
(1997) 07 DEL CK 0066

In the Delhi High Court

Case No : Civil Miscellaneous Appeal No. 546 of 1996 and Letters Patent Appeal No. 100 of 1985

Orissa Co-operative Insurance Society Ltd.

APPELLANT

Vs

Santosh Gupta

RESPONDENT

Date of Decision : 28-07-1997

Acts Referred:

Motor Vehicles Act, 1939 — Section 95

Citation : (1997) 2 ACC 276 : (1998) ACJ 757 : (1997) 4 AD 729 : (1998) 2 CivCC 128 : (1997) 68 DLT 204 : (1998) 44 DRJ 230 : (1998) 1 ILR Delhi 54 : (1997) 117 PLR 32 : (1997) 4 RCR(Civil) 632 : (1997) RLR 502

Hon'ble Judges : S.K. Mahajan, J;Mahinder Narain, J

Bench : Division Bench

Advocate : B.R. Sabharwal, Y.D. Nagar, O.P. Goyal and Meenakshi Singh, for the Appellant;

Judgement

S.K. Mahajan, J.

(1) Being aggrieved by the judgment of the Hon''ble Single Judge holding the insurance company to be liable to pay compensation to the legal heirs of the deceased, who was a gratuitous passenger in the car involved in the accident, the appellant has filed this Letters Patent Appeal mainly on the ground that the insurance company with which the car is comprehensively insured, is not liable to make payment of compensation in case of death of or bodily injury to a gratuitous passenger in the car.

(2) Before we deal with the respective contentions of the parties, we may give some relevant facts which have given rise to this Appeal.

(3) An Ambassador car bearing No.DLJ-3675 owned by respondent No.8 was comprehensively insured under a policy of insurance with the appellant company. On 5th May, 1971 at about 4.45 p.m. when the car was being driven in a reckless and negligent manner by respondent No.7, Kartar Singh, it met with an accident and dashed against a tree away from the road. As a result of the accident one

Sh. Manohar Lal Gupta, who was sitting on the rear seat of the car, received injuries. After the accident Sh. Manohar Lal Gupta along with other injured was taken to the Najafgarh Public Health Centre where he was declared dead.

(4) Respondents 1 to 6 being the heirs of the deceased Sh. Manohar Lal Gupta filed a petition for compensation u/s 110-A of the Motor Vehicles Act before the Motor Accident Claims Tribunal. Notice of the application was also issued to the appellant - insurance company. The Motor Accident Claims Tribunal (in short referred to as "the Tribunal") on the assessment of the evidence on record held that respondent No.7 was driving the car in a rash and negligent manner resulting in accident in which Sh. Manohar Lal Gupta was killed. It further held that the claimants, respondents 1 to 6, were entitled to the award of compensation amounting to Rs.64,260.00 . The Tribunal, however, did not award interest on the said amount from the date of filing of the application for compensation and it also held that the insurance company, was not liable to pay compensation on the death of a gratuitous passenger of a car and, Therefore, directed respondents 7 and 8 to make payment of the compensation awarded in favor of respondents 1 to 6.

(5) Not satisfied with the award of the Tribunal, the owner, respondent No.8, filed an appeal in this Court. The claimants, respondents 1 to 6, also filed cross-objections complaining about the inadequacy of compensation and also non award of the interest by the Tribunal. Appeal and cross-objections were heard by the Hon''ble single Judge of this Court and by judgment dated 10th April, 1985 it was held by the Hon''ble single Judge that the insurance company cannot avoid its liability to pay compensation to the claimants. It was held that the policy being a comprehensive policy and the company having undertaken to cover the risk to "any person" it must be held that the occupants/passengers in the car were also covered by the policy being third parties to the contract of insurance. The Hon''ble single Judge, Therefore, directed the insurance company to pay the entire amount of compensation awarded by the Tribunal. The appeal of respondent No.8 was, accordingly, allowed.

(6) On the question of interest, Hon''ble the single Judge directed the claimants to be paid interest at the rate of 9 per cent per annum from the date of the application.

(7) Being aggrieved by the judgment of Hon''ble the single Judge, allowing the appeal of respondent No.8 and cross-objections of the claimants, respondents 1 to 6, the insurance company has filed this Letters Patent Appeal. Notice of this appeal having been issued, the claimants filed cross-objections being CM.No.546/96 claiming enhancement of compensation to Rs.3,50,000.00 and interest at the rate of 12% p.a. from the date of the application.

