

(1988) 05 OHC CK 0005

In the Orissa High Court

The Oriental Fire and General Insurance Company

APPELLANT

Vs

Panapati Devi

RESPONDENT

Date of Decision : 23-05-1988

Acts Referred:

Motor Vehicles Act, 1988 — Section 95(2), 96, 96(6)

Citation : (1989) 2 ACC 617

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Judgement

S.B. Sinha, J.—Both these appeals involve Common questions of law and fact and having arisen from the same this Court they are taken up together for bearing and are being disposed of by this common judgment.

2. The facts of the case lie in a very narrow compass.

3. M.A. No. 215 of 1982 arises out of a judgment and award dated 21-6-82 passed by Sri R.L. Bhagat, Motor Vehicle Accident claims Tribunal, Bhagalpur in claim Case No. 18 of 1982 which was filed by the respondents 1 to 5 thereof.

4. M.A. No. 216 of 1982 arises out of a judgment and award of the same date in claim Case No. 19 of 1981 which was filed by the respondents 1 to 6 thereof.

5. On 29-5-1981 a truck bearing registration No. OSC 2316 was passing through Swami Vivekanand Path situate in the town of Bhagalpur. The said vehicle was being driven at a very high speed and in a most rash and negligent manner as a result whereof an accident occurred wherein one Raghubir Rajak and one Lakshmi Narayan Sarkar were killed. The manner in which the accident took place as also the place of occurrence had been discussed in details in the judgment of the learned Court below and for the purpose of disposal of these appeals it is not necessary to reiterate the same over again.

6. The claimants of claim Case No. 18 of 1981 were granted compensation to the extent of Rs. 80,000/- whereas the claimants of claims Case No. 19 of 1981 were

granted compensation to the extent of Rs. 90,000/- by the learned Court below and the respondents meaning thereby the Insurance Company, the owner of the driver and the others were directed to pay the said amount jointly and severally. It was further declared that the claimants of both the cases would also be entitled to interest at the rate of nine per cent per annum on the sum awarded as compensation.

7. Against the aforementioned award these appeals have been filed by the Oriental Fire and General Insurance Company who was the insurer of the aforementioned vehicle.

8. Learned Counsel for the appellant has raised three fold contentions:

Firstly the learned Counsel contended that the amount awarded by the learned Court below by way of compensation to the claimants are excessive. Secondly the learned Counsel submitted that there is no evidence to show that the accident had taken place because of rash and negligent driving on the part of the driver. Learned Counsel lastly submitted that in any event taking into consideration the provision as contained in Section 95(2) of Motor Vehicles Act it must be held that the liability of the insurer in respect of an accident was to the extent of Rs. 50,000/- in all and the award against the appellant beyond the said amount was wholly illegal and without jurisdiction. learned Counsel in this connection has referred to *Om Prakash Dalmia Vs. Smt. Bina Saha and Others*, , *Sobha Jain and Another Vs. Bihar State Tribal Co-operative Development Corporation Ltd., Ranchi and Others*, and *National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others*, .

9. Learned Counsel for the respondents on the other hand submitted that the appeal on behalf of the Insurance Company, so far as points Nos. 1 and 2 as referred to hereinbefore are concerned is not Maintainable as the same does not come within the purview of Section 96(2) of the Motor Vehicles Act.

10. Learned Counsel further submitted that the extent of the liability of the insurer as mentioned in Section 95(2) of the Motor Vehicles Act so far as a motor vehicle carrying goods is concerned, the same is not restricted to a sum of Rs. 50,000/- in case of a pedestrian. Learned Counsel has relied upon *British India British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others*, and *National Insurance Co. v. Magikhaia Das* reported in AIR 1976 Ori173 (FB).

11. Section 96 of the Motor Vehicles Act provides for the duty of insurer to satisfy judgments against persons insured in respect of third party risks. Sub-section (2) of Section 96 of the Act reads as follows:

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 under Sub-section (4) of Section 93 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 Clause (b) of Sub-section (1) of Section 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 provision of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable there under, 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.

(2) No sum shall be payable by an insurer under Sub-section (1) in respect of any judgment unless before or after the commencement of the proceedings in which the judgment is given the insurer had notice through the Court of the bringing of the proceedings, or in respect of any judgment so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is not given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely :

(a) That the policy was cancelled by mutual consent or by virtue of any provision contained therein before the accident giving rise to the liability and that either the certificate of insurance was surrendered to the insurer or that the person to whom the certificate was issued had made an affidavit stating that the certificate has been lost or destroyed or that either before or not later than fourteen days after the happening of the accident the insurer has commenced proceedings for cancellation of the certificate after compliance with the provisions of Section 105 ; or

(b) That there has been a breach of a specified condition of the policy, being one of the following conditions, namely

(i) A condition excluding the use of the vehicle.

