

---

**(2009) 07 RAJ CK 0051**  
**In the Rajasthan High Court**

Ram Lal

APPELLANT

Vs

Sajjan Raj and Others

RESPONDENT

---

**Date of Decision :** 13-07-2009

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 140, 147, 149

**Citation :** (2009) 3 WLN 374

**Hon'ble Judges :** N.P. Gupta, J

**Bench :** Single Bench

**Final Decision :** Dismissed

---

## Judgement

N.P. Gupta, J.—This appeal has been filed by the owner against the award of the Motor Accident Claims Tribunal, Pali dt. 20.09.1995, passed in Claim Case No. 120/89 awarding the compensation of Rs. 68,625/- for personal injuries to the claimant, and holding the insurer liable to the extent of Rs. 15,000/-, and fastening the remaining liability on the owner and driver.

2. The necessary facts are, that the claimant respondent Sajjan Raj along with the deceased friend Kamlesh Kumar was travelling in Jeep No. RRT-6945, which jeep met with an accident near village Balrai, on account of negligent driving of the jeep by driver Devendra Kumar, as a result of which the driver lost balance, and the jeep hit against the Neem tree, and then overturned. Sajjan Raj received injury and Kamlesh Kumar died. With these averments claim petition had been filed claiming compensation in the sum of Rs. 1,27,500/-. In para-10 of the claim petition the present respondent No. 3 who was impleaded as defendant No. 3 in the claim petition was pleaded to have issued insurance cover on 28.04.1989. The insurer admitted the vehicle to be insured with it. However, the claim as such was denied on various grounds. Then, in additional pleas it was contended, that the driver was not having valid driving license, the company complies with the provisions of Sections 147 and 149 of the Motor Vehicles Act, and is entitled to contest the claim according to the terms of the policy.

3. The learned trial Court framed various issues. Issue No. 1 related to negligence, and the claimant receiving injuries. Issue No. 2 was about ownership and insurance of the jeep, and issue No. 3 was as to whether the claimant is entitled to get compensation of Rs. 1,27,500/-, or any other amount. Then, issue No. 4 was about driver having valid licence. Learned trial Court decided issues in favour of the claimants. However, while deciding issue No. 3, it found the claimants entitled to Rs. 68,625/-. Then, the Tribunal went on examining the question of liability of the insurer, as it was contended by the insurer that its liability is limited to Rs. 15,000/-, and reliance was placed on the judgment of the Hon'ble Supreme Court in National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, The learned Tribunal held, that since the accident occurred on 12.05.1989 undisputedly the question is to be decided on the basis of law laid down by the Hon'ble Supreme Court, as to whether the liability is unlimited, or statutory liability prescribed u/s 95(2), and in case statutory liability is sought to be distinguished to be beyond the limits prescribed in Section 95(2), the specific contract is required to be there between insurer and the owner, and for that premium should have been paid separately. It was contended before the learned Tribunal, that since in the reply no pleading has been raised by the insurer, about liability of insurer being limited objection cannot be allowed to be raised. In this regard it was held by the learned Tribunal, that it is a legal plea, which was not required to be pleaded. Then, in para-16 of the reply the insurer has referred to Section 140 of the Motor Vehicles Act which was not in force on the date of accident. Then, reliance was placed on the judgment of Hon'ble Madhya Pradesh High Court in United India Fire and General Insurance Co. Ltd. v. Natwarlal reported in 1988 A.C.J. 956 (M.P.), and that of Jammu & Kashmir High Court in New India Assurance Co. Vs. Hurmat Begum and Others, Then, the evidence of N.A.W. 2 Anand Sharma, produced by the insurer, was considered, who had proved the certified copy of the insurance policy. He deposed that for third party liability maximum limit was Rs. 50,000/-, and for passenger it is upto Rs. 15,000/- upto six passengers in the maximum. It was admitted that it is a comprehensive policy. He has deposed, that the original policy goes to the insured, and only second copy remains with them. On being confronted with the policy, he admitted that in another file by clerical mistake endorsement about liability did not come to be mentioned in the policy produced in the another file, but in the present file there is a schedule of premium, which is the same in both the files, wherein Rs. 72/- has been charged as premium for six passengers, @ Rs. 12/- per passenger, and Rs. 8 have been charged for insurance of driver/cleaner, and since there is no doubt or discrepancy regarding schedule of premium in both the files, relying on the judgment of the Hon'ble Supreme Court in New India Insurance Co. v. Smt. Shanti Bai reported in 1995 DNJ (SC) 106, wherein contention about charge of extra premium in the policy was found to be an error, it was held that according to tariff prevalent, premium of Rs. 12/- per passenger was for the statutory liability upto Rs. 15,000/-, and for unlimited liability the premium of Rs. 50/- was to be paid. In that case the premium paid was Rs. 12/- per passenger, and relying upon the judgment in National Insurance

