
(1988) 07 J&K CK 0005
In the Jammu And Kashmir High Court
Case No : C.M.A No. 56 of 1978

New India Assurance Co. Ltd.

APPELLANT

Vs

Ghulam Mohd. Tunda and Others

RESPONDENT

Date of Decision : 05-07-1988

Acts Referred:

Motor Vehicles Act, 1988 — Section 95, 96

Citation : (1990) ACJ 177

Hon'ble Judges : S.M. Razvi, J;M.L. Bhat, J

Bench : Division Bench

Advocate : S.L. Kaul, for the Appellant; K.N. Raina, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Bhatt, J.—This appeal arises out of the Motor Vehicles Act and is filed by insurance company against whom an award is passed for

payment of Rs. 36,195/- on behalf of owner and driver of the vehicle which had caused accident to the vehicle belonging to respondent No. 1 and

had caused some injuries to the inmates of the car. The amount is payable with simple interest at the rate of 6 per cent per annum from the date of

the award to the date of payment and the costs also are payable to the claimants.

2. It appears that respondent Nos. 1 and 2 herein had filed a claim petition before the Motor Accidents Claims Tribunal on the allegation that the

vehicle No. DHE 3397 owned by respondent No. 1 and driven by respondent No. 2 was smashed by bus No. JKB 5235 owned by respondent

No. 4 and driven by respondent No. 3. The accident had taken place near Dalgate, Srinagar. Front portion of the car and its engine had suffered

damage. Two children sitting in the car and the driver of the car, namely, Abdul Rashid were injured. For injuries to the inmates of the car Rs.

10,000/-were claimed and for damage caused to the car Rs. 40,000/- were claimed before the Tribunal. Against the total amount of Rs. 50,000/-

claimed by the claimants, the Tribunal had given a lump sum award for injuries caused to the inmates of the car and for damage to the car at Rs.

36,195/- along with the interest as mentioned above.

3. Mr. Kaul appearing for the appellant insurance company raised number of arguments before us. His first argument was that insurance company's

statutory liability for payment of damages would be only upto Rs. 2,000/- and not beyond that, therefore, company was not liable to pay the

damages as granted by the Tribunal. In the next place, he contended that there was joint and contributory negligence of the driver of the bus and

driver of the car which was involved in the accident, therefore, the liability of the insurance company to pay compensation would have to be

slashed down and judged from that angle. His third contention was that as against the compensation which was paid to the respondent No. 1,

debris of the motor car No. DHE 3397 was also given to the owner which should have been taken into account while deciding the compensation.

His next argument was that the quantum of compensation was highly exorbitant as the car had not suffered more than Rs. 4,000/- to Rs. 5,000/-as

damage which the company out of grace was willing to pay to the owner of the car.

4. The appellant had made an application for amendment of the memo of appeal and he had tried to raise new grounds in the memo of appeal. The

said application numbered as CMP No. 99-A came to be decided by this court on 10th August, 1984. The application was rejected and appeal

was directed to be heard.

5. Mr. Kaul has now tried to urge same grounds at the time of hearing of the appeal which were not permitted to be raised by the court vide its

order dated 10th August, 1984. Therefore, it is very difficult for us to consider the submissions made by the learned counsel for the appellant

which seem to be outside the scope of pleadings and which were expressly disallowed from being raised by this court.

6. However, on point of law alone, Mr. Kaul was heard. He referred to issue No. 2 which reads as under:

If issue No. 1 is proved, how much compensation the applicants are entitled to

and from whom and in what proportion?

Mr. Kaul's contention was that the language of issue would make it possible for this court to consider the statutory liability of the appellant in

regard to the payment of compensation towards the third party risk. Therefore the provisions of Motor Vehicles Act in this regard can be

considered by this court.

7. Issue No. 2 is to be read conjointly with issue No. 1. Issue No. 1 reads as under:

Was the accident which resulted in causing damage to the vehicle of applicant No. 1 and injury to applicant No. 2 caused due to the rash and

negligent driving of non-applicant No. 1 which was owned by non-applicant No. 2 and insured with non-applicant No. 3?

8. From the language of the two issues, it appears that Tribunal was not considering the statutory liability of the appellant for payment of

compensation to third party. The Tribunal had framed the issue to consider as to how much damage was caused by the accident to the vehicle and

injury to the persons sitting in the vehicle and in what manner that should be apportioned between the persons who were held responsible for

causing the damage. The insurance company, the appellant, did not raise any objection before the Motor Accidents Claims Tribunal about the

statutory limit of their liability for payment of compensation to third party. Therefore, that issue was not framed. The insurance company does not

seem to have raised that issue for various reasons. The policy of insurance which is on record and which is admitted to have been in force

prescribes the limit of insurance company u/s II-1 (ii) in respect of any one claim or series of claims arising out of one event to the extent of Rs.

