
(1985) 05 AHC CK 0026
In the Allahabad High Court
Case No : F.A.F.O. No. 193 of 1978

New India Assurance Co. Ltd.

APPELLANT

Vs

Dau Dayal and Others

RESPONDENT

Date of Decision : 07-05-1985

Acts Referred:

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

Citation : (1987) ACJ 528 : AIR 1985 All 186 : (1986) 60 CompCas 518

Hon'ble Judges : K.C. Agarwal, J;A.P. Misra, J

Bench : Division Bench

Advocate : M.P. Singh, for the Appellant;

Judgement

K.C. Agaewal, J.—This appeal has been filed by the New India Insurance Co. Ltd., against the award of the Motor Accidents Claims Tribunal dated December 23, 1977, awarding Rs. 39,000 to the respondents, out of which Rs. 33,440 would be payable by the insurance company and the remaining amount of Rs. 5,560 by the the respondents, Radhey Lal Agarwal and Kashi Prasad, the owners of the truck.

2. In this appeal, since the only question is about the defence which is open to an insurer u/s 96(2) of the Motor Vehicles Act, detailed facts are not necessary to be mentioned. It would be sufficient to state that on May 29, 1972, an accident occurred with truck .No. MPA 6521 in which two persons, namely, Rajendra Prasad and Vijai Kumar, died. Rajendra Prasad was driving the scooter and Vijai Kumar was sitting on the back seat. The scooter was coming from city side and was going towards Sadar Bazar. In the meantime, the truck aforesaid, driven by Mohammad Iliyas Ahmed appeared on the scene and hit the scooter. The incident occurred due to rash driving of the truck by the aforesaid driver. Vijai Kumar died on the spot in this accident. Rajendra Prasad who was also seriously injured was removed to Civil Hospital, Jhansi, for his treatment but he also succumbed to his injuries on the same day.

3. In respect of these two deaths, two different applications were filed. Dau Dayal filed Claim Petition No. 31 of 1972 for compensation on the death of his son, Vijay Kumar, and Claim Petition No. 50 of 1972 was preferred by one Tulsi Das for the death of Rajendra Prasad.

4. The claim petition was contested by the owner of the truck on a number of grounds including that the accident resulted due to negligence of the scooter driver, Rajendra Prasad, and not due to any rash or negligence driving of the truck driver.

5. The New India Insurance Company Ltd. also denied that the accident had taken place due to any rash and negligent driving of the truck driver. According to the New India Insurance Company Ltd., the truck was running at a very slow speed and the scooter had collided with the truck resulting in two deaths. After taking the evidence of the parties, the Claims Tribunal awarded Rs. 39,000 to Dau Dayal in Claim Petition No. 31 of 1972 whereas it awarded Rs. 16,560 to Tulsi Das who had filed Claim Petition No. 50 of 1972. Aggrieved, the New India Insurance Company Ltd. has filed two appeals in this court being FAFO No. 193 of 1978 and FAFO No. 38 of 1981. The FAFO No. 193 of 1978 is directed against the judgment of the Claims Tribunal given in Claim Petition No. 31 of 1972 whereas FAFO No. 38 of 1981 has been filed against the judgment in Claim " Petition No. 50 of 1972. In both the appeals, the appellant is the New India Insurance Company Ltd.

6. Sri M. P. Singh, counsel for the appellant in these two appeals, urged that the Tribunal has committed an error in awarding Rs. 20,000 for the shock and mental agony and, therefore, the amount to that extent was liable to be reduced.

7. Section 96(2) of the Motor Vehicles Act, 1939, provides the grounds on which an insurer can avoid his liability. These grounds are specified in Clauses (a), (b), (c) of Section 96(2) of the aforesaid Act. Under Clause (a), the liability can be avoided by an insurer if the policy has been cancelled and the certificate of insurance has been returned to the insurer before the occurrence. Clause (b) provides for repudiating the liability of the insurer on the grounds of breach of conditions of a policy. Clause (c) of Sub-section (2) of Section 96 provides for defence on the ground that the policy was obtained by non-disclosure of material facts or by representation of a fact which was false in some material particular.

8. The defence of an insurer is, therefore, confined to the grounds mentioned in Sub-section (2) of Section 96 of the aforesaid Act. In the instant case, the argument of the learned counsel for the insurance company travels beyond Section 96(2). The bar of Section 96(2) of the said Act applies not only to the original court proceedings but to the appellate proceedings as well. In *British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others*, the Supreme Court discussed the provisions of Section 96(2) at length and rejected the arguments on behalf of the insurance company, holding that the insurer who is made a defendant to an action is not entitled to take any defence which is not

specified in Sub-section (2). The relevant portion is quoted below (headnote of British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others, :

" Apart from the statute, an insurer has no right to be made a parte to the action by the injured person against the insured causing the injury Sub-section (2) of Section 96, however, gives him the right to be made ; party to the suit and to defend it. The right, therefore, is created b) statute and its content necessarily depends on the provisions of the statute. Sub-section (2) clearly provides that an insurer made a defendant to the action is not entitled to take any defence which is not specified in it. When the grounds of defence have been specified, they cannot be added to. The only manner of avoiding liability provided for in Sub-section (2) is through the defences therein mentioned. Therefore, when subsection (6) talks of avoiding liability in the manner provided in Sub-section (2), it necessarily refers to these defences. It cannot be said that in enacting Sub-section (2), the Legislature was contemplating only those defences which were based on the conditions of the policy."

That decision has been followed in innumerable cases by the High Courts. Some of them have been mentioned in United India Fire and General Insurance Co. Ltd. Vs. Smt. Kalyani and Others, .

9. In United India Fire and General Insurance Co. Ltd., Kanpur and Another Vs. Gulab Chandra Gupta, , the same view has been taken. The Division Bench has held that the appeal by an insurer is restricted to grounds permissible u/s 96(2). We accordingly find that since the argument advanced by the appellant is not confined to the provision of Section 96(2), the same could not be permitted.

10. Sri M. P. Singh, counsel for the appellant, placed reliance on Section 110C(2A) of the Motor Vehicles Act. His argument that an insurer could, in appeal, raise all the points on merits which a person against whom the claim is made has not taken by filing the same. We do not agree with this submission. In our opinion, Section 110C(2A) of the said Act applies to the proceedings before a Claims Tribunal. The High Court is not a Claims Tribunal within the meaning of Sub-section (2A) of Section 110C.

11. The controversy next raised by the learned counsel for the appellant that for the death of the persons in the same incident, the insurer could not be held liable to pay separately to their dependants, stands concluded by a decision of the Supreme Court in Motor Owners" Insurance Company Limited Vs. Jadavji Keshavji Modi and Others, .

12. The contention of the insurer that it could not be made to pay the interest in part or whole, is not well-founded. It appears from the combined reading of Section 95(2)(a) and Sub-section (2) of Section 96 of the Motor Vehicles Act that the insurer has to pay the amount insured which does not exceed Rs. 50,000 but it shall be made together with the amount payable in respect of interest and costs. This demonstrates that the insurer will be required to pay the costs and interest in addition to the statutory liability.

13. In the result, the appeal fails and is dismissed with costs.