

(2002) 07 JH CK 0053
In the Jharkhand High Court
Case No : L.P.A. No. 251-A of 1998 (R)

Oriental Insurance Co. Ltd.	Vs	APPELLANT
Shanti Devi and Others		RESPONDENT

Date of Decision : 11-07-2002

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(2)
Motor Vehicles Act, 1988 — Section 147(2A)

Citation : (2004) ACJ 118 : (2003) 2 ACC 637

Hon'ble Judges : M.Y. Eqbal, J; Hari Shankar Prasad, J

Bench : Division Bench

Advocate : A. Allam, for the Appellant; S.N. Lal, for the Respondent

Final Decision : Dismissed

Judgement

Hari Shankar Prasad, J.—This appeal under clause 10 of the Letter Patent is directed against the judgment dated 5.5.1998 passed in M.A. No. 130 of 1995 (R), whereby and whereunder the learned Single Judge, refused to set aside the judgment and award passed by the learned 5th Additional Judicial Commissioner-cum-Motor Vehicle Accident Claim Tribunal, Ranchi in Compensation Case No. 170/89.

2. The facts of the case lie in a narrow compass. The learned Claims Tribunal awarded a sum of Rs. 1,20,000/- as compensation amount to be paid by the insurer of the vehicle involved in the accident. The Insurance Company has taken a plea that as per Section 95(2) of the Motor Vehicle Act, 1939, the liability of the Insurance Company in the ordinary cases was fixed at Rs. 50,000/- only. It was further pointed out that the accident has taken place on 15th October, 1989, but Clause (2-A) of Section 147 of new Act, 1988 provides that if the accident takes place within 4 months of the coming into force of the new Act, liability of the insurance company will be limited. It is further submitted that the accident has actually taken place within 4 months from the date of commencement of the new Act and, therefore, the principle of limited liability of the insurance company

should have been considered by the Court but it was not so done.

3. Mr. A. Allam, learned counsel appearing for the appellant, submitted that whether this plea of limited liability was taken in the trial Court or not is immaterial because insurance policy was produced in the learned trial Court. From perusal of insurance policy, it will appear that no extra premium for unlimited liability was paid and, therefore, according to Section 95 of the Act, the liability of the Insurance Company will be limited to the extent of Rs. 50,000/-. In this connection, learned counsel placed reliance on AIR 2002 SCW 259, wherein it was held that if Insurance Company is not taking any higher premium for payment of compensation to 3rd party, in such a situation Insurance Company will not be liable to pay the entire amount and the liability of Insurance Company will be limited to Rs. 50,000/- in terms of insurance policy. Learned counsel further submitted that in view of this case law, in any circumstance, since death has occurred within four months from the date of coming into force of new Act, 1988, the liability of the Insurance Company will be limited to Rs. 50,000/- only.

4. On the other hand, Mr. S.N. Lal learned counsel appearing for the respondent, submitted that there is no irregularity or illegality in the judgment of learned trial Court and similarly the single Judge also did not commit any irregularity or illegality in refusing to set aside the judgment and award. He further pointed out that legal position is that Section 95(2) has been made to remain effective within four months of the commencement of the new Act, 1988 but it does not mean that death occurred after coming into force of new Act from 1st July, 1989, the liability of the Insurance Company will be deemed to be limited one. He further pointed out that in the case law, upon which reliance has been placed (*supra*), the legal position regarding Section 147(2)(a) was not considered and, therefore, this case law, so far as liability of Insurance Company after commencement of new Act from 1st July, 1989 is concerned, since the death occurred within four months from the date of commencement of the new Act, will not mean that the liability of the Insurance Company will be limited one and this legal position has been considered in a number of cases and in those cases learned courts have held that the liability of the Insurance Company in such a situation will be unlimited and the Insurance Company will have to bear the entire amount of compensation. He has placed reliance upon *National Insurance Company Ltd. Vs. Behari Lal and Others*, in which it has been held that liability of the Insurance Company will be governed by Section 147(2)(a) of new Act and the amount of liability incurred but not u/s 95(2) of old Act. In the case law referred, what happened is that the deceased died on 4.9.1989 after new Act come into force but before expiry of policy in force, as new Act has come into force from 1st July, 1989 and the death occurred on 4.9.1989. The National Insurance Co. Ltd. took the plea that there is a provision under the new Act that old Act of 1939 will remain in force within four months from 1st July, 1989 and in between this period all accidents which occurred, the liability of the Insurance Company will be limited if no extra premium for higher risk was taken but in this case it was held

