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**(1999) 06 OHC CK 0028**

**In the Orissa High Court**

**Case No : M.A. No"s. 26, 29, 30 and 31 of 1993**

New India Assurance Co. Ltd.

APPELLANT

Vs

K. Saimma and Others

RESPONDENT

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**Date of Decision : 29-06-1999**

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 147

**Citation : (2001) ACJ 458 : (2000) 89 CLT 794**

**Hon'ble Judges : P.K. Misra, J**

**Bench : Single Bench**

**Advocate : S.S. Rao and P.K. Mishra, for the Appellant; A.K. Choudhury, L. Samantaray, R.N. Mohanty, B.N. Rath, M. Das and B.N. Udgata, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

P.K. Misra, J.—All the four appeals at the instance of the insurance company are directed against a common award passed in different claim cases and have been heard together. Since a common question of law is involved, all the appeals are being disposed of by one common judgment.

2. The only question raised in these appeals relates to the limit of liability of the insurance company. The relevant facts necessary for considering the question of law are as stated below. The accident occurred on 21.7.89. The vehicle in question was admittedly insured with the present appellant. The victims of the accident were admittedly passengers in the vehicle, a bus. The insurance policy was effective from 21.6.1989 to 20.6.1990. The contention of the counsel for the appellant is that the insurance policy had been issued at a time when the liability of the insurance company in respect of a passenger of a bus was only Rs. 15,000. It is, therefore, contended that since the insurance policy had been issued with limited liability of Rs. 15,000 in respect of each passenger, any amount of compensation in excess of Rs. 15,000 payable to a claimant is to be paid by the owner of the vehicle and the insurance company is liable only to pay

a sum of Rs. 15,000 in respect of each victim passenger.

The learned counsel appearing for the claimants-respondents and the owner have supported the finding of the Tribunal to the effect that the liability of the insurance company was unlimited as the accident occurred on 21.7.1989, after the new Act came into force with effect from 1.7.1989. It has been contended that irrespective of the date of issuance of an insurance policy, the minimum statutory liability of the insurance company to indemnify the liability of the owner is to be decided on the basis of the law applicable on the date of the accident and not on the basis of the date of issuance of the insurance policy. In support of such contention, the learned counsel have placed reliance upon the decision of the Supreme Court in *Padma Srinivasan Vs. Premier Insurance Company Limited*, .

3. In the aforesaid decision of the Apex Court, the insurance policy had been issued at a time when the statutory liability of the insurance company was a lesser amount. However, by the date of accident, while the policy issued was still in force, the limit of statutory liability had been enhanced by way of amendment. It was contended before the Supreme Court that the liability of the insurance company was limited to the amount indicated in the provision of Section 95 of the Motor Vehicles Act, 1939 (hereinafter referred to as "the old Act") applicable on the date of issuance of the policy which had been issued keeping in view such limit of liability. Such a contention was repelled by the Supreme Court and it was held that though the policy had been issued at a time when the limit of liability was lesser, the limit of liability of an insurance company has to be decided on the basis of the provision of law available on the date of the accident and not on the date of issuance of the insurance policy. The aforesaid Apex Court decision squarely supports the contention of the counsel for the claimants and the owner to the effect that the limit of liability of insurance company has to be determined on the basis of provision of law applicable on the date of accident and not on the basis of date of issuance of the insurance policy.

4. The learned counsel appearing for the appellant has submitted that while the aforesaid position was applicable to the cases under the old Act, such decision would be inapplicable in the present case. In support of such contention, the learned counsel for the appellant has placed reliance upon the provision contained in Section 147 (1) and (2) of the Motor Vehicles Act, 1988 (hereinafter referred to as "the new Act"). The relevant part is quoted hereunder:

147. Requirements of policies and limits of liability.--(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; 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:

xxx xxx xxx

(Proviso and Explanation not quoted as unnecessary for the present purpose)

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

(a) save as provided in Clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

Placing reliance upon the proviso, it is submitted that in the present case, the insurance policy had been issued with limited liability and was in force immediately before the commencement of the new Act and such policy of insurance with limited liability is to remain effective for a period of four months after commencement of the new Act. It is, therefore, submitted that since the policy had been issued on 21.6.1989, when the old Act (i.e., 1939 Act) was still in force and the liability of the insurance company in respect of each passenger was limited to Rs. 15,000, such limited liability continued till expiry of four months from the date of commencement of the new Act, that is to say, till 1.11.1989. On the other hand, the learned counsel for the respondents submitted that the proviso has the effect of only limiting the duration of such policy which had been issued under the old Act, but such proviso does not alter the position of law as interpreted by the Supreme Court in the decision in *Padma Srinivasan Vs. Premier Insurance Company Limited*, .

