
(1980) 02 AHC CK 0066

In the Allahabad High Court

Case No : F.A.F.O. No"s. 504, 505 and 506 of 1975

National Insurance Co. Ltd.

APPELLANT

Vs

Narendra Kumar and Others

RESPONDENT

Date of Decision : 28-02-1980

Acts Referred:

Evidence Act, 1872 — Section 106

Motor Vehicles Act, 1939 — Section 95(2)

Citation : AIR 1980 All 397 : (1983) 53 CompCas 669

Hon'ble Judges : N.N. Mithal, J;M.N. Shukla, J

Bench : Division Bench

Advocate : J.N. Chatterji, for the Appellant; Gyan Chandra Dwivedi, for the Respondent

Final Decision : Dismissed

Judgement

M.N. Shukla, J.—These three connected appeals u/s 110-D of the Motor Vehicles Act arise out of a single accident which occurred on 17-12-1972 in village Pinjokhra near Sugarcane Purchasing Centre on Saharanpur-Shadra Road within police station Kandhala in the district of Muzaffarnagar in which a motor truck owned by Veern Sain and Brij Mohan, respondents Nos. 3 and 4 and driven by Dharam Veer, respondent No. 5 collided with the motor bicycle owned and driven by Raj Kumar deceased with Narendra Kumar, respondent in one of the appeals (seated on the carrier) coming from the opposite direction. The motor cycle was badly damaged and serious injuries were caused to Raj Kumar and Narendra Kumar out of whom the former succumbed to his injuries and the latter survived. It was alleged that the truck was being driven rashly and negligently by the driver and that was the cause of the accident. The petition was resisted by the owner of the truck and the National Insurance Company Ltd. The claimant Narendra Kumar who was injured in the accident filed a claim for Rs. 54,000/- as compensation. The father, mother and the daughter of the deceased preferred a claim for a sum of Rs. 85,000/-. The third claim was made by the widow and the daughter of the deceased for a sum of Rs. 1,00,000/- as compensation. The

Motor Accidents Claims Tribunal by its impugned orders directed Veern Sain Dham Veer and the General Assurance Society Ltd. to pay a sum of Rs. 34,000/- to Narendra Kumar, a sum of Rs. 55,000/- to Smt. Sarla Devi and Kumari Lalita and a sum of Rupees 20,000/- to father and mother of the deceased respectively. Thus, the co-owners of the truck, the driver and the National Insurance Company Ltd. were made jointly liable for the various amounts of compensation, totalling Rs. 1,90,000/-. It is only the National Insurance Company Ltd. which has preferred these appeals and the other respondents have submitted to the award.

2. Sri J.N. Chatterji, learned counsel for the appellant in all the cases has urged only one contention before us, namely, that all the claims having arisen out of a single incident the total amount of compensation could not exceed the maximum limit of Rs. 50,000/- prescribed by Section 95 (2) (a) of the Motor Vehicles Act. In order to appreciate the validity of the above submission it is necessary to refer to the various provisions of the Motor Vehicles Act. Chapter VIII deals with the insurance of motor vehicles against third party risk. Section 95 (1) reads:

"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 u/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-section (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 provided that a policy shall not be required -

(i) to cover liability in respect of the death, arising out of and in course of his employment, of the employees of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment, other than a liability arising out under the Workmen's Compensation Act, 1923, in respect of the death of or bodily injury to, any such employee -

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods vehicle, being carried in the vehicle, or

(ii) except 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, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises or

(iii) to cover any contractual liability." Sub-section (2) of Section 95 in so far as it is relevant for the purpose of this case reads:

"(2) Subject to the proviso to Sub-section (1) a policy of insurance shall cover any liability incurred in respect of any accident up to the following limits namely:--

(a) where the vehicle is a goods 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."

3. Relying on a literal Interpretation of Sub-section (2) of Section 95 the learned counsel for the appellant took recourse to a neat mathematical formula, saying that the total amount of compensation awarded plainly exceeded the limit of Rs. 50,000/- under the above provision and consequently the award of the Tribunal was erroneous to that extent and liable to be suitably modified. There is, however, more in the above provision than meets the eye and it cannot be construed divorced from the foregoing provisions of subsection (1) of Section 95. If read together, Section 95 (2) becomes susceptible to an interpretation which is inconsistent with the contention raised on behalf of the appellant. Ostensibly the language of subsection (2) of Section 95 might suggest the maximum liability incorporated in Clause (a) of that Sub-section and the policy of insurance also to cover the same amount yet the import of that provision can be correctly gathered only after carefully scrutinising the mandate of Sub-section (1). It provides that a policy of insurance must be a POLICY whose contents are provided in Sub-section (2) (a). It is clear from the tenor of the opening words of Section 95 (1) that the accent is on the minimum amount of policy which must be made mandatory to secure.

