**(1981) 09 AHC CK 0070**

**In the Allahabad High Court**

**Case No :** F.A.F.O. No. 194 of 1973

Satnam APPELLANT

Vs

Smt. Surendra Kaur and Others RESPONDENT

**Date of Decision :** 04-09-1981

**Acts Referred:**
Motor Vehicles Act, 1939 — Section 95, 96(4)

**Citation :** (1982) ACJ 235 : (1981) AWC 798

**Hon'ble Judges :** K.N. Singh, J;B.N. Sapru, J

**Bench :** Division Bench

**Advocate :** Gur Pratap Singh, for the Appellant; S.M. Dayal, A.K. Saxena and Sarbjeet Singh, for the Respondent

**Final Decision :** Allowed

## Judgement

B.N. Sapru, J.—One Sardar Kuldeep Singh who was found to be the owner of truck No. UPG 2422, was going in his truck from Allahabad to Kanpur. At about 12 in the night on 23-4-1970 his truck reached village Bakandha. It was stopped there so that some bags of onion could be loaded on the truck. It was found that the truck was parked on the left side of the road on kuchcha pavement. Sardar Kuldeep Singh was on the kachcha pavement when truck No. UP 7509 owned by the Appellant Satnam and insured with the Respondent No. 6, Northern India General Insurance Company Limited, came from behind and the truck has been found to have crushed Sardar Kuldeep Singh. It had also been found that truck No. UP 7509 driven by Raj Bahadur Singh was being driven in a rash and negligent manner. After crushing Sardar Kuldip Singh, the truck hit truck No. UPG 2422 and pushed it further about 20 feet towards west.

2. Because of the accident the legal representatives of the deceased filed a claim petition before the Motor Accident Claims Tribunal.

3. The claim petition has been decreed in the amount of Rs. 40,000/-. The Tribunal ordered half the amount awarded, namely Rs. 20,000/-, should be paid

by the Appellant and the balance by the Northern India General Insurance Company Limited, the Respondent No. 6.

4. Aggrieved by the order of the Tribunal, Satnam has filed this appeal.

5. The only argument advanced on behalf of the Appellant is that the Tribunal erred in holding that the Insurance Company was liable to pay only half of the amount of compensation, namely Rs. 20,000/-. It is urged that the entire amount should be payable by the Insurance Company.

6. The only question in this case is whether or not the Insurance Company should also be liable to pay the entire amount of compensation awarded.

7. The insurance policy was obtained on 15-6-69. The accident, as mentioned above, took place on 23-4-70. Before the accident took place and during the pendency of the insurance policy, the Motor Vehicles (Amendment) Act, (Act No. 56 of 1969), came into force on 2-3-1970. The Tribunal was of the view that as the insurance policy was issued at a time when the statutory liability of the Insurance Company was only Rs. 20,000/-, a liability greater than that figure could not be fastened on the Insurance Company.

8. The question of liability of the Insurance Company in similar circumstances has come before the courts in a number of cases. The learned Counsel for the Appellant has referred to a Full Bench decision of the Karnataka High Court in the case of S. Sanjiva Shetty Vs. Anantha and Others, wherein it was observed that by virtue of Section 96(4) of the Motor Vehicles Act the liability of the insurer to the person entitled to compensation is imposed statutorily. The Full Bench went on to observe in paragraph 9 of its judgment as follows :

Dissenting from the view expressed in The Premier Insurance Co. Ltd. Vs. Padma Srinivasan, we hold that the material date for ascertaining the extent of liability of the insurer is the date of the accrual of the cause of action for a claim arising out of an accident, which in general would be the date of claim arising and so in respect of a claim arising out of an accident on or after 2-3-70 the extent of the pecuniary limit of liability of the insurer is to be determined on the basis of the provisions of Section 95, as at that date and in the instant case the higher limit provided by Section 95 as amended with effect from 2-3-70 is attracted.

9. We are in respectful agreement with the view of the Karnataka High Court. A similar view was taken in the case of Maheshwari Transport Company and Another Vs. Pritam Kaur and Others, .

10. We, therefore, hold that the Insurance Company, the Respondent No. 6, was also jointly liable to pay Rs. 40,000/- along with the Appellant Satnam.

11. In the result, the appeal is partly allowed and the order of the Motor Accident Claims Tribunal is modified to the extent that the sum of Rs. 40,000/-shall be payable both-the Appellant Satnam and the Respondent No. 6, Northern India General Insurance Company Limited. The Appellant is entitled to his costs from

 

the Respondent No. 6.

 