(8) By this order we propose to dispose of both the Letters Patent Appeal filed by the insurance company as well as the cross-objections filed by the claimants, respondents 1 to 6. During the course of arguments Mr. O. P. Goyal, learned

counsel for the claimants has, however, not pressed his claim for enhancement of compensation and has restricted his arguments to the award of interest at the rate of 12% p.a. from the date of the application.

(9) The main contention raised by Mr. Sabharwal, learned counsel for the appellant is that in view of the provisions of Sections 95(a) & 95(b)(i) of the Motor Vehicles Act, 1939, the policy of insurance does not cover the liability in respect of the death of or bodily injury to a gratuitous person being carried in the vehicle at the time of the occurrence of the event out of which the claim arises. In support of his contention he placed reliance upon the judgment reported as Pushpabai Purshottam Udeshi and Others Vs. Ranjit Ginning and Pressing Co. (P) Ltd. and Another, where a Division Bench of the Supreme Court had held as under :-

"AS Section 95 of the Motor Vehicles Act, 1939 as amended by Act 56 of 1969 is based on the English Act it is useful to refer to that. Neither the Road Traffic Act, 1960 or the earlier 1930 Act required users of motor vehicles to be insured in respect of liability for death or bodily injury to passengers in the vehicle being used except a vehicle in which passengers were carried for hire or reward or by reason of or in pursuance of a contract of employment. In fact, sub-section 203(4) of the 1960 Act provided that the policy shall not be required to cover liability in respect of death of or bodily injury to persons being carried in or upon, or entering or getting on to or alighting from, the vehicle at the time of the occurrence of the event out of which the claims arise."

(10) We have given our thoughtful consideration to the arguments advanced by Mr. Sabharwal but we are not able to persuade ourselves to agree with him. The Supreme Court in Pushpabai Parshottam Udeshi's case was concerned with two questions, namely, 1) whether the accident was caused due to the rash and negligent driving of the manager of the company; and 2) whether the accident took place during the course of the employment of the driver? After the Court decided these two questions, a notice was sent to the insurance company u/s 96(2) of the Motor Vehicles Act. On receipt of notice from the Court, it was submitted on behalf of the insurance company "that the scope of the Statutory Insurance does not cover the injuries suffered by the passenger and as the owner has specifically insured under the insurance policy the risk to passengers to the extent of Rs.15,000.00 only, the liability of the insurance company should be limited to Rs.15,000.00 ." It was in this context that the Supreme Court while pronouncing the judgment held that "on a construction of the insurance policy we accept the plea of the insurance company that the policy had insured the owner only to the extent of Rs.15,000.00 regarding the injury to the passenger. In the result we hold that the liability of the insurance company is restricted to Rs.15,000.00 ." The Court in that case was considering the scope of Statutory Insurance and being only concerned with the quantum of compensation to be paid in view of the policy of insurance. Policy in the present case is a comprehensive policy and not a statutory policy u/s 95 of the Act and, Therefore,

in our view, the appellant cannot take any advantage of the above referred observations of the Supreme Court in Pushpabai Parshottam Udeshi's case. Moreover, we find that the recommendations of the Tariff Advisory Committee as well as the earlier larger Bench judgment of the Supreme Court in New Asiatic Insurance Co. Ltd. Vs. Pessumal Dhanamal Aswani and Others, was not brought to its notice in Pushpabai Parshottam Udeshi's case. The judgment in New Asiatic Insurance Co. Ltd.'s case is by three Hon"ble Judges of the Supreme Court whereas the judgment in Pushpabai Parshottam Udeshi's case is given by two Hon"ble Judges of the Supreme Court.

(11) Before we deal with the judgment of the Supreme Court in New Asiatic Insurance Co.Ltd., we would like to refer to the recommendations of the Tariff Advisory Committee. Tariff Advisory Committee, a statutory body, issues instructions from time to time in respect of the liability of the insurance company under the policy of insurance. Tariff is also fixed on the recommendations of the Tariff Advisory Committee and tariff is fixed after taking into consideration the liability of the insurance company with respect not only to the damage to the vehicle but also compensation which the company may have to pay to third parties including passengers. Immediately after the judgment of the Supreme Court in Pushpabai Parshottam Udeshi's case the Tariff Advisory Committee issued a circular dated 13th March, 1978 informing the insurance companies that the intention of the Tariff Advisory Committee was clear that the comprehensive private car policy covers passengers liability. The Tariff Advisory Committee's circular dated 13th March, 1978 reads as under :-

"Insurers are informed that in order to make the intention clear that the Comprehensive Private Car Policy covers passengers liability, the Tariff Advisory Committee have decided to amend Clause 1(a) of Section II, Private Car Policies by incorporating the following wording after the words "death of or bodily injury to any person" appearing on Sheet 38 of India Motor Tariffs :-

"INCLUDING occupants carried in the Motor Car provided that such occupants are not carried for hire or reward."

