

---

**(1985) 04 AHC CK 0039**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 3017 of 1984

Sheo Prasad Tewari

APPELLANT

Vs

District Judge, Fatehpur and Others

RESPONDENT

---

**Date of Decision :** 10-04-1985

**Acts Referred:**

Motor Vehicles Act, 1939 — Section 96(2)

**Citation :** AIR 1985 All 354 : (1985) AWC 570 : (1987) 62 CompCas 536

**Hon'ble Judges :** B.D. Agrawal, J

**Bench :** Single Bench

**Advocate :** S.N. Agarwal, for the Appellant;

**Final Decision :** Partly Allowed

---

## **Judgement**

B.D. Agrawal, J.—Heard learned counsel for the parties.

2. An accident took place on 19-10-1982 involving a Bus owned by the petitioner and leading to the death of Ajaipal Singh, the husband of respondent 3. A claim petition was filed by the respondent 3 before Motor Vehicles Accident Claims Tribunal (District judge, Fatehpur). This proceeded ex parte since the petitioner, who alone was impleaded as the opposite party to the claim petition, did not put in appearance. The award was given on 29-8-1983 giving a sum of Rs. 31,000/- to respondent 3. When the award was sought to be enforced, the petitioner put in an application to the effect that the amount be recovered from New India Assurance Co. Ltd. Respondent 2, on the plea that the Bus in question stood insured with respondent 2 on the relevant date. This plea was rejected by the Tribunal summarily under the impugned order dt. 15-2-1984 with the observation that it appears that the Insurance Policy relied by the petitioner was for the period of June 5, 1982 to June 4, 1983 and that did not cover the date when the accident took place. Aggrieved against this rejection, the petitioner has approached this Court.

3. Learned counsel for the petitioner has referred to the Insurance Policy issued

to him by respondent 2 covering the period June 5, 1982 to June 4, 1983. It has been submitted that subsequently this policy was renewed on June 1, 1983 for the period subsequent thereto. It seems the attention of the Tribunal was not drawn to the Insurance Policy which covers the period when the accident took place, viz. 19-10-1982 and was also renewed. There being the policy intact for the period 5th June, 1982 to 4th June, 1983 it cannot be said that there was no insurance for the relevant period.

4. With the consent of learned counsel for the parties, the petition is being disposed of at the preliminary stage.

5. For respondent 2 it is submitted that since respondent 2 was not impleaded as party to the claim petition, they did not have opportunity to raise the defences permissible u/s 96(2), Motor Vehicles Act, and they being necessary party their non-impleadment at the stage preceding the giving of the award makes the award unenforceable, especially since there was no notice given to them before the award was made. In my opinion a careful perusal of the provisions contained in Section 96 does not support this contention.

6. From Sub-section (1), Section 96, it will appear that the general provision made is that the liability of the insurer is on the footing as if they were the judgment-debtor in the award, meaning thereby that the provision creates a legal fiction whereby the Insurance Company is placed at par with the person actually impleaded as party and against whom the award has been given. This Sub-section is, however, made expressly subject to other provisions contained in the section. Therefore, we have now to turn to other Sub-sections. Sub-section (2) is relevant. According to this subsection no sum shall be payable by an insurer under Sub-section (1) in respect of any judgment unless before or after commencement of the proceedings in which the judgment is given the insurer had notice through the Court of the bringing up of the proceedings or in respect of any judgment so long as the execution is stayed thereof, pending an appeal. The subsection then provides the defences which the insurer may raise upon such notice being given to them. The contention for the respondent is that in accordance with this provision the notice has to be issued necessarily before the conclusion of the proceedings leading to the award and in case no such notice is issued then the enforcement of the award itself is vitiated. I am unable to agree, The provision specifically refers to notice being given even at the stage after the judgment of the Tribunal has been given. This appears clear from the use of the expression "in respect of any judgment so long as execution is stayed thereof pending an appeal". This suggests that notice can go to the insurer even subsequent to the judgment, but in case the execution against that judgment is stayed in appeal, the judgment cannot be given effect to against the insurer for so long as the stay holds good meaning thereby also that where there is no such stay in appeal against execution, the enforcement of the award on the judgment is not prohibited, provided notice is issued to the insurer at that stage. This is also manifest from the use of the expression "before or after the commencement

of the proceedings". There is no line drawn as between "after commencement of proceedings" on the one hand and the delivery of the judgment on the other. It does not follow that in case notice has not gone prior to the judgment even though the same is subsequent to the commencement of the proceedings, the enforcement of the judgment is vitiated. The purpose behind Sub-section (2) clearly is that the insurer should have an opportunity to contest the enforcement of the judgment on the defences enumerated in that Sub-section. Once this opportunity is available, it is of no consequence that the same is accorded subsequent to the judgment or prior to the delivery thereof. In case these defences prevail in a particular case the effect of the judgment as against the insurer may be nullified even at this stage. The insurer, therefore, cannot claim to be prejudiced merely on the ground that notice issues subsequent to the judgment and not prior to the same.

7. Sub-section (6) referred to by the learned counsel for the respondent may not also be claimed to assist him. The provision therein is that no insurer to whom notice referred to in Sub-section (2) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment as is referred to in Sub-section (1) otherwise than in the manner provided for in Sub-section (2). If anything, it is also suggestive, in my opinion, that it is legitimate to give notice to the insurer even subsequent to the judgment and in case the insurer gets opportunity thereby to raise defences permissible under Sub-section (2) of Section 96, the enforcement of the award against the insurer is not vitiated.

8. In support of his contention learned counsel for the respondent has placed reliance upon the decisions reported in *Madhya Pradesh State Road Transport Corporation, Jabalpur Vs. Jahiram and Another*, and *B. Srinivasa Reddy and Another Vs. Khatumbi and Others*, . In the latter it is laid down that although the Act or the Rules do not require the claimant making an application u/s 110A to implead the insurer as opposite party a duty is cast on the Tribunal to send notice of such application to the insurer. Where such notice is issued to the insurer he can be regarded as party to the proceeding before the Tribunal. Then the claimant has no right to fix up the insurer as a party to the proceedings. On this basis it cannot be inferred in my judgment that if notice has not gone prior to the making of the award, even though notice does issue subsequent thereto, there is no compliance made to the requirement of Section 96(2) of the Act.

9. In the *Madhya Pradesh* case (supra) the insurer had been impleaded as party initially to the claim petition. Subsequently the insurer was deleted and this was held to be bad in law upon the same principle. Since the insurer had been brought on record, it was proper that the insurer has opportunity to raise defences permissible u/s 96(2) though subsequent to the judgment there is prejudice caused to the insurer or that they are in any manner precluded from raising defences which are otherwise permissible to them and which may even have ultimately the effect to nullify the enforcement of the award on merit against them. The text of Section 96(2) in other words does not warrant the

submission that if notice has not given before judgment, there is no action possible against the insurer.

10. Having regard to the above, the petition succeeds in part and is allowed accordingly. The Order dt. 15-2-1984 made by the Tribunal is set aside. The Tribunal is directed to issue notice to the New India Assurance Co. respondent 2, in accordance with Section 96(2), Motor Vehicles Act, and to permit the respondent to raise such defence as is permissible under the said sub-section. The liability of respondent 2, if any, in respect of the claim, arising under the award, shall be adjudicated upon merit on hearing the parties. Cost on parties.