50,000/-. The bus No. JKB 5235 was comprehensively insured. The insurance company had undertaken to indemnify the owner or driver of the

bus, as the case may be, for payment of any compensation to the third party in the event of bus getting involved in any accident. So there was an

agreement to the contrary to statutory limit prescribed in the Motor Vehicles Act.

9. Section 95 of the Motor Vehicles Act provides as to what is the requirement of insurance policy and what is the limit of insurance company. It

fixes statutory limit, but that is subject to contractual liability. Therefore, if there is no contract to the contrary for payment of compensation to third

party, the minimum which the insurance company is to pay is the payment according to the statutory limit which varies from vehicle to vehicle. If

there is a contractual liability which is permissible to be undertaken by the insurance company, the insurance company will be liable to indemnify the

owner or driver of the vehicle to the limit of contractual liability. In the event of contractual liability, insurance company cannot plead that it has only

undertaken to pay compensation to third party for accident etc. to the extent of statutory limit. The policy of insurance is essentially a contract

between the insurer and the insured whereby the insurer undertakes to indemnify the insured for any loss that may be caused to the vehicle of the

insured or that will be caused to the third party by the vehicle of the insured. The policy of insurance evidences the liability of the insurance

company and it casts duty on the insured to pay premium to the insurer and inform the insurer about any mishap that may occur during the currency

of the insurance policy. Before any insurance policy is issued by the insurer a proposal is to be made which contains the rights of the insured and

obligation of the insurance company, that may be covered by insurance policy and that proposal is to be signed by both the parties. The insurance

company is not bound to accept the proposal. It may refuse to insure a vehicle comprehensively. It issues the policy on the basis of proposal

accepted by the insured. The policy becomes a contract between the parties and the insurer is liable to abide by the conditions contained in the

policy of insurance.

10. From the joint reading of the policy and the statement of Chand Narayan Malla, Branch Manager of the insurance company who has appeared

as a court witness, it appears that 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/-and the bus No. JKB 5235 involved in the accident was comprehensively insured from 15th March, 1977 to 14th March, 1978 which

governs the liability of third party also.

11. Insurance policy which is on record contains some sections which provide liability of insurance company for payment of compensation in

different situations. Section I provides as to in what manner the company will indemnify the insured against loss or damage to the motor vehicle and

its accessories which may be caused by accident, fire, malicious acts, etc. etc.

Section II provides liability of third parties. Sub-section 1 of Section

II provides that the insurance company will indemnify the insured against all sums including claimant's costs and expenses which the insured shall

become liable to pay in respect of death or bodily injury to any person caused by or arising out of the use (including the loading and/or unloading)

of the motor vehicle. Sub-clause (ii) of Sub-section 1 provides for damage to property caused by the use (including the loading and/ or unloading)

of the motor vehicle etc. etc.

12. The limit of liability towards the third party risk u/s II-1 (ii) quoted above is to the extent of Rs. 50,000/-. Therefore, the appellant is liable to

indemnify the owner of any loss or damage caused to the property of third person in respect of any one claim or series of claims, to the extent of

Rs. 50,000/-. The statutory limit will not operate in this case because there is contract to the contrary and limit of liability is extended by contract.

Therefore, Mr. S.L. Kaul's contention that issue No. 2 would permit him to argue the case on the basis of statutory limit cannot be accepted for

two reasons, one that issue No. 2 does not deal with the liability of statutory limit as provided under the Motor Vehicles Act nor can that be

considered because there is a contract to the contrary.

13. Insurance company has a duty to satisfy the claims against persons insured in respect of third party risks. Therefore, insurance company has to

indemnify the third parties for the default of insured. It cannot, therefore, raise a dispute about the quantum of compensation in appeal.

14. In *United India Fire and Genl. Ins. Co. Ltd. v. Lakshmi Shori Ganjoo* 1982 ACJ 470 , a Division Bench of this court has held as under:

An insurer is not entitled to resist the claim or the award, where the insured has been found liable on the grounds not enumerated u/s 96(2) of the

Act, where the term of the policy of insurance provides that the insurer has the right to defend the action in the name of the insured, the insurer shall

have the right to defend and if he does so, all the defences as are open to the insured can be urged by the insurer both to resist the claim as well as

the award, if it appears that the claimant and the insured have colluded, then after receiving permission of the Tribunal u/s 110-C (2-A) the insurer

can defend the claim as well as the award on all grounds which are available to the insured and except for the aforesaid contingencies, an insurer

cannot question an award in appeal...

15. Therefore, we are of the opinion that insurance company in this appeal cannot challenge the quantum of compensation which is determined by

the Tribunal in its presence. The only exception to this rule is if insured and claimants are in collusion. That is nobody's case.