INSURERS are also advised that all existing policies should be deemed to incorporate this amendment automatically and the above decision is brought into force with effect from 25th March, 1977.

INSURERS are, Therefore, requested to make necessary amendments in their copies of the Tariffs pending reprinting of the relevant Tariff Sheet. sd/- Y. J. Desai Regional Secretary"

(12) Though this circular has been issued on 13th March, 1978 but it makes it clear that the intention of the Tariff Advisory Committee had always been to include the liability of the insurance company in case of death or bodily injury to the passengers in the car under a Comprehensive Insurance POLICY. In our view, Therefore, the insurance company cannot take protection under the judgment of the Supreme Court in Pushpabai Parshottam Udeshi's case to contend that a

gratuitous passenger in the car is not covered by the policy of insurance.

(13) Irrespective of the recommendations of the Tariff Advisory Committee mentioned above, we feel that the contract of insurance itself indicates that the risk of the passengers was covered by the policy. u/s II of the contract of insurance, the company has agreed to indemnify the insured in the event of accident caused by or arising out of the use of the Motor Car against all sums including claimant's costs and expenses which the insured shall become legally liable to pay in respect of death of or bodily injury to any person but except so far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act 1939 the Company shall not be liable where such death or injury arises out of and in the course of employment of such person by the Insured.

(14) In our view, the words "death or bodily injury to any person" appearing u/s II(i)(a) of the contract of the insurance will include a gratuitous passenger in the car. We had not been able to find anything in Section 95 of the Motor Vehicles Act which may exclude the liability of the insurance company in case of death of or bodily injury to a gratuitous passenger. The view which we are taking is fully supported by the judgment of the Supreme Court in *New Asiatic Insurance Co. Ltd.*'s case. In the said judgment the facts were that one S. N. Asnani insured his Chevrolet Car with the New Asiatic Insurance Company Limited. S. N. Asnani permitted Pesumal Dhanamal Aswani to drive that car. When Pesumal Dhanamal was driving that car with Daooji Radhamohan Meherotra and Murli Dholandas sitting in the car, the car met with an accident as a result of which Meherotra died and Murli received injuries. The heirs of Meherotra instituted a suit against Pesumal for recovery of Rs.2,50,000.00 by way of damages and interest. Murli instituted another suit against Pesumal to recover Rs.1,50,000.00 by way of damages. Notice u/s 96 of the Motor Vehicles Act was issued to the insurance company as the liability of the owner of the vehicle was insured with the company under a policy of insurance. The policy was a private car comprehensive policy. Section II of the policy of insurance was exactly similar to Section II of the policy in the case before us. After hearing the parties, Hon'ble the Supreme Court observed in paragraph 16 as under :-

"SUB-SECTION(5) of S.95 makes the insurer liable to indemnify the person or classes of person specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons. If the policy covers the insured for his liability to third parties, the insurer is bound to indemnify the person or classes of person specified in the policy. The same is the effect of sub-s.(1) of S.96 which provides that the insurer is bound to pay to the person entitled to the benefit of a decree he obtains in respect of any liability covered by the terms of the policy against any person insured by the policy irrespective of the fact whether the insurer was entitled to avoid or cancel or might have avoided or cancelled the policy. This means that once the insurer has issued a certificate of insurance in accordance with sub-s.(4) of S.95 he has to satisfy any decree which a person receiving injuries from the use of the vehicle

insured obtains against any person insured by the policy. He is however liable to satisfy the decree only when he has been served with a notice under sub-s.(2) of S.96 about the proceedings in which the judgment was delivered. It is for this reason that a notice under sub-section (2) of S.96 was issued to the company and it is on account of the consequential liability in case the plaintiffs' claim is decreed against Pesumal that the appellant challenged the correctness of the allegation that Pesumal was a person insured under the policy issued by it in respect of the Chevrolet car. It follows from a consideration of these various provisions of the Act -- and this is not really disputed for the appellant -- that if under the terms of the policy Pesumal can be said to be the person insured under para 3, the company would be liable to satisfy the decree if any passed against Pesumal."