Co. Ltd. v. Jugal Kishore, limit of liability was held to be Rs. 15,000/-. It was found, that in the present case also premium of Rs. 12/- per passenger has been charged, which clearly shows that liability of insurance was limited. Various other judgments, apart from the judgments referred to above were considered, and it was held, that the insurer is liable to the extent of Rs. 15,000/- only. From the above recitals of the judgments it appears, that two claim petitions were filed, arising out of the same accident. Other one appears to be for compensation in regard to death of Kamlesh Kumar.

4. Learned Counsel for the insurer at the opening of the arguments relied upon and referred to the judgment of this Court in Ram Lal v. Hasti Mal reported in 2005 R.A.R. 410 (Raj.) passed in C.M.A. 398 of 1996 decided on 04.10.2004, and submitted, that that was the appeal filed by the present owner, against the award passed by the learned Tribunal in other case, being that of compensation on account of death of Kamlesh Kumar. He also submitted, that in that case also the question of limit of liability was also raised in this Court, and this Court in para-5 negated the contention of the present appellant, who was represented in that appeal also by the same learned Counsel, and held that the insurance company is liable to pay the compensation to the extent of Rs. 15,000/- only, and the appeal was dismissed.

5. However, arguing the appeal it was not disputed by the learned Counsel for the appellant, that two claim petitions were filed arising out of the same accident, and that the judgment rendered in Civil Misc. Appeal 398 of 1996 Ram Lal v. Hasti Mal relates to this very accident, but then, it was submitted, that the two claim petitions were not consolidated, as such, the case has to be decided on the basis of material available on record of each particular case, and since the material in two cases is different, the judgment dt. 04.10.2004 cannot have the effect of non-suiting the appellant.

6. Since much was sought to be contended on the basis of the statement of N.A.W. 2 Anand Sharma, and by referring to cross examination, wherein it was mentioned, that it is correct that in policy Ex. N.A.1/3 produced in Claim No. 103 it is not mentioned, about the total liability of Rs. 50,000/-, and individual liability per passenger to be Rs. 15,000/-, but then it is mentioned that the policy is under Chapter VII-A, and 1 of the Motor Vehicles Act, 1939, and that it is correct that Claim No. 103 Hasti Mal v. Devendra Kumar, and Claim No. 120; Sajjan Raj v. Devendra Kumar which relate to same jeep No. 6945, and duration of insurance is 28.04.1989 to 27.04.1990, but there is some difference in the contents of both, inasmuch as in Case No. 103 specific difference of liability is not mentioned, while it is so mentioned in Claim No. 120.

7. Looking to the controversy raised, before completing dictation of judgment I thought it appropriate to call from the Registry the file of Hasti Mal's case, being C.M.A. No. 398/1996 decided on 04.10.2004, and fortunately when the file was received by me, original record of the trial Court was also tagged with that file. Thus, I had the privilege to peruse both the records.

