
(1983) 09 AHC CK 0067
In the Allahabad High Court
Case No : F.A.F.O. 508 of 1979

New India Assurance Co. Ltd.

APPELLANT

Vs

Leelawati Agnihotri and Others

RESPONDENT

Date of Decision : 21-09-1983

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(2)

Citation : (1984) ACJ 449 : (1986) 59 CompCas 836

Hon'ble Judges : N.N. Mithal, J

Bench : Single Bench

Advocate : M.P. Singh, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

N.N. Mithal, J.—A short but interesting point is involved in this first appeal from order. In a claim petition filed u/s 110A of the Motor Vehicles Act, an award of Rs. 12,000 has been given in favour of the claimants. The insurance company with whom the motor cycle involved in the accident resulting in the death of Chotey Lal was insured has come up in appeal and it is contended that its liability is limited to the sum of Rs. 2,000 according to the terms of the policy. It is, therefore, urged that the award in excess of Rs. 2,000 cannot be enforced against it.

2. Learned counsel for the appellant has in this connection referred to Section 95 of the Motor Vehicles Act and according to him the maximum liability for payment of compensation which arises in favour of the claimants against it was Rs. 2,000 in view of Section 95(2)(d) of the Motor Vehicles Act. I cannot agree to this submission.

3. Section 95 of the Motor Vehicles Act is in two parts. Sub-clause (1) deals with the positive requirements which provides that certain conditions must be contained in a policy of insurance such as the person who issues the policy must be an authorised insurer. It must insure persons according to provision made in

Sub-section (2) and the liability which the insurer must incur must be in respect of death, bodily injury or damage to property of the third party which may arise from the use of the vehicle in a public place. Further, it must also be in respect of death of, or bodily injury to, a passenger of a public service vehicle arising from the use of a vehicle in a public place. Proviso to this part also contains several exceptions. The second part of this section deals with the limits of liability under the policy of insurance in respect of various classes of vehicles. While Clause (a) deals with goods vehicles, Clause (b) refers to carriers of passengers and Clause (c) deals with other kinds of vehicles. Clause (d) is an exception to other clauses and it deals not with death or bodily injury but damage to the property of a third party.

4. A plain reading of Section 95(2) will show that it has no reference to the actual terms of the contract between the insurer and the insured. On the other hand, this sub-section creates a statutory obligation under which it is incumbent that every policy of insurance must contain terms extending the liability of the insurer to the extent indicated in the latter part of Sub-section (2). To say that in the case of death resulting from an accident involving the motor vehicle in question, Sub-clause (d) would be applicable is totally erroneous. As I have mentioned above, Sub-clause (d) only deals with damage to the property of a third party resulting from an accident involving any kind of vehicle. The words "irrespective of the class of the vehicle " also shows that although the first three clauses deal with different class of vehicles, Clause (d) makes no distinction about the nature of vehicle involved in the accident. It, however, deals with entirely a new kind of liability, i.e., in respect of damage caused to the property of a third party. Sub-clause (d) thus has no relation with either death of a person or causing bodily injury to any person. In the present case, what has happened is that Chotey Lal has been killed in an accident involving the motor cycle insured with the applicant. There is no claim for any damages in respect of property of any third party. Operation of Clause (d), therefore, is completely ruled out. The present case is one which falls squarely under Clause (c) which reads as follows:

" (c) Save as provided in Clause (d), where the vehicle is a vehicle of any other class, the amount of liability incurred.

5. The words "a vehicle of any other class" have to be read in conjunction with Clauses (a) and (b) which deal with goods vehicles and vehicles in which passengers are carried for hire or reward. Thus, those types of vehicles which are not covered in Clauses (a) and (b) will come within the purview of Clause (c) which will include a motor cycle also. In such a case, the liability of the insurer will be co-extensive with the liability incurred by the owner of the vehicle. In this case, the owner has been made liable to pay Rs. 12,000. Thus, the insurance company is also liable to the same extent.

6. In the end, Sri M.P. Singh, learned counsel for the appellant, urged that it will work very hard on the insurance company because according to the mutual agreement between the parties, its liability was only to the extent of Rs. 2,000.

Without expressing any opinion on the question as to the liability of the insurance company under the policy of insurance, I am of the opinion that the remedy of the appellant, if any, may lie against the insured on the basis of their mutual agreement but so far as the third party is concerned, its right will be regulated not by the conditions of the insurance policy but by the conditions laid down by the statute. That being the position, I fail to find any merit in the submissions of the appellant.

7. The appeal fails and is accordingly dismissed with costs.