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**(1996) 07 PAT CK 0027**  
**In the Patna High Court**

Oriental Fire Insurance Company

APPELLANT

Vs

Saroj Gupta and Another

RESPONDENT

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**Date of Decision :** 16-07-1996

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 96(2)

**Citation :** (1997) 1 ACC 470 : (1996) 2 PLJR 850

**Hon'ble Judges :** S.N. Mishra, J

**Bench :** Single Bench

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**Judgement**

S.N. Mishra, J.—The Oriental Fire Insurance Company through the Deputy Manager has filed this Miscellaneous Appeal challenging the judgment and award passed by the Additional Motor Accident Claims Tribunal, Muzaffarpur, whereby the Tribunal has awarded a compensation of Rs. 1,87,200/- against the appellant-insurer as compensation to the claimant-respondent No. 1, after deducting a sum of Rs. 50,000/- which was already paid along with interest at the rate of 12% per annum. According to the applicant, on 16.7.1988 her son Alok Kumar Gupta alongwith others was proceeding on a Rajdoot Motor Cycle bearing registration No. BHF 350 from Patna to Muzaffarpur when a Jeep bearing registration No. BPK 8615 dashed against the motor cycle because of the rash and negligent driving, as a result the motor cycle was badly damaged and the said Alok Kumar Gupta sustained server head injury. The victim was first treated in the General Hospital at Muzaffarpur but in view of his serious condition he was treated by one Dr. Ramesh Chandra at Patna, where he died on 23.7.1988. According to the claimant the deceased was earning Rs. 15,000/- per month through self employing business as well as part time service with M.S. Barat Pipe and Sanitary Works at Exhibition Road, Patna. After the death of the victim first Information Report was lodged which was registered as Kurhani Police Station Case No. 158/88. The offending jeep was insured by the Oriental Insurance Company Ltd. According to the claimants, the total claim compensation was Rs. 4,76,187.20 which includes the cost of medical treatment and repairing of damages of the motor cycle. The owner, respondent No. 2, of the jeep as well as

the driver of the jeep appeared before the Tribunal and have filed written statement wherein apart from raising technical objection they have claimed that the deceased was unemployed at the time of occurrence, inasmuch as, the jeep, in question, was proceeding in a i normal speed by keeping extreme left side. Meanwhile the deceased, who was without helmet drove the motor cycle rashly and on account of break failure the same came to the wrong side of the road and dashed the motor cycle against the jeep, as a result both the riders were thrown away and struck with the metalled portion of the road. It is alleged that the jeep, in question, was insured for the period 9.7.1988 to 8.7.1989 under the comprehensive scheme and, as such, the owner stood indemnified by the insurer against any payment in such accident. It was also alleged that the amount of compensation, as claimed by the claimant, was exorbitant and unreasonable. The appellant-Insurance Company had also filed their written statement denying the allegations made in the application and further alleged that the insurer was not given information of the accident. It was also alleged that the owner was driving the jeep in a normal speed. According to the insurer, the deceased himself is responsible as he was driving his motor cycle at a very high speed. It is alleged that the insurer is not liable for the claim amount of the applicant to the accident mentioned in the cover note of the insurance policy regarding jeep, in question. On the basis of the aforesaid pleadings, several issues were framed. The Court on consideration of the evidence on record has held that the mode and manner of the accident as alleged by the claimant stands admitted. Further the negligence on the part of the driver of the jeep is fully established. However, the Tribunal came to the conclusion that the deceased had also contributed to his death and has further held that the deceased Alok Kumar Gupta died due to head injury. The Tribunal has further held that since the deceased was not wearing helmet he contributed to his death and to that extent he is also negligent. The Court has also come to the conclusion that the jeep, in question, was insured and the policy was enforced on the date of accident covering 3rd party risk and, accordingly, held that the insurer is liable to pay the compensation to the claimant on behalf of owner of the jeep. The age of the deceased was assessed at 47 years at the time when the evidence was being recorded and at the time of occurrence he must have completed 43 years of age. Taking into consideration the average life of the Indian upto 70 years and on that basis the victim could have earned for 26 years more and, accordingly, the yearly income of the deceased was multiplied by 26 and after making necessary deduction, the Court has come to the conclusion that the Insurance Company is liable to pay the compensation of 60% of Rs. 3,12,000/- which will come to Rs. 1,87,200/- making the same as round figure to 1,87,000/- and 40% were directed to be paid by the claimants, after making necessary deduction, i.e., a sum of Rs. 1,72,000/- with interest at the rate of 12% per annum.

