

(1975) 11 OHC CK 0006
In the Orissa High Court
Case No : M.A. No. 170 of 1973

The Vanguard Insurance Co. Ltd.

APPELLANT

Vs

Raghunath Patra and Others

RESPONDENT

Date of Decision : 06-11-1975

Acts Referred:

Motor Vehicles Act, 1939 — Section 110(2), 96(2)

Citation : (1976) ACJ 12

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

Bench : Single Bench

Advocate : P. Roy, for the Appellant; R. Mohanty, S.C. Ghosh and U.N. Sahu, for the Respondent

Final Decision : Allowed

Judgement

B.K. Ray, J.—This appeal arises out of the judgment of the Motor Accident Claims Tribunal, Puri and the insurer who was opposite party No. 3 before the Tribunal is the Appellant.

2. Before the Tribunal the case of Respondent No. 1 was as follows:

He (Respondent No. 1) was the Assistant Settlement Officer of Cuttack Major settlement on 16.12.70 when he was proceeding from Cuttack to Bhubaneswar on his motor cycle the motor truck bearing No. ORU 856 dashed against him near the Master Canteen at Bhubaneswar. As a result of the accident Respondent No. 1 sustained serious injuries and was admitted to the Capital Hospital. Subsequently, he was removed to the S.C.B Medical college hospital, Cuttack. He, therefore, claimed Rs. 43,600/- as damages. According to him, when he was going on the road on his motor cycle he saw the truck coming from the opposite direction from a distance of one furlong. Seeing this, he left the entire pitched portion of the road and was going over the moorum portion on the extreme left. When the truck was only at a distance of 10 feet from the motor cycle the driver of the truck suddenly swerved to his right in order to overtake a rickshaw. As the

truck was in a high speed the driver could not control it and as a result of the swerving the truck dashed against Respondent No. 1's motor cycle causing several fractures and other injuries on his body. For treatment of the injuries he remained in the hospital till 12.2.71 and underwent operations. The damages claimed by him consisted of Rs. 2,000/- towards cost of treatment till the date of filing of the petition. Rs. 2,000/- towards cost of the servant who was taking care of him (Respondent No. 1), Rs. 1,000/- as damages to the motor cycle, Rs. 4,000/- as damages for the loss of pay by remaining on leave, Rs. 14,600/- towards loss of special pay of being permanently invalid and unable to do field work in the administrative service for the remaining years of his service at the rate of Rs. 100/- per month and Rs. 10,000/- as compensation for bodily and mental sufferings.

3. The owners of the truck who were opposite party Nos. 1 and 2 before the Tribunal did not contest the claim of Respondent No. 1. The insurer alone who is the present Appellant objected to the claim of Respondent No. 1 its specific defence being that the claim was barred by limitation and was high, excessive and exaggerated. According to it, the truck was not being driven at a high speed, rashly and negligently. The accident was the result of rash and negligent conduct of Respondent No. 1. Lastly, it was pleaded by the Appellant that the driver who was driving the truck at the time of the accident had no valid licence, and so, the insurer was not liable under the provisions of the Motor Vehicles Act.

4. The Tribunal recorded the following findings:

(a) The application of Respondent No. 1 claiming damages before the Tribunal was maintainable and was not barred by limitation against the insurer ;

(b) the accident happened due to the negligence of the truck ;

(c) Respondent No. 1 sustained fractures and injuries on his right leg and as a result of the accident his right leg was shortened, and so, he incurred a permanent disability ;

(d) the monthly income of Respondent No. 1 at the time of the accident was Rs. 620/- and he was entitled to Rs. 4,000/- on account of loss of pay during the period he was on leave for treatment;

(e) Respondent No. 1 was entitled to Rs. 14,600/- for loss of future prospects on account of the accident and (f) Respondent No. 1 was entitled to Rs. 20,000/- as compensation on account of bodily pain and mental suffering.

5. The Appellant only challenged the quantum of damages awarded by the Tribunal for loss of future prospects assessed by the Tribunal at Rs. 14,600/- and as compensation on account of bodily pain and mental suffering assessed at Rs. 20,000/-.

