
(1989) 12 AHC CK 0039
In the Allahabad High Court
Case No : F.A.F.O. No. 385 of 1980

The Oriental Fire and General Insurance Co. Ltd.	APPELLANT
Vs	
Smt. Shakuntala Devi	RESPONDENT

Date of Decision : 13-12-1989

Acts Referred:

Motor Vehicles Act, 1939 — Section 95, 95(2), 95(4), 96

Citation : (1990) 2 ACC 359 : (1991) ACJ 177 : AIR 1991 All 48

Hon'ble Judges : N.N. Mithal, J;G.D. Dube, J

Bench : Division Bench

Advocate : A.B. Saran, for the Appellant; L.P. Naithani, for the Respondent

Final Decision : Allowed

Judgement

G.D. Dube, J.—A very interesting point arises in this appeal, whether descendants of an insured can claim compensation from an insurance company if his death is caused in an accident involving his own insured vehicle. It arises from a judgment and order of the Claims Tribunal, Jhansi, in case No. 7 of 1976, awarding a compensation of Rupees 1,51,000/- to the respondent. The Oriental Fire and General Insurance Company Ltd., Agra has come in appeal.

2. It has been alleged that Jagdish Prasad the husband of the petitioner was driving his International Tractor No. USG 7468 on 22-9-1975. On that date, it was raining heavily. At about 8.00 p.m., he was returning home. When he reached near village Chhappar, he applied brake to avoid accident to third person coming from opposite direction, but the brake slipped and the tractor fell from the edge of the road causing the death of owner cum driver Jagdish Prasad and two others. Jagdish Prasad was the owner of the tractor and insurance policy was also issued in his name. The appellant contested the claim and alleged, inter alia, that it was not liable to pay any compensation to the deceased who was insured himself. The jurisdiction of the Court to try the petition was also challenged.

3. On the pleadings of the parties, the learned Judge had framed four issues.

4. The first issue was whether the accident resulting in the death of Jagdish Prasad was caused due to his own negligence. This was answered in the negative. The second issue was whether the insurance policy issued by the appellant was covered by S. 95(i)(B)(i)(2) of the Motor Vehicles Act. The third issue was whether the award can be made against the petitioner without impleading the co-insured as opposite-party. These two issues were answered in favour of the petitioner and it was held that the death or fatal injuries to the insured was also covered by the policy. The issue No. 3 had been answered in the negative. The fourth issue was regarding the quantum of damages. Under this issue the compensation of Rs. 1,51,000/- was arrived at.

5. Only one point has been argued in this case. Our attention was drawn to Ss. 95 and 96 of the Motor Vehicles Act (hereinafter referred to as the Act). It was submitted that u/S. 95 of the Act the Insurance Company undertakes to indemnify the liability which may be incurred by him due to accident to third party or to his vehicle, if it is insured comprehensively. It was also urged that this liability arises only when a judgment is passed against the insured u/S. 96 of the Act.

6. Learned counsel for the respondent urged that the insurance policy on record shows that the insurance was comprehensive. According to learned counsel, the comprehensive policy covers : firstly the insured, secondly accident or damages to third party and lastly damages to the vehicle. Learned counsel for the respondent interpreted S. 95 of the Act, urging that the words "any person" occurring in S. 95(i)(b) of the Act includes the insured also.

7. In reply to the above contention, learned counsel for the appellant urged that if "the argument of the respondent's counsel is admitted, then the words "by him" occurring in the aforesaid section and the wordings of sub-clause (1) of S. 96 of the Act will be rendered meaningless, it was urged that the intention of 1991 A11./4 IV G--13 the Legislature was clear by reading of Ss. 95 and 96 of the Act. These two sections clearly say that the Insurance Company is required to indemnify the insured against losses caused to his vehicle or to third party. It does not cover the cases of death of the insured himself in accident from his own vehicle.

8. The relevant portion of S. 95 of the Act, to which or attention was drawn, reads as under:

"95. Requirements of Policies and Limits of Liability.-- (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which -

(a) is issued by a person who is an authorised insurer or by a cooperative society allowed u/S. 108 to transact the business of an insurer, and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-sec. (2) -

(i) against any liability which may be incurred by him in respect of the death of

or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place." (Emphasis ours)

9. Section 96(1) of the Act is only relevant for the purpose of this case. Our attention has been drawn to only sub-sec. (I) of S. 96 of the Act. The other sub-sec, of the Act pertains to the Contingencies following judgment. Sub-sec. (I) reads as under:--

"96. Duty of Insurers to Satisfy judgments against Persons Insured in Respect of Third Party Risks.-- (1) If, after a certificate of insurance has been issued u/sub-sec. (4) of S. 95 in favour of the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under cl. (b) of sub-sec. (1) of S. 95 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment-debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments."

10. Ss. 95 and 96 must be read together. S. 95(1)(b) of the Act makes the insurer liable to indemnify any liability which may be incurred by the insured. There is a use of the words "incurred by him". The word "him" refers to the insured. When the insured is dead, then the question of indemnifying liability of deceased insured, does not arise. The contractual liability by the insurance Company under the above quoted S. 95 of the Act ceases as soon as the insured is dead. The liability does not extend to the heirs of the deceased. S. 96 of the Act also says that after a certificate of insurance has been issued in favour of the person by whom a policy has been effected and a judgment in respect of such liability as is required to be covered by a policy under clause(b) of sub-sec. (1) of S. 95 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then the insurer is liable to pay to the person entitled to the benefit of decree the sum specified in the insurance policy. In the cases of instant nature no judgment can be passed against the insured. Hence the question of indemnification does not arise.