(15) It is clear from the observations of the Supreme Court in *New Asiatic Insurance Co. Ltd.*'s case that it had never been in dispute before the Supreme Court that a passenger in the car was a third party and in case of death of or bodily injury to the said passenger the insurance company was liable to satisfy the decree that might be passed against the owner of the vehicle. Mr. Sabharwal has not shown us any condition in the Policy of Insurance under which the insurance company could avoid its liability to pay to respondents 1 to 6, who were the heirs of the deceased sitting in the car at the time of the accident. In our view, unless the insurance company has specifically agreed with the owner of the vehicle to avoid its liability in respect of a passenger in the car, the liability of the insurance company to pay in case of death of the said passenger is absolute and it cannot escape its liability by taking shelter under the provisions of Section 95 of the Act.

(16) Chapter VIII of the Act makes provision for insurance of the vehicle against third party risks, that is to say, its provisions ensure that the third parties who suffer on account of the user of the motor vehicle would be able to get damage for injuries suffered and that their ability to get the damages will not be dependent on the financial condition of the driver or owner of the vehicle whose user led to the causing of the injuries. The provisions have to be construed in such a manner as to ensure this object of the enactment. In our view, the stand taken by the insurance company is wholly unreasonable.

(17) MR.B.R.SABHARWAL also tried to challenge judgment of Hon"ble the Single Judge on the ground that the amount awarded was excessive. In our view, u/s 96(2) of the Motor Vehicles Act 1939 an insurance company has a right to defend an action only on the grounds contained in Section 96(2) of the Act. Section 96(2) of the Act reads as under :-

"NO sum shall be payable by an insurer under sub-section (I) 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 organized 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 license 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."

(18) Supreme Court in British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others, has held 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 S.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 content necessarily depends on the provisions of the statute. Sub-Section (2) clearly provides that an insurer made a defendant to the action is not entitled to take any defense which is not specified in it. When the grounds of defense have been specified, they cannot be added to. The only manner of avoiding liability provided for in sub- Section (2) is through the defenses therein mentioned. Therefore, when sub-Section (6) talks of avoiding liability in the manner provided in sub-Section (2), it necessarily refers to these defenses." It

was further held by the Supreme Court that even "if he has been made to pay something which on the contract of the policy he was not bound to pay, he can under the proviso to sub-Section (3) and under sub-Section (4) recover it from the assured. It was said that the assured might be a man of straw and the insurer might not be able to recover anything from him. But the answer to that is that it is the insurer's bad luck. In such circumstances the injured person also would not have been able to recover the damages suffered by him from the assured, the person causing the injuries. The loss had to fall on some one and the statute has thought fit that it shall be borne by the insurer. That also seems to us to be equitable for the loss falls on the insurer in the course of his carrying on his business, a business out of which he makes profit, and he could so arrange his business that in the net result he would never suffer a loss. On the other hand, if the loss fell on the injured person, it would be due to no fault of his; it would have been a loss suffered by him arising out of an incident in the happening of which he had no hand at all."

(19) In view of the above observations of the Supreme Court, the appellant, insurance company, in our view, cannot challenge the quantum of compensation awarded in favor of the claimants.

(20) For the foregoing reasons, we see no merits in the appeal and the same is, accordingly, dismissed. CM.No.546/96 (Cross-objections)

(21) It has been argued by Mr. Goyal that the claimants ought to have been awarded interest at the rate of 12% p.a. He has referred to the judgment of the Supreme Court reported as Urmilla Pandey and others Vs. Khalil Ahmad and others, , where the claimants were awarded interest at the rate of 12% p.a. from the date of the application before the Tribunal and in case the amount was not paid within three months, the insurance company was directed to make payment at the rate of 18% p.a. In Rukmani Devi and Others Vs. Om Prakash and Others, , again interest has been awarded at the rate of 15% p.a. from the date of the application before the Tribunal by the Supreme Court.

(22) In view of the above judgments of the Supreme Court, we are of the view that the claimants are entitled to interest at the rate of 12% p.a. from the date of the application before the Tribunal. We, Therefore, allow these cross-objections and direct the payment of interest at the rate of 12% p.a. from the date of the application before the Tribunal till the date of its payment.

(23) Both the Letters Patent Appeal and the cross-objections are, accordingly, disposed of and in the circumstances of the case we leave the parties to bear their own costs.