2. Learned Counsel for the claimant respondents has raised a preliminary objection to the effect that the Insurance Company cannot challenge the award on merit inasmuch as the grounds specified and enumerated in Section 96(2) of

the Motor Vehicles Act can only be raised. According to the learned Counsel the Insurance Company has challenged the award on the quantum of the compensation allowed by the Tribunal which is not covered under the various clauses of Section 96(2) of the Act. In support of his contention learned Counsel has relied upon the following decisions: The United Fire and General Insurance Co. Ltd. Vs. P. Parvathamma, Kantilal and Bros. and Another Vs. Ramarani Debi and Others, The Oriental Fire and General Insurance Company Ltd. Vs. Rajrani Surendrakumar Sharma and Others, National Insurance Company Vs. Shanim Ahmad and Others, .; and United India Insurance Co. Ltd., Gauhati Vs. Member, Motor Accident Claims Tribunal, Lakhimpur and Others, . The different High Courts in the aforesaid decisions have held that the insurer. Insurance Company, cannot raise defence in their support which were not available to them at the trial stage. It has been held that the rights of the Insurance Company are wholly governed by the statute and under no circumstances the right of the Insurance Company in the appeal does not in any manner enlarge right of the Insurance Company which is absolutely confined within the bounds of Section 96(2) of the Act. The preliminary objection raised by the learned Counsel for the respondents, which requires adjudication by this Court, as to whether it is open to the Insurance Company to challenge the award on merit even though the defence is confined to the grounds specifically mentioned in Section 96(2) of the Motor Vehicles Act. In order to appreciate the argument of the learned Counsel for the respondents, it is relevant to quote Section 96(2), which reads thus:

96. Duty of insurers to satisfy judgments against persons insured in respect of third party risks.--

(1) XXX XXX XXX (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 proceeding 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 provisions contained there in 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 the 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.

From mere reading of the provision, as quoted above, it is quite apparent that the Insurance Company cannot be allowed to challenge the award on merit including the quantum of the compensation except on the ground mentioned u/s 96(2) of the Act. On going through the pleadings of the Insurance Company a clear stand has been taken that "the Company is not liable for the claim of the applicant to the extent of the amount mentioned in the cover note of the insurance policy". The grounds on which the award of the Tribunal is sought to be challenged do not come within the purview of Section 96(2) of the Act and, as such, the Insurance Company cannot be allowed to challenge the award as it is. While interpreting the provision under consideration the Apex Court in the case of *British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others*, has observed thus:

To start with it is necessary to remember that apart from the statute an insurer has no right to be made a party to the action by the injured person against the insured causing the injury. Sub-section (2) of Section 96 however gives him the right to be made a party to the suit and to defend it. The right therefore is created by statute and its contents necessarily depend on the provisions of the statute. The question then really is, what are the defences that Sub-section (2) makes available to an insurer ? That clearly is a question of interpretation of the sub-section.

Now the language of Sub-section (2) seems to us to be perfectly plain and to admit of no doubt or confusion. It is that an insurer to whom the requisite notice of the action has been given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely, after which comes an enumeration of the grounds. It would follow that an insurer is entitled to defend on any of the grounds enumerated and on others. If it were not so, then of

course no grounds need have been enumerated. When the grounds of defence have been specified, they cannot be added, to. To do that would be adding words to the statute.

Sub-section (6) also indicates clearly how Sub-section (2) should be read. It says that no insurer to whom the notice of the action has been given shall be entitled to avoid his liability under Sub-section (1) "otherwise than in the manner provided for in Sub-section (2)". Now the only manner of avoiding liability provided for in Sub-section (2) is by successfully raising any of the defences therein mentioned. It comes then to this that the insurer cannot avoid his liability except by establishing such defences. Therefore Sub-section (6) clearly contemplates that he cannot take any defence not mentioned in Sub-section (2), If he could, then he would have been in a position to avoid his liability in a manner other than that provided for in Sub-section (2). That is prohibited by Sub-section (6).

