide for issuance of a fresh certificate of insurance or cover note in a case where the original is lost, destroyed or mutilated.

32. Thus a reading of the provisions of the Motor Vehicles Act, 1939, and the rules framed thereunder and the provisions of Insurance Act, 1938. the provisions of the General Insurance Business (Nationalisation) Act, 1972, and the provisions of the General Insurance (Emergency) Act, 1971, makes it abundantly clear that every motor vehicle owner has to take out an insurance policy before using the motor vehicle in a public place. Thus, issuance of an insurance policy covering the risk for using the motor vehicle in a public place is a statutory duty cast on the insurance companies. As already observed, the business of general insurance including motor vehicle insurance was nationalised in the year 1972, and the Government has taken over the business of general insurance including the motor vehicle insurance. Therefore, the insurance companies which are owned by the Government are discharging a statutory and public duty as envisaged under the various enactments referred to above. Thus, issuance of a policy issued by a company wholly owned by the Government is, therefore, an act of an official body and of public officers as the policies are issued under the statutory provisions contained in the enactments referred to above.

33. Section 74 of the Indian Evidence Act provides that the documents forming the acts or records of the acts of public officers, legislative, judicial and executive of any part of India or of the commonwealth or of a foreign country are public documents. The Evidence Act, however, does not define the public officers. Therefore, the meaning of public officers has got to be taken in the ordinary sense. "Public officer" is defined in Section 2(17) of the Code of Civil Procedure.

34. 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 governmental company is required to issue the certificate of insurance/policy of insurance in the form prescribed by the Government and maintain the register of 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 companies in performance of their statutory duties can be classified as public documents within the meaning of Section 74 of the Indian Evidence Act. When a certificate of insurance/policy issued by the insurance company is a public document, the same can be proved by production of a certified copy u/s 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. It" 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 a certified copy of insurance policy is admissible in evidence u/s 74 read with Section 77 of the Indian Evidence Act without any formal proof. We, therefore, overrule the decisions in *Ajit Singh Vs. Sham Lal and Others*, and *The Oriental Fire and General Insurance Co. Ltd., Chandigarh Vs. Smt. Chandrawali and Others*, .

35. In First Appeal from Order No. 1154 of 1988, a certified copy of the policy was produced by the insurance company and it was marked as exhibit R-1 by the Tribunal. It shows that the limit of the company's liability u/s II-1(ii) in respect of any one claim or series of claims arising out of one event is Rs. 50,000. Thus, the liability of the insurance company is restricted to Rs. 50,000. The Tribunal awarded a sum of Rs. 1,70,000 as compensation to the claimants due to the death of one Paramjit Singh in an accident caused by the tempo, bearing No. PCN 9097, and the bus, bearing No. PJG 7199. The Tribunal also apportioned the liability between the owners of the tempo and the bus. Thus, the owner of the tempo is liable to pay a sum of Rs. 85,000 with interest at 12 per cent. per annum. As the liability of the insurance company under the policy in respect of the tempo (PCN 9097) is limited to Rs. 50,000 in accordance with the terms of the policy, the insurance company, appellant in First Appeal from Order No. 1154 of 1988, is liable to pay the said amount of Rs. 50,000 with interest from the date of the claim petition till actual payment.

36. Therefore, we partly allow the appeal (First Appeal from Order No. 1154 of 1986) filed by the United India Insurance Company Ltd., Ludhiana, and restrict its liability to Rs. 50,000 with interest at 12 per cent. per annum from the date of claim petition till actual payment.

37. In LPA No. 372 of 1985, filed by the owners of the vehicle against the judgment in First Appeal from Order No. 33 of 1980, dated December 6, 1984, the only point raised by learned counsel for the appellants is that the liability of the insurance company is unlimited and, therefore, the entire liability has to be fastened on it. As already observed, the insurance policy is marked as exhibit R-1. According to learned counsel for the appellants, i.e., the owners of truck, bearing No. PNC 4552, the liability of the insurance company is unlimited. This was controverted by learned counsel for the insurance company. The policy in this case is marked as exhibit R-1. Under the terms limits of liability, the company's liability is limited u/s II-1(i) in respect of any accident. Thus, the liability of the insurance company is limited in terms of Section II of the policy, exhibit R-1. Section II deals with liability to third party. It is useful to extract the relevant portion of Section II :

"Subject to the limits of liability of Sub-sections (i) and (ii) :

Provided always that (a)..... (c) except so far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act, 1939, in relation to liability

under the Workmen's Compensation Act, 1923, the company shall not be liable in respect of death or bodily injury to any person (other than a passenger carried by reason of or in pursuance of a contract of employment) being carried in or upon or entering or mounting or alighting from the motor vehicle at the time of the occurrence of the event out of which any claim arises."

38. Thus, according to the terms of the policy, the 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 March 22, 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, exhibit 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 to Section I! 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 u/s 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. The claimants in the Letters Patent Appeal filed cross-objections claiming more amount than what was awarded by the learned single judge. The learned single judge after taking into account the income and age of the deceased assessed the dependency of the claimants at ₹100 per month and applied 16 as multiplier. In the claim petition, the claimants claimed a sum of Rs. 4 lakhs. In the cross-objections they claimed the said amount. It is in evidence that the deceased was working in British Airways European Division at London. She was employed on gross wages of ₹56.23 per week without any deductions. At the time of the accident, she came to India on maternity leave. It is claimed that her salary would have increased to ₹77.3 per week. Thus, the monthly income at the time of the commencement of the maternity leave was ₹244.92, but this is before the deduction of Income Tax and other deductions. Therefore, in our view, the learned judge rightly assessed the monthly dependency of the claimants at ₹100 per mensem. We do not find any illegality in the same. The learned judge also rightly applied the multiplier of 16 taking into account the age of the deceased at the time of the accident. It cannot be said on the facts of the case that the multiplier applied by the learned single judge is in any way unreasonable converting the pounds into Indian rupees at the exchange rate prevailing at the time of the death of the deceased, the learned judge awarded a sum of Rs. 3 lakhs.

39. On a consideration of the facts and circumstances of the case, we do not find that the amount of compensation is unreasonable or unjust. We are, therefore, of the opinion that the cross-objections as well are also liable to be dismissed.

40. In view of what has been stated above, we partly allow the appeal F. A. O. No. 1154 of 1988 filed by the United India Insurance Company Limited against the award passed by the Motor Accidents Claims Tribunal, Ludhi-ana, in M.A.C.T. Case No. 271/31/53 of 1987-88 and restrict its liability to Rs. 50,000 with interest at the rate of 12 per cent. per annum from the date of claim petition till actual payment. The rest of the amount is liable to be paid by the owner of the vehicle, namely, tempo bearing No. PCN 9097.

41. Letters Patent Appeal No. 372 of 1985 and cross-objections filed against the orders of this court in F.A.O. No. 33 of 1980 which has arisen out of the order of M.A.C.T., Ludhiana, in M.A.C. Case No. 25 of 1978 are hereby dismissed. There will be no order as to costs in both the appeals and cross-objections.