that accident has occurred after 1st July, 1989 but within four months from the commencement of the new Act 1988, the liability of the Insurance Company will be governed by Section 147(2)(a) of the new Act and not under the old Act meaning thereby the liability of the Insurance Company will be unlimited. In the instant case no extra premium for higher risk was charged. Learned counsel further placed reliance upon *Padma Srinivasan Vs. Premier Insurance Company Limited*, in which it has been held that the liability of the insurer would be extended to legal provision as stood on the date of accident meaning thereby the liability of the Insurance Company in the instant case will be governed as it stands on 15.10.1989, the date of accident. He has further placed relied upon *National Insurance Co. v. Bihari Lal and Ors.* 2000 AIR SCW 3352 in which it has been held that even statutory limited liability policy was taken under the old Act and proviso to Section 147 keeps it alive for four months after enforcement of new Act but without limits for liability imposed by old Act, the liability of the insurer will become unlimited. In this case law it is further held :

"Since the liability of the insurer to pay a claim under a motor accident policy arises on the occurrence of the accident and not until then, one must necessarily have regard to the state of the law obtaining at the time of the accident for determining the extent of the insurer's liability under a statutory policy. In this behalf, the governing factor for determining the application of the appropriate law is not the date on which the policy of insurance came into force but the date on which the cause of action accrued for enforcing liability arising under the terms of the policy. That we consider to be a reasonable manner in which to understand and interpret the contract of insurance entered into by the insured and the insurer in this case."

"We are not persuaded to accept the contention of Mr. Sharma that the proviso in question is incorporated to effect of that judgment. The proviso to Sub-section (2) of Section 147 cannot be read as a proviso to Section 217(2)(c) of the New Act and it does not, in case of the existing policy being in force on the date of the occurrence of the accident, limit the liability of the Insurance Company to the amount mentioned in Section 95(2) of the old Act."

5. For the going discussion made above, it becomes clear that in the case law, relied upon by the learned counsel for the appellant, this aspect of the matter was not considered by the Hon"ble Apex Court but in the case law cited on behalf of the respondents Section 95(2) was clearly dealt with a definite finding given on the matter. In that view of the matter, since the case law relied upon by the learned counsel for the respondents, clearly lays down that the occurrence occurred after commencement of new Act, 1988 but within four months from the commencement of the new Act, the matter will not be guided by Section 95(2) of the old Act but will be guided by the provisions of new Act, We do not find any infirmity in the judgment of the learned Single Judge.

6. In the result we find no merit in this appeal, which is accordingly dismissed.

Hart Shankar Prasad

M.Y. Eqbal, J.—I respectfully agree with the view expressed by my learned brother (Hari Shankar Prasad, J.) but I would like to add a few words of my own in order to meet the points raised by Mr. A Allam, learned counsel appearing for the appellant-Insurance Company.

