
(1984) 08 RAJ CK 0045

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 58 of 1978

Oriental Fire and General Insurance Co. Ltd.

APPELLANT

Vs

Dhanraj Gupta and Others

RESPONDENT

Date of Decision : 02-08-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 13

Motor Vehicles Act, 1939 — Section 105, 95(1), 95(2), 95(2A), 95(4)

Citation : (1986) 60 CompCas 665

Hon'ble Judges : Guman Mal Lodha, J

Bench : Single Bench

Advocate : L.R. Mehta and Rajendra Mehta, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Guman Mal Lodha, J.—A short but sure point raised by Shri Rajendra Mehta, the learned counsel for the appellant, relates to the liability of the insurance company when the Tribunal has exonerated the insured.

2. The submission is based on the provisions of Section 96 of the Motor Vehicles Act, 1939, 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 sum 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 a breach of a specified condition of the policy being one of the following conditions, namely :--

(i) a condition excluding the use of 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

(c) 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 (5 of 1908), conclusive as to any matter adjudicated upon by it, the insurer (being an insurer registered under the Insurance Act, 1938 (4 of 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 Subsection (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 Sub-section (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."

3. As per the finding of the Tribunal, Abdul Aziz, respondent No. 3, was the original owner of the vehicle (three wheeler autorickshaw) but he sold it to Gulam Rasool, respondent No. 2. Earlier, the insurance policy was in favour of respondent No. 3, Abdul Aziz, and was never transferred in the name of

respondent No. 2, Gulam Rasool. Though, at the relevant time, the vehicle was insured but it was in the name of Abdul Aziz. The accident in which Dhanraj Gupta, respondent No. 1, received injuries was as a result of the rash and negligent driving by Gulam Rasool. The Tribunal has held as a matter of fact that at the relevant time when the accident took place, Abdul Aziz was not the owner and, therefore, exonerated Abdul Aziz from the claim. The Tribunal granted Rs. 4,600 against Gulam Rasool, Kishan and the insurance company.

4. Shri Mehta's contention is that irrespective of the question regarding acknowledgment of the transfer by the insurance company, the fact remains that the insurance company's insured was Abdul Aziz and when Abdul Aziz has been exonerated, the question of indemnifying Abdul Aziz u/s 96 of the Motor Vehicles Act cannot arise. In this connection, Shri Mehta has placed reliance upon the judgment in *New India Assurance Co. Ltd. v. Parvathamma* 1977 ACJ 469 (Kar), *Minu B. Mehta and Another Vs. Balkrishna Ramchandra Nayan and Another*, *Oriental Fire and General Insurance Co. Ltd. Vs. Bachan Singh and Others*, and *Abdul Gajoor v. New India Assurance Co. Ltd.* 1981 ACJ 340 (All).

5. In *Minu B. Mehta and Another Vs. Balkrishna Ramchandra Nayan and Another*, their Lordships of the Apex Court interpreted Section 96 of the Motor Vehicles Act to mean that when the judgment is in respect of such liability as is required to be covered by the policy is obtained against any person insured by the policy, then the insurer shall pay to the person entitled to the benefit of the decree as if he were a judgment debtor.

6. It would be seen from the above that in all the decisions, the emphasis is that the insurance company would indemnify the persons who are insured in the policy of insurance itself.

7. I would not like to discuss and decide in this case whether a decree would have been passed against Abdul Aziz or not, but since no appeal has been filed by the claimants, it would be assumed that there was no award or decree against Abdul Aziz. In view of this, the insurance company cannot be directed to indemnify for the accident claim because there is no award against Abdul Aziz and the policy stands in the name of Abdul Aziz.

8. The result of the above discussion is that the appeal filed by the insurance company before this court is accepted. The award passed by the Motor Accidents Claims Tribunal, Jodhpur, is modified to this extent only that the appellant would not indemnify and would not be responsible for paying the amount of the award passed against Gulam Rasool and Kishan.

9. Since no one has appeared to oppose this appeal, the parties would bear their own costs.