8. From perusal of the record, the startling thing that transpired was, that though the two claim petitions were not consolidated, but then the present claimant Sajjan Raj, who was examined in the present case as A.W.1 on 20.01.1994, was also examined in Hasti Mal's case also as A.W. 4, and on the same date being 20.01.1994. Not only this, a collective perusal of the statements of the two files does show, that the statement in Hasti Mal's case is carbon copy of the statement available in the present case as A.W.1 and A.W.4 and Case No. 103/89 and 120/89, is put by mentioning the numerical figures by hand only. The statement in the present case is available at page B 17/1 to B 17/4, while in Hasti Mal's case it is available at page B 25/1 to B 25/4. Similarly the present appellant Ram Lal has also been examined in both the cases on the same date being 26.08.1994, and this time the original statement is in the File No. 103 of Hasti Mal, and the carbon copy is in the present appeal file, and in both the cases he was examined as N.A.W. 1 only. The figures representing case No. being "120" and "103" have been inserted by hand. The statement in the present case is available at page B 18/1 to B 18/2 while in Hasti Mal's case it is available at page B 26/1 to B 26/2. Then, coming to the statement of Anand Sharma again, his statement in original is available in original of file No. 103, and the statement in the present case is only carbon copy, and figure representing case number is mentioned separately. The statement in the present case is available at page B 18/3 to B 18/4 while in Hasti Mal's case it is available at page B 26/3 to B-26/4.

9. Significantly, in the file of the present case, in the order sheet dt. 20.01.1994 this fact has been specifically mentioned, that with the consent of the lawyers, one copy of the statement was kept in the present case, which shall be read in evidence. Then, again in the order sheet dt. 26.08.1994 also this fact is mentioned.

10. This sequence of things, in my view, so far the factual controversy sought to be raised before me is concerned, eliminates any consequence of non consolidation of two cases.

11. Then, irrespective of whatever might have stated from the mouth of N.A.W. 2 Anand Sharma in cross examination, what I find is, that the insurance policy, as produced in both the case is same, except that in the present case the entire policy has been produced, while in Hasti Mal's case only part of it was produced, comprising of schedule of premium. But then, since the policy is the same, the distinction sought to be drawn by the learned Counsel for the appellant, in my view, is simply non-est. The section about limit of liability in the present policy stipulates it to be as is necessary to meet the requirements of Section 95.

12. This being the position, in my view, the distinction drawn by the learned Counsel for the appellant cannot be accepted as a distinction.

13. Then, learned Counsel for the appellant relied upon the judgment of the Hon'ble Supreme Court in Tejinder Singh Gujral v. Inderjit Singh reported in 2007 ACJ 37 specially para-13. I may gainfully quote para-13 which reads as

under:

13. The learned Tribunal, however, committed an error in opining that the insurance policy was not required to be proved. Learned single Judge of the High Court, in our opinion, rightly held that the insurance policy having not brought on record, a presumption would arise that the liability of the insurer was unlimited....

14. True it is that this is judgment of the Hon"ble Supreme Court, and is required to be respected with utmost deference at my command. However, the predicament is, that this judgment does not notice all previous judgments of the Hon"ble Supreme Court, in Jugal Kishore's case, Shanti Bai's case, which (Shanti Bai's case is a judgment rendered by a Bench comprising of three Hon"ble Judges, and follows the judgment in Jugal Kishore's case, and this judgment has then been approved by the constitutional Bench of Hon"ble the Supreme Court, in New India Assurance Co. Ltd. Vs. C.M. Jaya and Others, and also subsequent judgment of the Hon"ble Supreme Court in National Insurance Co. Ltd. Vs. Keshav Bahadur and Others, which also in turn follows the judgments in Jugal Kishore's case, Shanti Bai's case and C.M. Jaya's case. In view of the fact that the judgment in Tejinder Singh Gujral's case runs contrary to the constitutional Bench judgment in C.M. Jaya's case, has been rendered by a bench comprising of two Hon"ble Judges only, and has been rendered without considering that judgment, I am bound by the judgment in C.M. Jaya's case rendered by the Constitutional Bench. It may also be noticed here, that the judgment rendered by this Court on 04.10.2004, has also been rendered by following C.M. Jaya's case.

15. The net result of the aforesaid discussion is, that the present appeal is devoid of any force, and the same is, therefore, dismissed. Parties shall bear their own costs.