5. Section 147(1) of the new Act corresponds to the provision contained in Section 95 (1) of the old Act with some changes. The main change which is discernible relates to the limit of liability of the insurance company. Under the old Act, the limit of liability of the insurance company in respect of some categories, that is to say, in respect of passengers of bus, was limited to Rs. 15,000 per passenger. However, under the new Act, there is no such provision limiting the liability of the insurance company in respect of a passenger of a public service vehicle. In the present case, we are not concerned with the proviso to Section 147(1) which relates to accident involving (sic) as the proviso to Section 147(1) still continues to be limited to the extent indicated in the Workmen's

Compensation Act. However, as already indicated, so far as the liability in respect of a passenger of a public service vehicle is concerned, the liability which was limited is now unlimited.

6. Though a cursory reading of the proviso to Section 147(2), prima facie, supports the contention of the appellant, on closer scrutiny such a contention is not acceptable. There is no doubt that but for the proviso to Section 147(2), the law as declared by the Apex Court in the decision in Padma Srinivasan Vs. Premier Insurance Company Limited, is applicable. The submission of the learned counsel for the appellant is that the legislature wanted to modify the interpretation of the Supreme Court by incorporating the proviso and the intention was that any policy issued under the old Act with limited liability shall remain in force for a period of four months or till the expiry of normal duration of such policy. In other words, according to the learned counsel for the appellant, for a period of four months or till the expiry of the policy in vogue, the limited liability as envisaged in the old Act and necessarily incorporated in the insurance policy, is to remain effective and after expiry of four months only, such liability becomes unlimited, as contemplated in Section 147(1). Such an interpretation shall have the effect of protecting the insurance company vis-a-vis the claimant as well as the owner of the vehicle. On the other hand, the tenor of the proviso indicates that the legislature intended that where the liability has become unlimited under the new Act, a policy with any limited liability issued before the commencement of the new Act shall remain effective only for a period of four months after the commencement of the new Act. In other words, the legislature wanted to statutorily curtail the duration of such policy which had been issued under the old Act on the footing of limited liability in respect of some of the vehicles. The expression "with any limited liability" has been utilised for the purpose of describing the policy of insurance. In other words, normal policy of insurance where there was no question of limited liability would continue for its normal duration, but a policy of insurance with limited liability even though issued a few days prior to the commencement of the new Act would continue for a period of four months and shall cease to be operative thereafter. In other words, though the legislature wanted to protect the claimant as well as the owner, they also wanted to protect the insurance company to some extent by limiting the duration of such policy which had been issued prior to the commencement of the new Act. It is evident that but for such proviso, the policy though issued under the old Act would have continued till end of the normal period of its duration irrespective of the fact that limited liability envisaged under the old Act in respect of certain types of vehicles had become unlimited. If the legislature wanted to say that the liability of the insurance company would be limited for a particular period of time, they would have easily said so by clearly incorporating that the limited liability as envisaged under the old Act shall continue for a period of four months. As per the proviso to Section 147(2) of the new Act, the policy of insurance shall be effective for a period of four months, but so far as the limit of liability is concerned it does not make any change to the

law as declared by the Apex Court in its decision referred to supra. In such view of the matter, the contention raised by the counsel for the appellant cannot be accepted.

7. The learned counsel for the claimants-respondents and the owner had also submitted that adverse inference should be drawn against the insurance company for non-production of the entire policy along with all endorsements. In this connection, the learned counsel have placed reliance upon several decisions of the Supreme Court as well as of this court. It has been submitted that the assertion of the owner and the claimants that policy had been issued with unlimited liability by accepting extra premium had not been specifically denied by the insurance company and the insurance company did not produce the entire policy including the endorsement to counter such a plea and as such, it should be held that unlimited liability has been undertaken by the insurance company. However, in view of the principle already discussed, it is not necessary to delve into this question.

8. In the result, the misc. appeals are dismissed. There is, however, no order as to costs.