

(1982) 02 AHC CK 0061

In the Allahabad High Court

Case No : First Appeal From Order No. 89 of 1979

New India Assurance Company

APPELLANT

Vs

Mannu Lal and Others

RESPONDENT

Date of Decision : 04-02-1982

Acts Referred:

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

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

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

Citation : (1983) ACJ 536 : (1984) 56 CompCas 472

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

Bench : Single Bench

Advocate : M.P. Singh, for the Appellant; Raghubansh Sahai, S.K. Sharma and A.K. Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

Mithal, J.—This first appeal from order, on behalf of the New India Assurance Company, is directed against an award of the Claims Tribunal awarding a sum of Rs. 20,000 by way of compensation in connection with the death of one Raj Kumar, son of Mannu Lal, respondent No. 1, in an accident on September 23, 1974, by Motor Vehicle No. UPU 6578. The said vehicle, admittedly, stood insured against third party risk with the appellant company. The important question that arose for consideration is as to whether the insurance company can assail the findings of the Claims Tribunal as regards the negligence and the amount of compensation awarded to the claimant in view of Section 96(2) of the M.V. Act.

2. Sri M.P. Singh, appearing on behalf of the appellant, has submitted that in this case both the owner and the driver of the vehicle have kept away from the proceedings and did not even file a written statement. The insurance company was further handicapped in its defence on account of failure of the owner of the vehicle in informing the company about the accident immediately after it had taken place as per clause of the insurance contract which is on record. His

contention, therefore, was that since the owner had failed to inform the insurance company about the occurrence of the accident, the insurance company could not try to find as to who was the driver of the vehicle at the time of accident and whether he had any valid driving licence with him. If this opportunity had not been denied to it, on account of failure of the owner of the vehicle, the company would have been able to take up any of these pleas in defence and could have avoided its liability of payment of the compensation awarded. His only argument, therefore, was that due to lapse on the part of the insured to serve the requisite notice on the insurer as per contract, the company can avoid its liability regarding compensation awarded. The award, in such cases, can only be executed against the insured.

3. In order to judge the correctness of the argument, it would be proper to first examine the purpose behind the Act. It cannot be gainsaid that Chapter VIII of the M.V. Act which deals with insurance of the motor vehicles against third party risk was amended in the recent past with a view to cover the risk incurred by the public while getting involved in any accident involving use of motor vehicle and to ensure that after obtaining an order for payment of compensation, the claimant may immediately recover the same without having to run from pillar to post. It is a benefactor provision introduced for helping the dependants of helpless victims of such accidents who are usually left unprovided for. In this background, Section 95 of the M.V. Act becomes relevant. This section lays down the necessary conditions which must be incorporated in every policy of insurance and Sub-clause (b) of Sub-section (1) of Section 95 of the Act lays down that insurance shall be provided "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 ". It further provides that the liability of the insurer would be such as is laid down in Sub-clause (2) of the section. Sub-section (2) provides the minimum limit up to which the risk must be covered by the insurer in respect of various kinds of vehicles. In the case of vehicles carrying passengers without any hire or reward, the liability of the insurer is unlimited. In order to make the insurance company liable for the compensation awarded, the only pre-requisite is that a certificate of insurance ought to have been issued by the insurance company to the insured in respect of the vehicle in question. Even where only a cover note has been issued and it is not followed by a policy of insurance within the prescribed time, the insurer would still be liable unless this fact had been notified by the insurance company to the registering authority. The main thrust in the language of this section, therefore, is to make the insurance company liable in all events for payments of the amount of compensation awarded even in cases where only a cover note had been issued without being followed by issue of a regular policy in favour of the insured. This liability cannot be avoided. Sub-section (5) of Section 95 also casts a duty on the insurance company to indemnify the third party who is the victim of accident involving the use of motor vehicle insured by it. This provision also signifies that primarily it is the responsibility of the insurance company first to satisfy the award and then

only it may seek indemnification in respect thereof from the insured, if the terms of the policy so warrant.

4. Coming now to the provisions of Section 96 it will be better to quote the section itself which reads as under :

" 96. Duty of insurers to satisfy judgments against persons insured in respect of third party risks.--(1) If, after a certificate of insurance has been issued under Sub-section (4) of Section 95 in favour of the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under Clause (b) of Sub-section (1) of Section 95 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment-debtor in respect of the liability, together with any amount payable in respect of costs and any amount payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under Sub-section (1) in respect of any judgment unless before or after the commencement of the proceedings in which the judgment is given the insurer had notice through the court of the bringing of the proceedings, or in respect of any judgment so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely :

(a) that the policy was cancelled by mutual consent or by virtue of any provision contained therein before the accident giving rise to the liability, and that either the certificate of insurance was surrendered to the insurer or that the person to whom the certificate was issued has made an affidavit stating that the certificate has been lost or destroyed or that, either before or not later than fourteen days after the happening of the accident the insurer has commenced proceedings for cancellation of the certificate after compliance with the provisions of Section 105 ; or

(b) that there has been breach of a specified condition of the policy, being one of the following conditions, namely :

(i) a condition excluding the use of a vehicle--(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward ; or

(b) for organised racing and speed-testing ; or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is (a transport vehicle); or

(d) without side-car being attached, where the vehicle is a motor cycle ; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification ; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion ; or

