**(1980) 12 AP CK 0003**

**In the Andhra Pradesh High Court**

**Case No :** C.M.A. No. 509 of 1979

The United Fire and General Insurance Co. Ltd. — APPELLANT

Vs

P. Parvathamma — RESPONDENT

**Date of Decision :** 19-12-1980

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 100
Motor Vehicles Act, 1939 — Section 105, 110C, 110D, 94, 95

**Citation :** AIR 1981 AP 227 : (1981) 1 APLJ 49

**Hon'ble Judges :** P.A. Choudary, J

**Bench :** Single Bench

**Advocate :** M.P. Ugle, for the Appellant; K.V. Reddy and R. Venkatramana, for the Respondent

**Final Decision :** Dismissed

## Judgement

1. O. P. No. 19 of 1975 on the file of the Motor Accidents Claims Tribunal, Chiltoor, was filed by one Pogaku Parvathamma, wife of Venkatrayappa, Madanapalle, Chittoor Dist., claiming compensation of an amount of Rs. 20,000/- for the injuries caused to her by reason of an accident due to the rash and negligent driving of a bus, APC 6311 near Sanatorium Church of Madanapalle on 1-8-1974.

2. The petitioner''s case was that she was travelling in the aforesaid bus white going to her village Chinnathippa Samudram. While the bus was proceeding to that village, it turned turtle near Sanatorium Church, Madanapalle, when the petitioner was injured all over her forehead. Her lower tooth in the lower jaw was broken and another had become loose. The petitioner issued a notice to the bus owner, K. Narayana Reddy and to the United India Fire and General Insurance Company Ltd., Madras on 23-8-1974 claiming the aforementioned compensation. Having received no satisfactory reply, she filed the aforesaid O. P. against the two respondents. It may be mentioned here that the aforementioned bus was insured with the United India Fire and General Insurance Company under an Insurance

Policy, Ext. P-3 dated 19-11-1973. That policy covered the loss to the bus and also what is generally known as a ''third-party risk''. So far as the loss to the bus was concerned, the liability of the insurer was limited to a sum of Rs. 50,000/-. So far as the third-party risk was concerned, no specified amount was mentioned. But it was stated:

"Subject to the limits of liability, the company will indemnify the insured against all sums including claimant''s case and expenses which the insured shall become legally liable to pay in respect of :

(i) death or bodily injury to any person caused by or arising out of the use (including the loading and/or unloading) of the motor vehicle;

(ii) damage to property caused by the use (including the loading and/or unloading) of the motor vehicle."

The Accidents Claims Tribunal, Chittoor, by its order dated 27-6-1979 upheld the claim of the petitioner, but awarded only Rs. 12,000/-with proportionate costs towards compensation payable by the owner of the bus (1st respondent) and the insuring company (2nd respondent).

3. Against this order and award of the Accidents Claims Tribunal, the owner of the bus filed no appeal. But the Insurance Company which had insured the bus not only against any loss or damage that might occur to it, but also against third-party risk had preferred this appeal. To this appeal, both the victim of the accident as well as the owner of the bus have been made parties.

4. Mr. Ugle, the learned counsel for the appellant, argued that u/s 95 (4) of the Motor Vehicles Act, (for short, the ''Act'') the liability of the insurer is limited only to Rs. 5,000/- for each individual passenger travelling in, any vehicle other than a motor cab and that thereafter the lower Court''s direction that a sum of Rs. 12,000/- awarded as compensation should be recovered both from the owner of the bus as well as from the insurer is clearly erroneous and contrary to the statutory provisions. In other words, Mr. Ugle argued that this client should have been made liable only to an extent of Rs. 5,000/- as prescribed by Section 95 (2) of the Act and beyond that amount liability to pay the compensation amount rests solely with the owner of the bus, who is the only other respondent. In view of the judgment of the Supreme Court in Sheikhupura Transport Co. Ltd. Vs. Northern India Transport Insurance Co., , I think this argument of the learned counsel for the appellant must be accepted, ruling out any other interpretation, which appears to be not wholly impossible on the somewhat involved language of Section 95 of the Act.

5. But the question is whether that relief can be granted in this insurer''s appeal ? Section 94 of the Act, which occurs in Chapter VIII of the Act and deals with insurance of motor vehicles against third-party risks, makes it obligatory for any person who uses a motor vehicle in a public place to take a policy of insurance complying with the requirements of that chapter. Section 95 of the Act