(a) For hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or.

(b) For organised racing and speed testing, or

(c) For a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle; or.

(d) Without side car being attached, where the vehicle is a motor cycle; or

(ii) A condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification ; or

(iii) A condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(e) That the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in

some material particular.

12. From a perusal of the aforementioned provision it is evident that the points Nos. 1 and 2 as taken by the learned Counsel for the Insurance Company are not subject matters covered under Sub-section (2) of Section 96 of the said Act and as such this appeal is not Maintainable in relation thereto.

13. In *British India General Insurance Co. Ltd. v. Captain Itbar Singh* reported in (1958) ACC CJ 1, the Supreme Court held as follows:

The statute has no doubt created a liability in the insurer to the injured person but the statute has also expressly confined the right to avoid that liability to certain grounds specified in it. It is not for us to add to those grounds and therefore to the statute for reasons of hardship. We are furthermore not convinced that the statute causes any hardship. First, the insurer has the right, provided he has reserved it by the policy, to defend the action in the name of the assured and if he does so, all defences open to the assured can then be urged by him and there is no other defence that he claims to be entitled to urge. He can thus avoid all hardships, if any, by providing, for a right to defend the action in the name of the assured and this he has full liberty to do. Secondly, if he has been made to pay something which on the contract of the policy he was not bound to pay, he can under the proviso, to Sub-section (3) and under Sub-section (4) recover it from the assured. It was said that the assured might be a man of straw and the insurer might not be able to recover anything from him. But the answer to that is that it is the insurer's bad luck. In such circumstances the injured person also would not have been able to recover the damages suffered by him from the assured, the person causing the injuries. The loss had to fall on some one and the statute has thought fit that it shall be borne by the insurer. That also seems to us to be equitable for the loss falls on the insurer in the course of his carrying on his business, a business out of which he makes profit, and he could so arrange his business that in the net result he would never suffer a loss. On the other hand, if the loss fell on the injured person, it would be due to no fault of his, it would have been a loss suffered by him arising out of an incident in the happening of which he had no hand at all.

14. The aforementioned decision has been followed by a Full Bench of Orissa High Court in *National Insurance Co. Vs. Magikhaia Das (After him) Mst. Laxmi Dibya and Others*, . Recently a Division Bench of this Court in *National Insurance Co. Ltd. v. Shanim Ahmad* reported in 1985 Acc CJ 749 has also taken the same view.

15. In this view of the matter, in my opinion, grounds Nos. 1 and 2 urged on behalf of the appellant cannot be accepted and it must be held that the Insurance Company cannot raise the aforementioned points in this appeal.

16. However, so far as the third point raised by the learned Counsel for the appellant is concerned, the same requires serious consideration. Section 95 of the M.V. Act provides for requirement of policy and limits of liability. Sub-section

(2) of Section 95 reads as follows:

(2) Subject to the proviso to Sub-section (1), a policy of insurance shall cover any liability incurred in respect of one any accident up to the following limits namely:

(a) Where the vehicle is a goods vehicle, a limit of (one lakh and fifty thousand rupees) in all, including the liabilities, if any, arising under the Workmen's Compensation Act, 1923 (8 of 1923, in respect of the death of or bodily injury to, employees (other than the driver) not exceeding six in number being carried in the vehicle; (b) Where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment:

(i) In respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all;

(ii) In respect of passengers a limit of fifteen thousand rupees for each individual passenger;

(c) Save as provided in Clause (d) where the vehicle is vehicle of any other class, the amount of liability incurred;

(d) Irrespective of the class of the vehicle, a limit of rupees (six thousand) in all in respect of damage to any property of a third party.

17. In the instant case it is admitted that the vehicle in question was a goods vehicle. It is also admitted that at the relevant time the liability of the vehicle in terms of Clause (a) of Section 95(2) of the said Act was limited to Rs. 50,000/- only.

18. Learned Counsel for the appellant submitted that from a plain reading of the aforementioned provision it is clear that the liability of the insurer in terms of Sub-section (2) of Section 95 is in all Rs. 50,000/- and as such the learned Court below has no jurisdiction to fix the liability of the insurer any amount higher than that mentioned in the said provision.

19. In Lachhman Singh and Others Vs. Gurmit Kaur and Others, , a Full Bench of Punjab & Haryana High Court while considering the limit of the liability of the insurer has held that the outer limit of the liability of the Insurance Company is only Rs. 50,000/-.