6. In course of hearing of this appeal Mr. R. Mohanty, learned Counsel for Respondent No. 1, has raised a technical question that the Appellant who is the

insurer cannot maintain the appeal on the ground that the damages awarded to Respondent No. 1 are high and excessive. He invites my attention to Section 96(2) of the Motor Vehicle Act, 1939 (herein after called the "Act") and urges that the defence which is available to the insurer having been specifically mentioned in the aforesaid provision of the Act is not open to the Appellant to attack the judgment of the Tribunal regarding the quantum of damages awarded by it, Mr. Mohanty then relies upon Section 110(c) (2) of the Act and argues that it is only in a case where the Tribunal is satisfied that there is collusion between the person making the claim and the person against whom the claim is made has failed to contest the claim, it may for reasons to be recorded by it in writing direct that the insurer who may be liable in respect of such claim shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made. In the present case, according to Mr. Mohanty, the Tribunal has not passed an order directing the insurer to contest the claim of Respondent No. 1 on all or any of the grounds available against the owner of the truck. Hence the quantum of damages awarded by the Tribunal cannot be challenged in this appeal by the insurer. Reliance is placed upon a decision reported, in *British India General Insurance Co. v. Itbar Singh* 1959 S.C. 1331 The following passages from the said decision may be extracted below:

To start with it is necessary to remember that apart from the statute an insurer has no right to be made a party to the action by the injured person against the insured causing the injury. Sub-section (2) of Section 96 however gives him the right to be made a party to the suit and to defend it. The right therefore is created by statute and its content necessary depends on the provisions of the statute.

When the grounds of defence have been specified they cannot be added to.

We therefore think that Sub-section (2) clearly provides that an insurer made a Defendant to the action is not entitled to take any defence which is not specified in it.

Therefore it cannot be said that in enacting Sub-section (2) the legislature was contemplating only those defences which were based on the conditions of the policy.

Therefore when Sub-section (6) talks of avoiding liability in the manner provided in Sub-section (2) it necessarily refers to these defences.

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 hardship 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.

To the same effect is the decision reported in *Northern India General Ins. Co. Ltd. v. L. Krishnan* 1972 A.C.J. 420 where it has been held that "the insurer can urge all the defences open to the insured only when the insurer defends the action in the name of the insured by virtue of a right reserved in the policy and that unless the insurer has defended the action before the Tribunal in the name of the insured, the only defences which it can urge before the Tribunal or in appeal are those specified in Clauses (a) to (c) of Sub-section (2) of Section 96 of the Motor Vehicles Act." These two decisions therefore make it amply clear that the insurer can only take the defences as mentioned in Section 96(2) of the Act. It is only when other defences which are available to the insured have been reserved in the policy the insurer can defend the action before the Tribunal in the name of the insured on the grounds reserved by it in the policy not provided for u/s 96(2) of the Act. In the present case, the policy which has been filed before me shows that the insurer has reserved a right to defend an action against the insured before the Tribunal on the grounds available to the insured though not provided for u/s 96(2) of the Act. But the objection filed by the insurer before the Tribunal does not show that it has been filed on behalf of the insured. The objection, however, shows that the insurer has taken the defences that are available to the insured and has challenged the quantum of damages claimed by the claimant. Mr. Mohanty, therefore, argues that the objection objecting to the quantum of damages filed by the insurer not having been filed on behalf of the insured the conditions laid down in the aforesaid tests have not been fulfilled, and therefore, the Appellant cannot challenge the quantum of damages in present appeal. Mr. P. Roy, learned Counsel for the Appellant, however, urges that in view of the fact that the rights available to the insured have been reserved in the policy; that in view of the fact that the defences available to the insured have been taken in the objection filed by the insurer before the Tribunal and that the insurer has been allowed to cross-examine the witness for the claimant before the Tribunal on the plea taken by it without an objection from the claimant it must be held that the conditions laid down in the aforesaid Supreme Court decision have been fulfilled and at this stage Respondent No. 1 cannot raise an objection that it is not open to the Appellant to challenge the decision of the Tribunal regarding the quantum of damages. This contention of Mr. Roy is well founded. In view of the provisions contained in Sections 96 (2) and 110 (c) (2) of the Act it was open to the claimant to raise an objection to the defence taken by the insurer before the Tribunal challenging the quantum of damages claimed by the claimant. The claimant does not appear to have raised any objection to the defence taken by the insurer before the Tribunal and in the absence of any objection the Tribunal allowed the insurer to cross examine the claimant's witnesses on the question of damages. The records also show that the