2. Mr. S.N. Lal, learned counsel appearing for the respondents on the one hand put heavy reliance on the decision of the Supreme Court in the case of National Insurance Company v. Behari Lal and others AIR 2000 SCW 3352 for the proposition of law that if the accident occurs after coming into force of new Act of 1988 and the policy remain in force then the entire liability will be saddled upon the Insurance Company despite the fact that under the policy the limited liability was fixed in terms of Section 95(2) of the old Act. However, Mr. A. Allam learned counsel appearing for the Insurance Company submitted that in view of the judgment of the Constitution Bench of the Supreme Court in the case of New India Assurance Co. Ltd. Vs. C.M. Jaya and Others, when liability of the Insurance Company is limited under the policy only to meet the requirement of Section 95 of the Act then the Insurance Company shall not be liable to pay entire compensation. Learned counsel submitted that the Constitution Bench judgment in the case of New India Assurance Company Ltd. Is binding and must be relied upon.

3. Before appreciating the submission of Mr. A. Allam, I would like to discuss the two decisions of Supreme Court. In the case of National Insurance Company the fact of the case was that the policy was issued on 28th October, 1988 and it was valid upto 27.10.1989. The new Act came into force on 1.7.1989 and the accident occurred on 4th September, 1989, after new Act came into force. On these facts the Supreme Court after considering the provisions of Section 147 of the new Act came to the conclusion that the Insurance Company will be liable to meet the entire liability and not only liability limited u/s 95(2) of the old Act. Their lordship after considering the relevant provisions of the new Act held as under ;

"From the above discussion, it follows that the proviso to Sub-section (2) of Section 147 does not limit the limit of liability of Insurance Companies to payment of compensation to the extent specified in the policy of Insurance in terms of Section 95(2) of the old Act which is in force before the commencement of the new Act for a period of four months after commencement of the new Act or till the date of expiry of such a policy, whichever is earlier. In this view of the matter, we endorse the view taken by the Division Bench of the Kacharabhai L. Limbachia Vs. Ratansinh J. Rathod-Patel and Others, and by the Division Bench of the Punjab and Haryana High Court in National Insurance Company Limited Vs. Puja Roller Flour Mills (Pvt.) Ltd. and Others, ."

4. In the case of New India Assurance Company Ltd.-v, C.M. Jaya (supra) upon which Mr. Allam put reliance, since there was some conflict in the two decisions

of the Supreme Court *New India Assurance Co. Ltd. Vs. Smt. Shanti Bai and others, and Amrit Lal Sood and Another Vs. Smt. Kaushalya Devi Thapar and Others*, on the question, "whether in case of insurance policy was not taking any higher liability by accepting a higher premium, the insurer would be liable to the extent limited u/s 95(2) or would be liable to pay entire amount," was referred to the Constitution Bench for decision. The Constitution Bench held that in cases the Insurance Company did not take any higher liability by accepting higher premium for payment of compensation to third party the insurer would not be liable to pay the entire amount in excess of the limit provided u/s 95(2) of the old Act. The facts of the case before the Constitution Bench was quite different. The Constitution Bench was not considering as to whether in case where accident occurs after coming into force of the new Act of 1988 and before expiry of the Policy which was to expire within four months from the date of enforcement of the new Act, what would be the liability of the Insurance Company. I, therefore, fully subscribe the view taken by my learned brother that the ratio decided by the Constitution Bench of the Supreme Court is not applicable rather the ratio decided in the *National Insurance Company's* case is directly applicable in the facts of the present case. It is well settled principles of law enunciated by the Supreme Court with regard to binding precedence of a decision. Their lordships held that the decision is only an authority for what it actually decided. Every judgment must be read as applicable to the particular facts proved and it is only principle laid down in the judgment with the binding of law under Article 141 of the Constitution of India. Their Lordships observed :

"A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because of the decision is its ratio and not every observation found therein."

5. Their Lordships further observed : "Therefore, in order to understand and appreciate the binding force of a decision it is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be decided. No judgment can be read as if it is a statute. A word or a clause or a sentence in the judgment cannot be read as a full exposition of law. Law cannot afford to be static and, therefore, Judges are to employ an intelligently technique in the use of precedence."

6. Taking into consideration the ratio decided by the Supreme Court and the law discussed hereinabove I agree with my learned brother that there is no merit in this appeal which is, accordingly, dismissed.