No doubt, the intention of the Legislature could have been expressed in more clear and unambiguous words and it did not require much linguistic ingenuity to achieve that object. However, this provision merely furnishes an illustration of inartistic and bad drafting, but on reading together sub-sections (1) and (2) of Section 95 we have no doubt that the intention of the Legislature was to prescribe by statute the minimum liability which must be borne by the Insurance Company and the minimum amount which must be covered by a policy made by an insurer in respect of a vehicle insured. There does not appear to be any comprehensible reason as to why the claim of the parties to enter into a contract for a higher amount of policy of insurance should have been inhibited. That is why there is no provision in the Act which restricts the claim of the insurer and the insured as to the terms of the contract relating to the upper limit of the

amount of the policy of insurance which the parties may agree upon. In Older that a vehicle may comply with the provisions of Chapter VII of the Act it must be insured and the Insurance Company must at least bear the liability the limit of which has been indicated by the Legislature in Section 95. In this context it is also pertinent to refer to the provisions of Section 96 (1) of the Act which says that the insurer shall pay to the person entitled to the benefit of the decree "any sum not exceeding the sum assured payable thereunder." Thus, there is clear indication in Section 96 that if the sum insured exceeds the minimum limit prescribed u/s 95 (2) (a), the Insurance Company cannot avoid this contractual liability. It logically follows that where a policy is taken merely in terms of Section 95 (2) (a), the liability of the insurer must also be confined to the same limit but where the insured and the insurer agree to subscribe to a larger amount of policy the liability of the Insurance Company would be commensurate with the amount of policy and shall thus be in conformity with the provisions of Section 96 (1).

Therefore, the law may be summed up by stating that where an Insurance Company insures the owner of a vehicle u/s 95 against the liability which the owner may incur in respect of an accident caused by the use of the vehicle in a public place and the policy is circumscribed by the limit set out in Section 95 (2) (a), the liability of the Insurance Company will be limited to the same amount but where there is a contract to the contrary and the Insurance Company has insured the owner of the vehicle for a higher amount of policy than the one prescribed by Section 95 (2) (a), the liability of the Insurance Company will extend to the higher limit contained in the policy. In other words, the compulsory insurance policy i. e. the one prescribed by the Act is a policy which contains the minimum requirements of coverage. The comprehensive third party liability may, however, cover against the legal liability for bodily injury or death of any party, even if it oversteps the limit provided for in the Act. The assured is free to go in for a policy for his own protection to the extent of the liability that may he incurred, even though it is in excess of the statutory limits. There appears to be no restriction contemplated by the Act which may militate against the view that it is open to the insurer to cover the risk up to a larger extent and if he does, the liability would be determined in terms of the risk so covered.

4. Learned counsel for the appellant placed reliance on the case of Jayalakshmi v. The Ruby General Insurance Co., Madras AIR 1971 Mad 143 (FB) in support of his contention. That case is clearly distinguishable because the facts of the case reveal that there the insurance policy had been drawn up in terms of the Act. On the other hand, the view which we are expressing finds support from certain observations of the Supreme Court in Sheikhpura Transport Co. Ltd. Vs. Northern India Transport Insurance Co., . It was observed in para. 9 of the Report:

"The limit of insurer prescribed u/s 95 (2) (b) of the Motor Vehicles Act can be enhanced by any contract to the contrary." In para. 10 it was observed:

"No clause in the insurance policy specifically providing for the payment of any

amount higher than that fixed u/s 95 (2) (b) was brought to our notice." Thus, the Supreme Court decision makes it abundantly clear that a contract to the contrary i. e. insurance policy of a motor vehicle for a higher amount than the one prescribed by Section 95 (2) (b) of the Act is permissible under the law.

5. Learned counsel for the appellant; however, submitted that the burden was on the claimants to plead and prove contract to the contrary and since there was nothing on record in the instant case to indicate that the insurer had taken a policy for a higher amount than Rupees 50,000/- the Tribunal was obliged under the law to confine the limit of liability of compensation payable to the petitioners to the statutory limits. It is correct that none of the parties has disclosed the amount of policy taken by the owners of the truck and the insurance policy has also not been brought on record. Hence, the question arises on whom was the burden cast to prove a contrary contract, justifying a higher liability to be imposed on the Insurance Company. Section 106 of the Indian Evidence Act provides:

"When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him." Ordinarily a plaintiff or a claimant must prove every pie of his claim to the hilt and the burden lies squarely on him to plead and prove his claim but Section 106 provides an exception to the general rule. It is common place that the amount of an insurance policy would be within the exclusive knowledge of the insurer and the insured. Both parties filed written statements before the Tribunal and no such plea was taken on behalf of the Insurance Company that the policy was drawn up strictly in terms of the Motor Vehicles Act and that consequently the Insurance Company could not be made liable for a higher amount than the one prescribed by the Act. As we have already observed, the amount of policy was not disclosed by any of the parties. When the claimants asked for a larger amount of compensation and claimed it against all respondents it was the duty of the Insurance Company to disclose the amount of the insurance policy and bring on record the policy itself. The plea should have been clearly taken in its written statement if it wanted to resist the claim as stated by the petitioner. Hence, there is no material on record on the basis of which it may be possible for us to presume the absence of any contract to the contrary so as to limit the liability of the Insurance Company to Rs. 50,000/-.

6. In this view of the matter no ground has been made out for us to modify or in any way interfere with the order of the Tribunal.

7. Before parting with the case we may, however, refer to the fact that the learned counsel for the appellant prayed for leave to bring on record the insurance policy. This was, however, a very belated request. In the absence of any such plea on behalf of the Insurance Company taken before the Tribunal we are not satisfied that there is any legal justification for permitting additional evidence to be adduced at this stage. We, therefore, reject that request.

8. In the result this appeal along with the connected appeals is dismissed with costs.