(e) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

(2A) Where any such judgment as is referred to in Sub-section (1) is obtained from a court in a reciprocating country and in the case of a foreign judgment is, by virtue of the provisions of Section 13 of the Code of Civil Procedure, 1908, conclusive as to any matter adjudicated upon by it, the insurer (being an insurer registered under the Insurance Act, 1938 (48 1938), and whether or not he is registered under the corresponding law of the reciprocating country) shall be liable to the person entitled to the benefit of the decree in the manner and to the extent specified in Sub-section (1), as if the judgment were given by a court in India :

Provided that no sum shall be payable by the insurer in respect of any such judgment unless, before or after the commencement of the proceedings in which the judgment is given, the insurer had notice through the court concerned of the bringing of the proceedings and the insurer to whom notice is so given is entitled under the corresponding law of the reciprocating country, to be made a party to the proceedings and to defend the action on grounds similar to those specified in Sub-section (2).

(3) Where a certificate of insurance has been issued under Sub-section (4) of Section 95 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any conditions other than those in Clause (b) of Sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under Clause (b) of Sub-section (1) of Section 95, be of no effect:

Provided that any sum paid by the insurer, in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.

(4) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would, apart from the provisions of this section, be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

(5) In this section the expressions "material fact" and "material particular "

mean, respectively, a fact or particular of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk and, if so, at what premium and on what conditions, and the expression " liability covered by the terms of the policy " means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy.

(6) No insurer to whom the notice referred to in Sub-section (2) or Sub-section (2A) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment as is referred to in Subsection (1) or Sub-section (2A) otherwise than in the manner provided for in Sub-section (2) or in the corresponding law of the reciprocating country, as the case may be ".

5. A mere reading of the section would suggest that the insurer is liable to satisfy any judgment that may be passed against the insured in respect of third party risk. Sub-clause (1) of the section also makes it clear that subject to the condition laid down in Sub-section (2), the insurer is liable to satisfy the judgment in respect of the liability incurred by the insured in whose favour a certificate of insurance has been issued. Liability of the insurance company in such cases is to the extent it is liable under the contract of insurance or up to the minimum limit provided for in Section 95. The liability of the insurer would be the same as if the insurance company itself had been the judgment-debtor in place of the insured even including the liability to pay costs or any sums that any be directed to be paid to the claimant under the award. The only grounds on which the liability can be avoided by the insurance company are those as are given under Sub-clauses (a) and (b) and (c) of Sub-section (2) of Section 96, that is, (i) where by mutual consent between the insurer and the insured, the policy was cancelled before the Occurrence of the accident which gave rise to the liability, subject to a further condition. That certificate of insurance had been surrendered by the insured in favour of the insurer, or (2) where either before the happening of the accident or within fourteen days thereafter the proceedings were taken by the insurance company to seek cancellation of the certificate u/s 105 of the Act, and (3) the insurance company can also avoid its liability under the policy if any of the conditions mentioned under Sub-clause (b) is proved, that is, if the insured, contrary to the conditions contained in the policy, used the vehicle for hire or reward while it has no permit to do so, or the vehicle is being used for organised racing or speed testing for a purpose not allowed by the permit issued in respect of the vehicle or driving the motor cycle without a side-car, or where the vehicle was being driven by a person who did not have a proper driving licence, or if the liability was incurred under conditions of war, civil war, riot or civil commotion and, lastly, where policy was void on the ground that it had been obtained by non-disclosure of material fact or by misrepresentation. Except in any of these limited class of cases, the liability of the insurer towards the third party is absolute and the insurance company cannot avoid payment of the compensation under the award. In fact, Sub-section (2) of Section 96 also clearly specifies the grounds, which are the only grounds open, which the insurance

company can take while defending a claim petition u/s 110 of the Motor Vehicles Act. The only requirement is that the insurance company should have been given a notice about the commencement of the proceedings in the court. Right to defend, however, is limited as is obvious from the following words used in Section 96(2):

" And an insurer to whom notice of the bringing of any such proceeding is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds "

Sub-section (6) of Section 96 also makes it clear that the insurer cannot avoid its liability to satisfy the claim awarded except to the extent permitted to it under Sub-section (2) of Section 96.

6. The submission of Sri M.P. Singh, learned counsel for the appellant, that there existed a contract between the insurer and the insured which required that as soon as an accident should occur, the insured must inform the insurance company by notice about the occurrence of the accident and that since in this case the insured had failed to inform the insurance company, it would not be liable for the payment of the amount on account of breach of conditions of contract committed by the insured. The learned counsel, however, conveniently forgets that this contract binds only the insured and the insurer and a third party cannot be deprived of its statutory rights on that account. His rights are statutory and these cannot be abrogated in any way by any provision in the contract of insurance. The terms in a contract between them to the effect that an insurance company must be served with a notice whenever an accident occurs can only be enforced as between them but on its basis the insurance company cannot avoid its liability towards third parties. In suitable cases it may be open to it to recover any money paid by it to satisfy the award from the owner of the vehicle. However, so far as the claimants are concerned, their rights are fully protected and the insurance company cannot avoid its liability to satisfy the judgment and must pay the amount of compensation together with interest and costs which may have been awarded by the tribunal In favour of the respondents. Thus, I do not find any merit in the submissions made on behalf of the appellant.

7. In the result, the appeal fails and is hereby dismissed. There will be no order as to costs.