20. A Division Bench of this Court in Sobha Jain and Another Vs. Bihar State Tribal Co-operative Development Corporation Ltd., Ranchi and Others, took the same view. In the said decision, however, the decision of the Supreme Court in the case of Motor Owners' Insurance Company Limited Vs. Jadavji Keshavji Modi and Others, has been referred to but in my humble opinion the same was not properly appreciated. The Supreme Court in Motor owners' Insurance Co. Ltd., (supra) held as follows:

12. If the words used by the legislature in Clause (a) of Section 95(2) were the

sole factor for determining the outside limit of the insurer's liability, it may have been possible to accept the submission that the total liability of the insurer arising out of the incident or occurrence in question cannot exceed Rs. 20,000/- Clause (a) qualifies the extent of the insurer's liability by the use of the unambiguous expression "in all" and since that expression was specially introduced by an amendment, it must be allowed its full play. The legislature must be presumed to have intended what it has plainly said. But Clause (a) does not stand-alone and is not the only provision to be considered for determining the outside limit of the insurer's liability. In fact, Clause (a) does not even form a complete sentence and makes no meaning by itself. Like the other Clauses (b) to (d), Clause (a) is governed by the opening words of Section 95(2) to the effect that "a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits" that is to say, the limits Laid down in Clauses (a) to (d). We have supplied emphasis in order to focus attention in the true question, which emerges for consideration: What is the meaning of the expression "any one accident"? If that expression were plain and unambiguous, and its meaning clear and definite, effect would be required to be given to it regardless of what we think of its wisdom or policy. But as we will presently show, the expression "any one accident" does not disclose one meaning conclusively according to the laws of language. It clearly is, capable of more than one meaning, introducing thereby an ambiguity, which has to be resolved by restoring to the well-settled principles of statutory construction.

21. The expression "any one accident" is susceptible of two equally reasonable meanings or interpretations. If a collision occurs between a car and a truck resulting in injuries to five persons, it is as much plausible to say that five persons were injured in one accident as it is to say that each of the five persons met with an accident. A bystander looking at the occurrence objectively will be right in saying that the truck and the car met with an accident or that they were concerned in one accident. On the other hand, a person looking at the occurrence subjectively will say that he met with an accident. And so will each of the five persons who were injured. From their point of view, which is the relevant point of view, "any one accident" means "accident to any one". In matters involving third party risks, it is subjective considerations which must prevail and the occurrence has to be looked at from the point of view of those who are immediately affected by it. If the matter is looked at from an objective point of view, the insurer's liability will be limited to Rs. 20,000/- in respect of injuries caused to all the five persons considered en bloc as a single entity, since they were injured as a result of one single collision. On the other hand, if the matter is looked at subjectively as it ought to be, the insurer's liability will extend to a sum of Rs. 20,000/- in respect of the injuries suffered by each one of the five persons, since each met with an accident, though during the course of the same transaction. A consideration of preponderating importance in a matter of this nature is not whether there was any one transaction, which resulted in injuries to many, but whether more than one person was injured, giving rise to more than

one claim or cause of one single transaction. If more than one person is injured during the course of the same transaction each one of the persons has met with an accident."

22. The Supreme Court in the aforementioned case took into consideration the various other decisions and held that the Insurance Company is liable to pay the statutory amount of insurance to the claimants each of whom was entitled to lodge a claim for compensation.

23. In *National Insurance Co. Ltd. v. Chhunnu Ram* reported in 1983 BBCJ (HC) 596 this Court held as follows :

10. It was vehemently contended by the learned Counsel appearing on behalf of the appellant that if the meaning of the expression in respect of "any one accident" as given by the Supreme Court in the 1981 case is to be accepted even in relation to the claims relating to passenger buses then it would do violence to the express intention of the legislature in Sub-clause (4) and make the 1969 amendment meaningless as then there did not appear to be any sense for the legislature to prescribe different limitations for the different capacities of the passenger buses inasmuch as the outer limits of Rs. 50,000/-, 75,000/- and 1,00,000/- was made only keeping in view the possibility of the larger number of passengers being involved in the accident in bigger buses so that the limit of admissible claim fixed for each individual passenger in such cases may not prove too small and inadequate on account of apportionment in view of the outer limits of the liability fixed for the insurer and the number of passengers being carried in any such vehicle in view of the decision of Supreme Court the Court may perhaps in a given case may award the maximum compensation even to only one passenger who might be a victim of the accident in the type of the bus he was travelling against the Insurance Company.