 

specifies the requirements of policy and also limits the liability of the insurance company called ''insurer''. This section requires that the insurer under the aforesaid chapter of the Act must insure the person or class of persons specified in the policy against any liability arising out of death or bodily injury or use of the vehicle. But Section 95 (2) (4) of the Act limits the liability of the insurer to each individual passenger using the motor vehicle to a sum of Rs. 5,000/-, in any case, where the motor vehicle used is other than a motor cab. In the aforementioned judgment of the Supreme Court arising under the provisions of the unamended Section 95 of the Act, the learned Judges of the Supreme Court observed that the statutory liability of the insurer to indemnify the insured is restricted by Section 95 (2) of the Act as it stood then. This judgment of the Supreme Court was followed by several other High Courts. It is, therefore, clear that the Tribunal below had erred in awarding a joint and several decrees executable both against the owner of the bus and the insurer in a sum exceeding Rs. 5,000/-. The insurance policy which I have read above clearly limited the liability of the insurer to the limits of liability, meaning thereby the quantum of liability as fixed by Section 95 (2) (4) of the Act. In view of that limitation contained in the policy of insurance which is in harmony and is in conformity with the requirements of the Act and the limits fixed in Section 95 of the Act, I cannot but hold that the order of the Accidents Claims Tribunal making also the insurer liable in a sum of Rs. 12,000/- is erroneous. The Tribunal ought to have limited the liability of the insurer only to a sum of Rs. 5,000/-. On that basis, I would have straightway allowed this appeal. But there appears to be, unfortunately for the appellant, insurmountable difficulties in the way of allowing this appeal. The Motor Vehicles Act dealt with the liability of the owners of the motor vehicles and sets up special tribunals for qualifying the liability of such owners arising out of accidents which are now-a-days too many and too frequent causing loss of limb and life to the innocent general public. In order to facilitate easy collection of moneys of compensation awarded against the owners of the motor vehicles, the Act not only obligates the owners and users of the motor vehicles to take insurance policy covering what is known as ''third-party risk; but also makes any decree or award passed by the aforesaid Tribunals executable against such insurance companies called the Insurer. u/s 96 (1) of the Act, the law lays it down that the insurer should atisfy judgments of compensation passed by the Tribunals against persons insured by the Insurer even though the insurer was not directly, liable to the injured person. But the Act limits, as noted above, the liability of the insurer. In other words, the scheme of the Act is to make the insurer primarily liable to an unlimited extent and make the insurer liable only to a limited extent as specified in Chap. VIII. Proceeding on that basis, the provisions of that chapter, more particularly Section 96 (2) and Section 110-C of the Act make the presence of insurer before the Tribunal for adjudication of claims not absolutely necessary, but only contingent upon the happening of certain events. u/s 96 (2) of the Act, the claimant need not make the Insurance Company a party-respondent to his claim. But he must before or after the commencement of the proceedings claiming compensation in the Tribunal notify on the insurer through Court of the fact of bringing of those proceedings. It is then left for the insurer either to implead himself as a party-respondent and contest the proceedings or not. Even if the insurer on receipt of a notice u/s 96(2) of the Act chooses to contest the claim, he is not free to raise all objections. Statute limits his liberty to contest. He is entitled only to raise such objections to the claim as are specifically enumerated in Section 96 (2) (a), (b), (c) of the Act. They read as follows:

"(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 has 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 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, when the vehicle is a transport vehicle; of

(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

(c) that the policy it 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 particulars."