We therefore think that "Sub-section (2) clearly provides that an insurer made a defendant to the action is not entitled to take any defence which is not specified in it.

Similarly in the case of *Sundar Sahu Vs. Jogeswar Das*, , wherein the Full Bench in paragraph-6 observed thus:

As the facts of this case show, the insured had entered contest and there is no reason to hold in the absence of any allegation, and something more, that the insured has been colluding with the claimant. Leave of the Tribunal had admittedly not been taken u/s 110-8 (2-A) of the Act. There exists a clause in the policy bond authorising the insurer to defend in the name of the insured. As we have already noted, the insured and the insurer simultaneously wanted to defend, the insured defending in his own name and the insurer in its own. The term in the policy bond did not authorise such defence by the insurer. In the instant case, therefore, to the insurer the restriction u/s 96(2) of the Act applies and he could not travel beyond the restriction imposed by the Statute either before the Tribunal or in appeal before this Court. None of the grounds in the memorandum of appeal appertains to a defence raised within Section 96(2) of the Act and what is being mainly challenged is the quantum and liability on a ground not covered by Section 96(2) of the Act. On these grounds the insurer was not entitled to contest the claim nor the award. The appeal filed on its behalf, therefore, is not maintainable.

3. In the instant case as well the insurer mainly challenged the quantum and liability which is definitely not permissible having regard to the provisions of the statute as enumerated in Section 96(2) of the Act. The objection which has been raised in the written statement is being reiterated in the memo of appeal as well and, as such, the insurer cannot be allowed to challenge the liability and quantum of award.

4. Mr. Ajay Kumar in support of his submission has relied upon the decisions in

the case of T. Shantharam Vs. State of Karnataka and Others, . National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, , Ort. Fire & General Insurance Co. Ltd. v. Laxman Mahto and Ors.; The Hindusthan Ideal Insurance Corporation Ltd. Vs. Manne Chimperamma and Others, , The Hindustan Ideal Insurance Corpn., Ltd. v. Marine Chimperamma. The decisions cited by Mr. Kumar do not deal with the preliminary objection raised by the learned Counsel for the respondents and, as such, it is not necessary to deal with the same in detail. Having regard to the clear pronouncement of the Apex Court in British India General Insurance Company (supra) as well as the National Insurance Co. Ltd. (supra) (Full Bench), the submission that the insurer, namely, Insurance Company cannot challenge the award on merit, is accepted and, accordingly, the preliminary objection raised by the learned Counsel for the respondents sustains. As regards the merits of this case, I also do not find any illegality in the award. The findings arrived at by the Tribunal are all based upon the correct appraisal of evidence both oral and documentary as well as the procedures in calculating the compensation amount has been reasonably followed by the Tribunal, which cannot be interfered with. Other aspect of the matter may also be borne in mind while deciding such claim of the victim. Most of the victims of the motor accident come from middle or lower strata of the society being pedestrians, on cycle, scooter, motor cycle, tempo and bus. One can imagine the predicament of the family who died in a motor accident. It is well known that monetary compensation cannot be adequate and equal for loss of life or even permanent disability. In that view of the matter, whatever meagre amount is permissible under the statute must reach the victim's family without any loss of time when the compensation is sought for before the Court. The statute has taken care of the sufferings and pains of the deceased's family and, as such, a summary proceeding has been provided for deciding the claim of the claimants. Even though the persons who have suffered .injuries and/or met with an accident are legally entitled to claim, damages under the law of Torts" by initiating a regular suit, in order to avoid mental harassment and monetary loss the summary procedure has been prescribed under the statute which must be kept in view by the Court concerned while deciding such claim.

5. In the result, this appeal is dismissed but without cost However, the Insurance Company, namely, appellant, is directed to pay the compensation amount as early as possible preferably within six weeks, failing which the Insurance Company shall be liable to pay interest at the rate of 25% per annum on the balance amount to be paid to the claimant.