owner of the truck did not appear before the Tribunal and contest the claim of Respondent No. J. These being the state of things, in my view, there has been sufficient compliance of the conditions laid down in the aforesaid Supreme Court decision relied upon by Mr. R. Mohanty. The technical objection raised by Mr. Mohanty therefore fails.

7. Coming to the question of damages Mr. Roy does not challenge the finding that the monthly income of the claimant at the time of the accident was Rs 620/-. He also does not challenge the finding of the Tribunal that the claimant is entitled to Rs. 14,600/- on account of loss of all future prospects. His only challenge is about Rs. 20,000/- which has been awarded by the Tribunal on account of bodily pain and mental sufferings. Mr. Roy urges that once the Tribunal has awarded Rs. 14,600/- for loss of all future prospects, the said amount also covers the compensation on account of bodily pain and mental sufferings which according to the Tribunal has been classified as general damages. True, according to me, in fixing the quantum of compensation in accident cases there is bound to be some element of arbitrariness. Normally the matter would be left to the Tribunal to take a reasonable view of the facts and to come to fix the quantum of compensation. Once such an amount is determined it would not be proper to interfere with the quantum determined by the Tribunal. But where the judgment of the Tribunal shows that its determination of the quantum of damage on a particular head has already been covered under another head, it is open to a court of appeal to interfere with and to set aside that part of the judgment in which there has been duplication. For permanent disability the Tribunal has compensated the claimant by awarding Rs. 14,600/- as damages for sufferings caused to the claimant as a result of the accident. Once this is so, there is no reason for awarding a further sum of Rs. 20,000/-. The decision relied upon by the Tribunal in Samaraj Oil Mills and Fertilisers and Others Vs. D. Kothandaraman is of no avail to the claimant. This contention of Mr. Roy appears to have sufficient force. Paragraph 19 of the Tribunal's judgment does not indicate the basis on which it has reached a conclusion that besides Rs. 14,600 the claimant is entitled to another sum of Rs. 20,100/-. A distinction is sought to be made by Mr. Mohanty between damages for loss of expectation of life and damages for loss of amenities of life. He says that the sum of Rs. 14,600/- represents damages for loss of expectation of life and does not represent damages for loss of amenities of life which according to me is the same thing as damages for bodily pain and mental sufferings. The loss of expectation of life always includes loss of amenities of life. The Tribunal has awarded Rs. 14,600/- as damages for loss of expectation of life which, in my opinion, includes damages for loss of amenities of life also. Therefore, there is no justification for the Tribunal for awarding Rs. 20,000/- as a separate head of damages for bodily pain and mental sufferings. That apart, it is admitted at the Bar in course of hearing of this appeal that although the claimant after the accident joined judicial service being unable to discharge the functions of an officer in administrative service he (claimant) has once again joined

administrative service. This shows that he has become fit for doing any sort of field work required of an officer in administrative service. Hence the award of the Tribunal granting Rs. 20,000/- as damages for bodily pain and suffering becomes unsustainable.

8. In the result, the appeal succeeds in part. It is declared that Respondent No. 1., in all, is entitled to Rs. 20,300/- towards compensation for the loss occasioned to him on account of the accident together with interest at the rate of 6 per cent per annum on the said amount from 21-6-71 till the date of payment. The award of the Tribunal is modified and the cross objection is disposed of accordingly. Respondent No. 1 will be entitled to proportionate costs before the Tribunal and the Appellant shall be entitled to proportionate costs of this Court.