24. The contention of the learned Counsel for the appellant is attractive and finds support from all the decided cases of the various High Courts, some of which have been noticed by the Supreme Court and overruled in its 1981 decision referred to above as well as by the decision of the Supreme Court itself in *Sheikhupura Transport Co. Ltd. Vs. Northern India Transport Insurance Co.*, but, in view of the binding effect of this authority which has noticed and distinguished the earlier case, the argument of the learned Counsel for the appellant cannot be accepted and it must be held that the provisions contained in Sub-clause (4) of Clause (b) of Sub-section (2) of Section 95 must give way to the interpretation given by the Supreme Court in the above case.

25. However the Supreme Court of India recently in *National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others*, held as follows:

Learned Counsel for the appellant then urged relying on the decision of this Court in *British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others*, that in view of Sub-section (6) of Section 96 of the Act no insurer to whom the notice referred to in Sub-section (2) thereof has been given is entitled "to avoid

his liability" to any person entitled to the benefit of any such judgment as is rendered to in Sub-section (1) thereof otherwise than in the manner provided for in Sub-section (2). On this basis it was urged that the appellant was not entitled to assert that its liability was confined to Rs. 20,000/- only, inasmuch as this is not one of the defences specified in Sub-section (2) Section 96 of Act. We find it difficult to agree with this submission either. Firstly, in paragraph 12 of the report of this very case it has been held that Sub-section (2) of Section 96 in fact deals with defences other than those based on the conditions of a policy. Secondly, from the words "to avoid his liability" used in Sub-section (6) of Section 96 it is apparent that the restriction placed with regard to defences available to the insurer specified in Sub-section (2) of Section 96 are applicable to a case where the insurer wants to avoid his liability. In the instant case the appellant is not seeking to avoid its liability but wants a determination of the extent of its liability which is to be determined, in the absence of any contract to the contrary, in accordance with the statutory provision contained in this behalf in Clause (b) of Sub-section (2) of Section 95 of the Act. In the instant case since as seen above the appellant did not undertake in the policy any liability in excess of the statutory liability the award against it would be only in accordance with the said statutory liability.

26. There appears to be some conflict in the decisions of the Supreme Court in *Motor Owners" Insurance Company Limited Vs. Jadavji Keshavji Modi and Others*, and the decision of the Supreme Court in *National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others*, . However the first decision was rendered by three Judges whereas the decision in *National Insurance Company Ltd., New Delhi* has been rendered by two Judges of the Supreme Court.

27. The earlier decision of the Supreme Court in the aforementioned *Motor owners" Insurance Co, Ltd."*s case was not cited in *National Insurance Co. Ltd."*s case nor therein the crucial words" occurring in Sub-section (2) of Section 95 i.e., "any one accident" had been taken into consideration.

28. In *State of U.P. v. Ram Chandra Trivedi* reported in 1976 Lab. IC 1647 it has been held by the Supreme Court that in case of any conflict betwixt two decisions of the Supreme Court, the decision of the larger Bench should be followed.

29. In *Amar Singh Yadav v. Shanti Devi* reported in LJR 1987 Pat.184 a Full Bench of this Court held as follows:

To conclude on this aspect, it is held that where there is a direct conflict betwixt two decisions of the Supreme Court rendered by co-equal Benches, the High Court must follow that judgment which appears to it to state the law more elaborately and accurately. The answer to question (1) posed at the outset is rendered in these terms.

30. Recently again this Court in *Jaiswal Medical Hall v. Union of India* reported in 1988 BLTR 5 has held that the High Court is bound to follow the decision of a larger Bench of the Supreme Court. In that decision also the Full Bench decision

of this Court as also another Full Bench decision of this Court reported in 1987 BLT 47 had been referred to.

31. Further, as mentioned hereinbefore, the question, which was raised in the case of Motor Owners" Insurance Company Limited Vs. Jadavji Keshavji Modi and Others, was neither posed nor answered in National Insurance Co. Ltd."s case. The judgment in Meter owners" Insurance Company Limited"s case has been rendered after considering the crucial words "any one accident" which has not been done in the later decision.

32. In the circumstances I feel bound to follow the decision of the Supreme Court in Motor owners" Insurance Co. Ltd. 1982 BBCJ (SC) 70.

33. In view of the said authoritative pronouncement it is not necessary to consider the other decisions referred to by the learned Counsel at all.

34. However having regard to the statutory liability of the insurer it must to held that the same is limited to the extent of Rs. 50,000/- in each of the claim cases. The rest of the amount awarded that is Rs. 30,000/- in claim case No. 18 of 1982 and Rs. 40,000/- in claim case No. 19 of 1982 must be held to be the liability of the respondents Nos. 7 to 9.

35. As has been held by the learned Counsel below the said award shall carry interest at the rate of nine per cent per annum from the date of filing of the claim case.

36. In the result these appeals are allowed in part to the extent mentioned here in before but without any order as to costs.