11. The reading of the aforesaid two sections clearly show that the liability of payment of any sum by the insurer arises only when the insured incurs any liability in respect of an accident. In the instant case by his death from his own insured vehicle, the insured has not incurred any liability to pay any damages or compensation to any person. Consequently, no question of payment of damages

or compensation to the claimant arises in this case.

12. It was argued by counsel for the respondent that by the above interpretation of S. 95 of the Act, this Court would be making a discrimination between class of persons. It was urged that the insured is also covered within the class of person and he could not be excluded. The above argument is not tenable. Sub-cl. (b) of sub-sec. (1) of S. 95 of the Act starts; "insures the person or classes of persons". This is in respect of insurance. For example the insurer may insure more than one owner of the vehicle or even insure the owners, the hire purchaser etc. By any stretch of reading S. 95 of the Act cannot be read to include the death or injury caused to insured himself by his vehicle.

13. The insurance policy also speaks that the liability of the insurance Company was to the extent mentioned in the insurance policy. The words used in the policy reads as under:--

"Limits of Liability: Limit of the amount of the Company's liability u/S. II-I(i) in respect of any one accident : Such amount as is necessary to meet the requirements of the Motor Vehicles Act, 1939.

Limit of the amount of the Company's liability u/S. II-1(ii) in respect of any one claim or series of claims arising out of one event: Rs. 50,000."

14. Section II-I(i) has been incorporated at the end, S. II to the Insurance Policy (Ext. A-1) has the Heading "Liability to Third Parties". The relevant section of the Insurance Policy is as under:--

"1. Subject to the Limits of Liability the Company will indemnify the Insured against all sums including claimant's cost and expenses which the Insured shall become legally liable to pay in respect of

(i) death of or bodily injury to any person caused by or arising out of the use (including the loading and/or unloading) of the Motor Vehicle.

15. The reading of the above sub-section along with the Limits of Liability, as mentioned in the Insurance Policy itself, also indicates that the insurance was in respect of damages to third party and not to the owner and the insured of the vehicle.

16. The learned Judge had not discussed the liability of the Insurance Company, on the other hand, he has stated in paragraph 6 of his judgment that the deceased was covered by the words "any person" occurring in the above quoted Section 95. He held that as the deceased was the co-owner and had implied authority of the other co-owner and was also driving the vehicle as driver possessing a valid driving licence, he would be deemed in the eye of law as a self paid employee or even as implied paid employee of the co-owner. He also came to the conclusion that the policy was a comprehensive and the appellant was liable to pay the compensation. The learned Judge had not discussed the evidence on record nor had considered Sections 95 and 96 of the Act. Issue No.

2 was not even happily worded. In paragraph 17 of the written statement, the Insurance Company had claimed that it was not liable for the damages u/s 95, sub-sec.(I) clause(b) and sub-clause (i) of the Act. This portion too was not properly quoted in the issue. We, therefore, find that the lower court has not considered the matter in the proper perspective of the facts on record and law applicable to it. Even if the deceased was a self paid employees, then at the most the liability of the Insurance Company to the other insured person i.e. Suraj Kishore. We are not making any observation to this effect that in such cases the co-insured would be entitled to compensation if the other co-insured dies in an accident from the insured vehicle. Ext.A-1 shows that Suraj Kishore was another co-insured person. There is a slip attached to this Insurance Policy by which the Insurance Company had agreed that along with Jagdish Prasad, Suraj Kishore shall also be the co-insured. Suraj Kishore was not one of the claimants; hence the reasonings of the lower court were not at all tenable.

17. The case law cited by learned counsel for the respondent, viz., Madras Motor and General Insurance Co. Vs. Katanreddi Subbareddy and Others, is on different facts. In this case, the occupants of the car had received injuries and died. It is not a case where the insured himself had received injuries or died by any accident from his own insured vehicle.

18. National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, requires attention. In this case, the Supreme Court had observed :

"Comprehensive insurance of the vehicle and payment of higher premium on this score, however, do not mean that the limit of the liability with regard to the third party risk becomes unlimited or higher than the statutory liability fixed under sub-section (2) of Section 95 of the Act. For this purpose a specific agreement has to be arrived at between the owner and the Insurance Company and separate premium has to be paid on the amount of liability undertaken by the Insurance Company in this behalf. Likewise, if risk of any other nature for instance, with regard to the driver or passengers etc. in excess of statutory liability, if any, is sought to be covered it has to be clearly specified in the policy and separate premium paid therefore."

19. Consequently, any liability as alleged by learned counsel for the respondent ought to have been specifically contracted between the parties by paying suitable premium. In the discussion mentioned above, we do not find any such contract.

20. For the reasons mentioned above, we find that the only point raised by learned counsel for the appellant succeeds. The appeal should be allowed and the judgment of the lower court should be set aside. In the peculiar circumstances of the case, there should be no order as to costs.

21. The appeal is allowed. The judgment and order of the lower court are set aside. The Claim Petition is rejected. Both the parties shall bear their own costs.

22. Appeal allowed.