

(2001) 08 MP CK 0005
In the Madhya Pradesh High Court

New India Assurance Co. Limited

APPELLANT

Vs

Smt. Baikunthi and Others

RESPONDENT

Date of Decision : 07-08-2001

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 174

Citation : (2002) 1 ACC 8

Hon'ble Judges : S.P. Srivastava, J;R.B. Dixit, J

Bench : Division Bench

Judgement

1. The present appeal has been filed by the insurer of the offending motor vehicle which was involved in the accident which had taken place on 6.2.1989 wherein Lalaram had met his untimely death.
2. It may be noticed that in the impugned award disposing of the claim petition filed by the dependents of the deceased Lalaram u/s 110(A) of the Motor Vehicles Act, 1939, the insurer/appellant was found liable to pay the amount of compensation determined by the Motor Accident Claims Tribunal, Morena and a joint and several liability was cast upon the owner, driver and the insurer in respect thereof.
3. Feeling aggrieved, the insurer has now come up in appeal seeking redress and praying for its exoneration from the liability cast upon it by the tribunal.
4. We have heard the learned Counsel for the appellant as well as the learned Counsel representing the claimants/respondents, and have carefully perused the record.
5. The learned Counsel for the appellant has tried to assail the quantum of compensation determined by the Tribunal to which the dependents of the deceased were found entitled to. It is, however, not disputed by the learned Counsel for the appellant that no permission envisaged u/s 110-C(2A) of the aforesaid Act of 1939 had been obtained.

6. In the impugned judgment and award of the Tribunal, it has been clearly held that nothing had been brought on record which could lead to an inference that there was a collusion between the person making the claim and the person against whom the claim was being made or the person against whom the claim has been made had failed to contest the claim.

7. In the aforesaid view of the matter, the appellant cannot be permitted to challenge the quantum of compensation on the pleas available to the owner of the offending motor vehicle alone. The appellant in the circumstances of the case can assail the impugned award only on the limited grounds made available to an insurer under the Act.

8. No justifiable ground has been made out for any interference in the quantum of compensation as determined by the Tribunal in the present proceedings at the instance of the insurer/appellant.

9. The learned Counsel for the appellant has next contended that in any view of the matter in the impugned award, no liability could be fastened on the insurer in the matter relating to the payment of an amount over and above the statutory limit.

10. It has further been contended by the learned Counsel for the appellant that the finding of the Tribunal holding that the appellant to be liable to pay the entire amount due under the award is vitiated in law. The contention is that under the conditions subject to which the insurance policy had been issued, no such liability as is claimed could have been fastened upon the insurer.

11. In the present case, the insurer had not filed the original insurance policy. An alleged office copy of the insurance policy certified to be so by an employee of the insurer had been filed.

12. The Tribunal had found that there was no such evidence on the record which could lead to an inference that any condition subject to which the insurance policy had been issued was violated and in the aforesaid view of the matter, the plea of the insurer that no liability could have been fastened upon the insurer for the payment of the amount of compensation was not liable to be accepted.

13. The learned Counsel for the claimants/respondents has however urged that the insurer/appellant cannot escape the liability for the payment of the amount due under the award as it is a statutory liability which the insurer is bound to discharge.

14. We have considered the above submissions.

15. The question in regard to the extent of the liability of the insurer under the provisions of the Motor Vehicles Act, 1939, had been considered in detail by the Apex Court in its decision in the case of *Oriental Insurance Co. Ltd. v. Cheruvakkam Nafeessu and Ors.* I (2001) ACC 335 (SC) : Civil Appeal No. 7359 of 2000, decided on 14.12.2000.

16. In its recent decision, the Apex Court in the case of Oriental Insurance Co. Ltd. v. Cheruvakkara Nafeessu and Ors. (supra), had elaborately dealt with the extent of liability of an Insurance Company towards the third party as per Section 95(1)(b) of the Motor Vehicles Act, 1939, and on the question as to what are its rights in case of payment of an amount in excess of the limits of the liability under the insurance policy vis-a-vis insured.

