

**(1993) 03 DEL CK 0071**

**In the Delhi High Court**

**Case No : First Appeal No. 179 of 1979**

New India Assurance Co.

APPELLANT

Vs

Murti Devi and Others

RESPONDENT

**Date of Decision : 29-03-1993**

**Acts Referred:**

Motor Vehicles Act, 1939 — Section 95

**Citation :** (1994) ACJ 291 : AIR 1993 Delhi 351 : (1993) 51 DLT 156 : (1993) 27 DRJ 112 : (1993) 2 ILR Delhi 292

**Hon'ble Judges :** Usha Mehra, J

**Bench :** Single Bench

**Advocate :** B.R. Sabharwal, Deepak Sabharwal and O.P. Goyal, for the Appellant;

## Judgement

Usha Mehra, J.

(1) A very interesting point has been raised regarding the applicability of the amendment brought about on 2nd March, 1970 to the Motor Vehicle Act (hereinafter called the Act) on enhancing the statutory liability of the Insurance Company, from Rs.20,000.00 to Rs.50,000.00 . The question for consideration is whether this amendment would apply retrospectively to the insurance policy which was issued prior to 2.3.70.

(2) Admitted facts on record are that the vehicle in question was insured with the appellant on 24th September, 1969 for one year. The amendment was brought about on 2.3.70. The accident in question took place on 4.5.70. The insurance policy was placed on record and exhibited as Ex.R-1. The liability of the insurance company as per the Ex.R-1 was Rs.20,000.00 . The Motor Accident Claim Tribunal (hereinafter called the Tribunal) fixed the liability of the appellant Insurance Company at Rs.50,000.00 and awarded the amount of compensation to the tune of Rs.38,400.00 , holding that there was a negligence on the part of the driver of the offending vehicle and consequently the owner of the vehicle was liable.

(3) The appellant/insurance company has not challenged the decision of the Tribunal with regard to negligence, even otherwise also it could not have challenged the same because appellant is to satisfy the judgment against persons insured in respect of third party risks as is required to be covered by the policy any sum not exceeding the sum assured. The owner of the vehicle has not challenged the decision with regard to negligence, hence the appellant has rightly not challenged the same. Mr. Sabharwal appearing for the appellant restricted his arguments only to the limit of liability of the Insurance Company. Mr. Sabharwal contended that the limit of liability does not increase or extend because of the amended Act dated 2nd March, 1970. Insurance policy is a contract. The liability arises out of this contract, when the contract limits the liability, then by mere amendment of the statute will not modify or alter the terms of the contract for that a special agreement is required. owner of the vehicle has to prove that he paid extra premium. When he does not pay extra premium or enter into special agreement then the amendment to the statutory liability clause will not have any bearing on the limit of liability mentioned in the policy. He further contended that since the liability of the Insurance Company was limited, the appellant was not required to produce and prove the original insurance policy. It was in fact for the claimants to prove that there was an enhanced liability after the amendment of the Act.

(4) On the other hand Mr. O.P. Goyal, counsel for the respondent contended that the amended Act will apply even to those policies which were taken out prior to the amendment on 2.3.70. The unless the vehicle is insured. Section 95 of the Act lays down the requirements of insurance policy and the limit of liability" there under. Sub-Section (1) of Section 95 deals with person or class of persons to whom a policy of insurance must insure to the extent specified in sub section (2). Sub section 2(a) of Section 95 reads as under:- Section 95(2) Subject to the provision to sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely-

"A)where the vehicle is a good vehicle, a limit of (one lakh and fifty thousand rupees) in all, including the liabilities, if any, arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death, or bodily injury to, employees (other than the driver), not exceeding six number, being carried in the vehicle)."

(5) This sub section was amended by Amendment Act 56 of 1969 which was notified on 2nd March, 1970 which substituted the liability from Rs.20,000.00 to Rs.50,000.00 i.e. the statutory liability. On account of this amendment liability stood increased.

(6) Admittedly, as per the term of the policy and the relevant legal provision as it existed on the date when the policy was got issued the liability of the insurance company was Rs.20,000.00 but with the coming into force of the amendment to sub section (2) of Section 95, the statutory liability was extended to Rs.50,000- as per the legal provisions as it stood on the date of the accident. As already

discussed above the insurance policy was got issued in this case on 24th September, 1969 for one year covering the period from 24th September, 1969 to 23rd September, 1970. The accident took place on 4th May, 1970 of the policy.

(7) The amended Act increasing the statutory liability will cover the risk on the date of the accident and not on the date when the policy was issued as held by the Supreme Court in the case of Padma Srinivasan Vs. Premier Insurance Company Limited, . It has been held by the Supreme Court that the liability is determinable under Chapter VIII at the relevant time, i.e. to say, at the time when liability arises. Since the liability of the insurer to pay a claim under a motor accident policy arises on the occurrence of the accident and not until then, one must necessarily have regard to the state of the law obtaining at the time of the insurer's liability under the statutory policy. For determining the application of the appropriate law is not the date on which the policy of insurance came into force but the date on which the cause of action accrued for enforcing liability arising under the terms of the policy. That was considered to be a reasonable manner in which to understand and interpret the contract of the insurance entered into by the insured and the insurer. The provision of Chapter VIII, means the provisions enforced at any given time, the given time being the date on which the right to sue accrues or, correspondingly, the liability arises. On the other hand Mr. Sabharwal placed reliance on the decision of the Supreme Court in the case of National Insurance Company Ltd. Vs. Jugal Kishore & Ors. to confess that the comprehensive insurance of the vehicle will not entitle the insured to an unlimited amount with regard to the third party risk because unlimited or higher risk than the statutory liability can only be fastened on the Insurance Company if additional premium had been charged by the Company. Since it is a contract, Therefore, the terms of the contract only will be applicable. The amendment will have no bearing on the contractual liability of the Insurance Company. I am afraid this judgment is of no help to Mr. Sabharwal because the Supreme Court in that case observed that since the appellant did not undertake in the policy any liability in excess of the statutory liability, the award against it would be only in accordance with the statutory liability. The Supreme Court in the case of National Insurance Company Ltd. (Supra) was dealing as to what the word "comprehensive" means. But that is not the case in hand. Here the contention of the claimant all along had been that in the Insurance policy itself the company had mentioned that liability will be as per Section 95, Therefore, it is the statutory liability which was covered initially and with the amendment of the Act the statutory liability automatically stood increased. To my mind, the judgment of the Supreme Court in the case of Padma Srinivasan (Supra) is on all force applicable to the facts of this case. It was not for the claimant to prove that additional premium was paid or not. The question of additional premium could have arisen if the claim of the claimant had been that there is an unlimited liability. But that is not the case in hand. The claimant's case is that the Insurance Company is liable for the statutory liability which statutory liability got enhanced and extended because of the amended Act 56 of 1969. I find force in

this submission.

(8) For the reasons stated above I find no merit in the appeal. The same is accordingly dismissed with costs. Trial court file be sent back.