

(1984) 01 AHC CK 0028

In the Allahabad High Court

Case No : First Appeal From Order No. 144 of 1979

Oriental Fire and General Insurance Company

APPELLANT

Vs

Sant Lal and Another

RESPONDENT

Date of Decision : 19-01-1984

Acts Referred:

Motor Vehicles Act, 1939 — Section 96(2)

Citation : (1984) 1 ACC 100 : (1987) 61 CompCas 104

Hon'ble Judges : O.P. Saxena, J;K.N. Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K.N. Singh, J.—The Oriental Fire and General Insurance Co. has preferred this appeal under Sections 110D of the Motor Vehicles Act, 1939, against the award given by the Motor Accidents Claims Tribunal, Allahabad, on February 14, 1979, awarding a sum of Rs. 30,000 to the respondent, Sant Lal, as compensation for the death of his wife and injuries received by him and his child.

2. On August 16, 1976, at about 11 a.m., Sant Lal, respondent-claimant, was proceeding on a bicycle on Hastings Road towards Phaphama side.

3. His wife, Smt. Murgulli Devi, was sitting on the carrier of the bicycle with her nine month old child in her lap. A stage carriage vehicle having registration No. UPI 7473 which came from the opposite direction hit the bicycle crushing Smt. Murgulli Devi, as a result of which she died and Sant Lal and his minor son both received injuries. Sant Lal filed a claim petition before the Claims Tribunal which was contested by the insurance company and the owner. The Claims Tribunal by its award dated February 14, 1979, awarded a sum of Rs. 30,000 to Sant Lal for the death of his wife as well as for the injuries caused to him and his minor son. Aggrieved, the insurance company has preferred this appeal.

4. Section 96(2) of the Motor Vehicles Act, 1939, lays down the defences which are open to an insurer. An insurer is under a liability to indemnify the owner for

the compensation which may be awarded against him. The insurer is, however, entitled to defend its liability on the grounds set forth in Sub-section (2) of Sections 96. Under that provision, an insurer is entitled to be impleaded as a party to the proceedings and to defend it. The insurer can only avoid its liability in accordance with the provisions contained in Sub-section (2) of Sections 96. It is not open to the insurer to avoid its liability on any other ground. The insurer cannot challenge the quantum of compensation nor can it challenge the findings of the Tribunal on the ground that the driver was not guilty of rash and negligent driving because the right of the insurer to challenge the Tribunal's order is confined to those grounds as set forth in Sub-section (2) of Sections 96. Under that provision, when filing an appeal, the grounds raised by the insurer must be confined to those grounds only. A perusal of Sections 96(2) would show that it is not open to the insurer to challenge the findings of the Tribunal on the question of rash and negligent driving of the vehicle or on the question of quantum of compensation. This view is well settled in view of the various decisions of the Supreme Court and this court. See *British India General Insurance Co. Ltd. v. Captain Itbar Singh* [1959] 29 Comp Cas 60 (Ins) *Manjula Devi Bhuta v. Manjusri Raha* [1968] ACJ 1 and *Om Prakash and Another Vs. Smt. Rukmini Devi and Others*, .

5. In the instant appeal, none of the grounds raised by the appellants in the memo of appeal are covered by any of the grounds set out in Sections 96(2) of the Act and as such the insurer cannot successfully challenge the award given by the Tribunal. Admittedly, the accident took place as a result of which Smt. Murgulli Devi died and Sant Lal and his minor son received injuries. It is further admitted that the stage carriage involved in the accident which took place had been insured by the appellant and the accident occurred at the time when the driver was driving the vehicle in the discharge of his duties. In the circumstance, the insurer cannot escape its liability to indemnify the owner in respect of the amount of compensation awarded by the Tribunal.

6. In the circumstances we found no merit in the appeal. It is accordingly dismissed with costs.