17. In the aforesaid case, the claimants had raised a claim for an amount of Rs. 2,00,000/- as compensation on account of the death of their predecessor-in-interest in a road accident on 6.7.1988 involving the offending motor vehicle an auto-rickshaw bearing registration No. KRN 1859. The insurer had contested the claim specifically stating therein that its liability was limited to Rs. 50,000/- under the policy of insurance. The Claims Tribunal however had granted an award for an amount of Rs. 1,94,150/- and had fastened the entire liability on the appellant/ Insurance Company. The insurance policy in that case was of a date prior to the coming into force of the new Motor Vehicles Act, 1988 on 1.7.1989.

18. Under the aforesaid insurance policy the limit of the Insurance Company's liability in respect of any one claim or series of claims arising out of one event was fixed at Rs. 50,000/- only. However, the avoidance clause of the policy provided that "nothing in the said policy or the 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, Section 96. But the insured shall pay to the Company all sums paid by the Company which the Company would not have been liable to pay but for the said provisions". Section II of the policy dealt with "liability of third party" and provided that the Company will indemnify the insured against all sums including claimants costs and expenses which insured becomes legally liable to pay in respect of the death of or bodily injury to any person caused by or arising out of the use of the motor vehicle or damage to the property caused by such use.

19. Taking into consideration the earlier decisions of the Apex Court in the case of New Asiatic Insurance Co. Ltd. Vs. Pessumal Dhanamal Aswani and Others, , and Amrit Lal Sood and Another Vs. Smt. Kaushalya Devi Thapar and Others, , the Hon"ble Supreme Court came to the conclusion that despite holding the liability under the policy limited to the extent of Rs. 50j000/-, the Claims Tribunal and the High Court were not unjustified in directing the appellant/ Insurance Company to pay the whole of the awarded amount to the claimants on the basis of the contractual obligations contained in clauses relating to the liability of the third parties and avoidance clause. However, it was further indicated that the Claims Tribunal and the High Court were not justified in rejecting the right of the appellant/Insurance Company to recover from the insured the excess amount paid in execution and discharge of the award of the Tribunal.

20. In the aforesaid view of the matter, the Apex Court allowed the appeal holding that the appellant/Insurance Company was liable to pay the entire award

amount to the claimants. Upon making such payment, the appellant can recover the excess amount from the insured by executing the award against the insured to the extent of such excess as per Section 174 of the Motor Vehicles Act, 1988.

21. In its another decision in the case of *New India Assurance Co. Shitnla v. Kamla and Ors.* reported in 2001 AIR SCW 1340, the Apex Court had indicated taking into consideration the implications arising under Sub-section (4) and its proviso together with Sub-section (5) of Section 149 of the Motor Vehicles Act, 1988, that they are intended to safeguard the interest of an insurer who otherwise has no liability to pay any amount to the insured but for the provisions contained in Chapter XI of the Act. This, it was clarified means that the insurer has to pay to the third parties only on account of the fact that a policy of insurance has been issued in respect of the vehicle, but the insurer is entitled to recover any such sum from the insured if the insurer were not otherwise liable to pay such sum to the insured by virtue of the conditions of the contract of insurance indicated by the policy.

22. In paragraph 22 of the aforesaid decision, the Apex Court summarised the position in law indicating that when a valid insurance policy has been issued in respect of a vehicle as evidenced by a certificate of insurance the burden is on the insurer to pay to third parties, whether or not there has been any breach or violation of the policy conditions. But the amount so paid by the insurer to third parties can be allowed to be recovered from the insured if as per the policy the policy conditions the insurer had no liability to pay such sum to the insured.

23. In paragraph 25 of the aforesaid decision, it was indicated that the insurer and the insured are bound by the conditions enumerated in the policy and the insurer was not liable to the insured if there was violation of any policy condition. But the insurer who was made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third parties, if there was any breach of policy condition."

24. In view of the aforesaid position in law and what has been indicated hereinbefore, the appeal is allowed holding that the appellant/Insurance Company is liable to pay the entire award amount to the claimants and upon making such payment, the appellant Company can recover the excess amount from the insured by executing the award against the insured to the extent of such excess as per Section 174 of the Motor Vehicles Act, 1988. The impugned award shall stand modified to that extent. In other respects, since the owner has submitted to the impugned award, it shall remain intact.

25. There shall however be no order as to costs.