16. Mr. S.L. Kaul has referred to number of authorities in which principle regarding determination of compensation is discussed. These authorities

will not be relevant for consideration of this appeal for two reasons: one, that the appeal is filed by the insurance company. It cannot challenge the

quantum of compensation. Second, the determination of compensation is done by the Tribunal on the basis of evidence and we cannot admit any

new plea which is sought to be raised by the appellant. The Tribunal has granted compensation for injury to the inmates of the car and for damage

to the car. That is a finding based on evidence and it has granted compensation within the limits of appellant's liability. Therefore, we cannot re-

appreciate the evidence in appeal at the behest of the appellant with a view to re-determine the compensation payable to the claimants.

17. There is no evidence regarding contributory negligence or regarding the owner of the bus and the owner of the motor vehicle which was

damaged being tortfeasors. Evidence in this regard was to be led by the driver of the vehicle. He alone could say the manner in which the accident

had taken place. It has not been the case of the appellant that the accident had occurred because of contributory negligence of the offending

vehicle and the damaged vehicle. Therefore in appeal we cannot on the basis of the solitary statement of a witness hold that accident had occurred

due to contributory negligence. The Tribunal has given a positive finding that the driver of the offending bus had acted rashly and negligently and the

accident was caused because of his rash and negligent driving. While examining the evidence we have noticed that there is evidence to sustain this

finding of the Tribunal. A solitary statement of one of the police constables to whom the matter was reported could not be taken into consideration

to reverse a finding about rashness and negligence recorded by the Tribunal. If appellant wanted to prove contributory negligence he should have

raised that plea specifically and examined the witnesses in support of that plea which could be met by the claimants so that the Tribunal could

return a finding. Without any factual basis for the plea of contributory negligence and without any evidence in support of that plea, it is not possible

for us to accept the contention of Mr. Kaul in this regard.

18. Mr. Kaul has also submitted that claimants' claim for damage to the motor car was covered by a separate policy which was payable under the

Insurance Act and not under the Motor Vehicles Act. There can be no dispute with this proposition, but in this petition claimants have claimed

compensation against the owner of the offending vehicle and the insurance company on the basis of insurance policy of the offending vehicle which

covers third party risk. Therefore, in the claim petition number of insurance policy is specifically mentioned and compensation is claimed from the

insurer on the basis of that policy. We are, therefore, not concerned to determine as to what are the rights and obligations of the claimants with an

insurance company with whom the motor vehicle involved in the accident is concerned. That is a separate matter and was not determined by the

Tribunal and enquiry was not directed in that regard. The claim petition was made against the offending vehicle, its owner, driver and insurance

company with which it was insured for compensation which is payable under the insurance policy to the offending vehicle. Therefore, it is not

relevant for us nor was it relevant for the Tribunal to consider the claim of the claimants on the basis of an insurance policy which was in existence

for the damaged car. That is a matter which does not require any consideration in this appeal.

19. The compensation is determined on the basis of contractual liability in the present case and not on the basis of statutory liability and that could

be done by the Tribunal. We are supported by some authorities of the Supreme Court and other High Courts in this regard which may be

mentioned.

20. Sheikhpura Transport Co. Ltd. v. Northern India Transporters' Insurance Co. Ltd. 1971 ACJ 206 and Premier Insurance Co. Ltd. v.

Gambhirsing Galabsing AIR 1975 Guj 133.

21. We are not concerned with the debris of the damaged car given to the claimant. The claimant has not claimed compensation against insurance

company on the basis of the policy of the damaged car but they had claimed damages against the offending bus and insurance company got roped

in because they had undertaken to pay damages to third party to the limit of Rs. 50,000/-. Therefore, it is not our concern as to how the debris of

the damaged car will be dealt with. For that insurance company could have claimed compensation or prayed for delivery of the same before the

Motor Accidents Claims Tribunal. This is altogether a new plea which cannot be entertained in the appeal.

22. In the present case it is contended by Mr. Kaul that compensation was excessive, arbitrary and too high. Therefore, it could be slashed down.

We have examined this argument also. Though on quantum of compensation the insurance company cannot file the appeal, but in order to satisfy

ourselves whether the Tribunal had acted arbitrarily we examined the evidence also. In *Union of India v. Savita Sharma* 1979 ACJ 1, a Division

Bench of this court has held that if it is found that the Tribunal has erred in either awarding large or low amounts and has fixed the compensation in

a manner that may be termed arbitrary, the High Court would certainly interfere and reduce or increase the amount of award as the case may be.

In that case compensation was claimed against Union of India and not against insurance company. Union of India has no inhibition to challenge the

quantum of compensation because Section 95 would not apply to anybody except insurance company. Therefore, reduction of compensation in

that case was not against insurance company but against Union of India. We do not dispute the correctness of this authority but the said authority

may not be applicable to the present case because here we are dealing with an appeal filed by the insurance company. Right of insurance company

to file an appeal is circumscribed by limitations which are contained in Sections 95 and 96 of the Motor Vehicles Act. Therefore, principles of

aforesaid authority cannot be attracted to this appeal.

23. For the reasons stated above, we see no merit in this appeal. The same is dismissed. The parties are left to bear their own costs in this appeal.