It is only u/s 110-C of the Act, that the insurer is permitted to raise all objections to the claim of the motor vehicle accident victim. But u/s 110-C of the Act, the insurer cannot and would not become a contesting party to the claim normally. The insurer would become entitled to implead himself as a party-respondent and oppose the claim only where the Accidents Claims Tribunal was satisfied that there was collusion between the claimant and the person against whom the claim was made or the person against whom the claim had been made had failed to contest the claim. In the absence of collusion between the claimant and the insured and negligence or indifference on the part of the insured in contesting the claim, the insurer cannot implead himself as a party. It follows from the above that the claimant is under no obligation to make on his own the insures a party-respondent to his claim and it is wholly for the insurer to implead himself as a party-respondent either u/s 110-C of the Act or u/s 96 (2) of the Act. If the insurer impleads himself, u/s 110-C of the Act, it would be open to the insurer to raise all objections to the granting of the claim which would have been raised by the insured. But, as in this case, as there was no finding by the Accidents Claims Tribunal that the insured was colluding with the claimant or that there was any negligence of indifference on the part of the insured and the insurer was impleaded from the commencement of the proceedings the Insurance Company cannot avail itself of the provisions of Section 110-C of the Act. The only other section of which it can take benefit of is Section 96 (2) of the Act. As we have already noted that u/s 96 (2) of the Act, it is not open to the Insurance Company to oppose the claim on all and every ground, it can only raise such of those objections which are enumerated in Section 96 (2) (a), (b) and (c) of the Act. The question then arises whether the present argument of the insurer falls u/s 96 of the Act. In this case, the argument of the Insurance Company is that the Accidents Claims Tribunal ought not to have saddled the Insurance Company with any liability exceeding Rs. 5,000/- fixed by Section 95 (2) (4) of the Act But the question is whether this argument is open for the Insurance Company to be raised. Mr. Ugle''s contention is that it should be open to the Insurance Company to raise this argument because in doing so it is doing no more than limiting its claim to a limit which is statutorily fixed by Section 95 of the Act and that it would be wholly unjust to allow the award of the Accidents Claims Tribunal to stand in excess of Rs. 5,000/-. Although I have great sympathy for this argument however considering it as a question of law, I find it exceedingly difficult to accept it and grant any relief to the appellant. So long as the appellant''s case does not come u/s 110-C of the Act, the limitations contained in Section 96 (2) of the Act would operate to restrain the Insurance Company and limit its defence before the Tribunal and appeal in this Court to the statutory grounds mentioned in that section. It is admitted by Mr. Ugle and, in any case, I so find that the argument that his client was liable to pay only Rs. 5,000/- is not an argument which can be described as falling u/s 96 (2) of the Act. I am, therefore, unable to uphold the contention of Mr. Ugle that it is still open for the appellant to urge that the award should be limited to an extent of Rs. 5,000/- only. These considerations would apply with peculiar force to an appeal. It is well known that an appeal, un-like a suit, is not a right at common law. It is wholly a creature of the Statute (see The Colonial Sugar Refining Company v. Irving 1905 AC 369. It is open for the Legislature to say whether there should or should not be an appeal. It is equally open to the Legislature to say whether on what points of law and to what extent an appeal should be allowed from the judgment of a lower Court or Tribunal. The well-known example of Section 100, C. P. C hitherto limiting the fight of a second appeal only to questions of law and now to substantial questions of law is a clear case in point. In other words, appealability can be restricted and limited both qualitatively and quantitatively. u/s 110-D of the Act, any person aggrieved by an award of a Claims Tribunal is given the right to file an appeal to the High Court within 90 days. But that provision must be read conjunctively with Sections 96 and 110-C of the Act. As we have already noted that the Statute does not recognise in its fullest extent that the insurer can be a person aggrieved in all cases. If the insurer could not raise his claim that no decree should be passed against him exceeding the statutory limit fixed u/s 95 (2) of the Act before the Claims Tribunal, it would not be logical to contend that it could raise this argument in appeal. The limits of Section 96 (2) of the Act are long enough to apply to the appeal. I am, therefore, clearly of the opinion that it is not open to the Insurance Company to raise this plea in this appeal. That there is no provision forbidding the insurer from raising such a plea in this appeal is hardly relevant. The language used by the Act in Section 96 (2) limits its appeal only to those enumerated grounds. The appeal being a creature of the Statute, what the appellant requires is permission of law to raise a particular plea. In this case, u/s 96 (2) of the Act the pleas available are all enumerated. It follows that it shall not be open to the appellant to urge any plea other than those that are enumerated and permitted.

6. Mr. Ugle has relied upon the judgment of a Division Bench of this Court consisting of Mr. Gopal Rao Ekbote and Mr. Justice Ramachandrarao reported in Hindustan Ideal Insurance Co. Ltd. v. Pokanti Ankaiah (1972) 1 APLJ 47 to contend that it shall be open for his clients to raise this plea. There is absolutely no doubt that the case fully supports the contention of Mr. Ugle. But, with the greatest respect to the learned Judges, who decided that case, I am unable to agree with that judgment for several reasons. Firstly because, the reasoning does not appear to me to be correct in principle which is that whatever is not permitted to be appealed against mutt be taken to have been forbidden; secondly because the judgment does not take full note of the concluding words of Section 96 (2) of the Act, "to defend the action on any of the following grounds" and also Section 96 (6) of the Act Finally because that judgment'' in my humble opinion, does not appear to be consistent with the principles laid down by the Supreme Court in British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others, . The learned Judges of the Supreme Court in the above case clearly held :--

"It would follow that an insurer is entitled to defend on any of the grounds enumerated and no others. If it were not so, then of course no grounds need have been enumerated. When the grounds of defence have been specified, they cannot be added to."

7. The above judgment of the learned Judges reported in Hindustan Ideal Ins. Co. Ltd. v. P. Ankaiah 1972 1 APLJ 47 (supra) was considered by a Division Bench of this Court consisting of Madhava Reddy and Jayachandra Reddy, JJ., in Reddipilli Chinna Rao and Vs. Reddi Lorudu and Others, . The learned Judges

 

held that the earlier Bench, decision was not correctly decided. With respect I follow and accordingly hold that it shall not be open to the appellant to raise this contention in this appeal.

8. Mr. Ugle also strongly relied upon a decision of the Division Bench of this Court consisting of Ramachandra Raju and Jeevan Reddy, JJ., reported in M. Vengamma v. K. Duravasulu AIR 1978 AP 90. That was a case where the question considered was whether the limits of the Insurer''s liability to third-party risks was governed by the provisions of the Act or the terms of the contract. The learned Judges held that it was governed only by the terms of the Statute and not by the terms of the contract. This case was referred to with approval by a Full Bench of this Karnataka High Court reported in S. Sanjiva Shetty Vs. Anantha and Others, on the question of its retrospectivity. But, neither of these cases considered the present question whether Section 96 (2) of the Act limits the defences open to an insurer to those grounds specified and enumerated in that section. These cases are, therefore, of no relevance to the present case. So is the judgment of a Division Bench of the Madras High Court reported in United India Fire and General Insurance Company Limited v. Union of India (1979) 1 Mad LJ 487.

9. For the aforesaid reasons, with regret but without hesitation, I dismiss this appeal. In the circumstances, without costs.