

(1971) 11 AHC CK 0013
In the Allahabad High Court
Case No : F.A.F.O. No. 364 of 1969

The Oriental Fire and General Insurance Company	APPELLANT
Vs	
Govind Singh and Others	RESPONDENT

Date of Decision : 25-11-1971

Acts Referred:

Motor Vehicles Act, 1988 — Section 95, 96
Workmens Compensation Act, 1923 — Section 3
Motor Vehicles Act, 1988 — Section 95, 96
Workmens Compensation Act, 1923 — Section 3
Motor Vehicles Act, 1988 — Section 95, 96
Workmens Compensation Act, 1923 — Section 3

Citation : (1972) 42 AWR 39

Hon'ble Judges : K.B. Asthana, J

Bench : Single Bench

Advocate : S.N. Varma, for the Appellant; Krishna Pal Singh and S.N. Doval, for the Respondent

Final Decision : Allowed

Judgement

K.B. Asthana, J.—I think the learned Compensation Commissioner fell into an error in passing a decree for recovery of Rs. 7000/- as compensation against the Oriental Fire and General Insurance Company Ltd., the insurers of the vehicle which met with an accident resulting in the death of the driver Sobat Singh, the husband of the claimant, instead of passing a decree against Govind Singh, the owner of the vehicle and the employer of deceased Sobat Singh. The learned Compensation Commissioner relied on Sections 95 and 96 of the Motor Vehicles Act and the terms of the insurance policy and thought that as a Compensation Commissioner under the Workmen's Compensation Act he had power and jurisdiction to pass a decree against the insurer instead of passing a decree against the insured. Section 95 of the Motor Vehicles Act lays down the essential terms of an insurance policy of a motor vehicle. Section 96 of the said Act lays down that when any decree is passed against the insured on the basis of a

liability which the insurer has undertaken under the terms of the policy to indemnify the insured, then the person benefited by the said decree can realise the decretal amount from the insured. There is nothing in the language of Section 96 that for the purposes of the Workmen's Compensation Act the insurer becomes the employer or steps into the shoes of the insurer. A reference was also made to the provisions of Sub-section (2) of Section 12 of the Workmen's Compensation Act. Nothing in the said provisions applies to the Oriental Fire and General Insurance Company, the insurer, as it would not be a contractor of Govind Singh, the insured, the Insurance Company not having undertaken to do any work or business of Govind Singh, the employer, in so far as the operation and driving of the vehicle driven by deceased Sobat Singh was concerned.

2. Since Govind Singh admitted to be the owner of the vehicle which met with the accident and also admitted that Sobat Singh was his employee and it is established on the evidence on record that when the accident occurred Sobat Singh was driving the vehicle in the course of his employment the liability to pay compensation squarely falls on Govind Singh. In so far as the Tehri Garhwal Motor Corporation is concerned, there is no evidence on record that they were the employer of deceased Sobat Singh or that they were engaged as contractor by Govind Singh, the owner of the vehicle as that term has been defined in Section 12(2) of the Motor Vehicles Act.

3. I have heard the learned Counsel for Govind Singh and he has not been able to satisfy me that under the law he is not liable to pay compensation. However, I do agree with him that he having insured the vehicle driven by deceased Sobat Singh with the Oriental Fire and General Insurance Company and he being liable to pay compensation to the widow of deceased Sobat Singh under the Workmen's Compensation Act, the widow ought to realise the compensation decreed from the said Insurance Company under the provisions of Section 96 of the Motor Vehicles Act. The learned Counsel for Smt. Bachani, the widow of deceased Sobat Singh stated before me that the said Insurance Company has already paid her the sum of Rs. 7000/- but that on furnishing of security under the orders of the High Court. That being so, I think the said Insurance Company was pressing this appeal and rightly so, for a decision of this Court on the question of law raised which question of law I have decided in their favour that in a proceeding taken u/s 3 of the Workmen's Compensation Act, the Compensation Commissioner has no jurisdiction to pass a decree against the insurer of a motor vehicle. The decree must always be passed against the employer.

4. As a result of the discussion above, I allow this appeal, set aside the decree passed by the learned Compensation Commissioner against the Oriental Fire and General Insurance Company and substitute it by a decree for the amount of Rs. 7000/- against Govind. Singh. I make no order for costs in this appeal.