

**(2007) 02 DEL CK 0222**  
**In the Delhi High Court**  
**Case No : FAO No. 222 of 1997**

|                                                   |            |
|---------------------------------------------------|------------|
| United India Insurance Company Ltd., Jeevan Vikas | APPELLANT  |
| Vs                                                |            |
| Smt. Kamla Behan and Others                       | RESPONDENT |

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**Date of Decision :** 24-02-2007

**Acts Referred:**

Motor Vehicles Act, 1939 — Section 95, 95(1), 95(2)

**Citation :** (2008) ACJ 1076

**Hon'ble Judges :** Vidya Bhushan Gupta, J

**Bench :** Single Bench

**Advocate :** L.K. Tyagi, for the Appellant; None, for the Respondent

**Final Decision :** Dismissed

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## Judgement

V.B. Gupta, J.—Appellant/United India Insurance Company Limited has filed the present appeal against the impugned order dated 6.6.1997 passed by Shri. D.R. Singh, MACT, Delhi, vide which learned Tribunal passed an award in the sum of Rs.3,60,000/- along with interest @ 12% per annum from the date of judgment till realisation.

2. Brief facts of the case are that on 1.6.1988, at about 8.35 a.m., deceased Javer Bhai, aged about 41 years, was traveling in Bus No. DEP-6028 (Route No. 930) which was going from Rani Bagh to Tilak Nagar. When the Bus reach near Punjabi Bagh, Gurvinder singh, driver of the Bus ( Respondent No. 9 herein "Appeal") could not control the Bus due to high speed and as the Bus was driven in a rash and negligence manner, hit the pavement dividing the road and turned with the result that deceased died in this accident. The Bus is owned by Shri Umesh Kumar (Respondent No. 10 herein the "Appeal") and was insured with appellant/Insurance Company.

3. After recording the evidence, learned Tribunal passed the impugned award. Being dissatisfied with the award, the appellant had filed the present appeal.

4. Notice of this appeal was issued to all the Respondents.

5. On 1.5.1998, counsel for respondents No. 1 to 7 appeared while respondents No. 8, 9 and 10 were not served. Fresh notices were ordered to be issued to unserved respondents. Respondent No. 8 was served for 21.8.98 but did not appear. Respondents No. 9 and 10 were ordered to be served by publication in "Dainik Jagran". Thereafter, the matter was listed for arguments and counsel for appellant appeared on various dates while, none appeared on behalf of respondents.

6. On 2.02.07, counsel for appellant was present while none appeared for respondents and on 6.02.07, again only counsel for appellant was present while none for respondents and part arguments were heard. The matter was listed for further arguments for 9.2.07. On that date, again only counsel for appellant was present while none appeared for respondents and arguments were concluded.

7. It has been argued by learned Counsel for appellant that the Motor Vehicle Act provides the liability of appellant towards the passenger to the extent of Rs. 15,000/- only and the same can be increased by charging extra premium. In the present case, the appellant company had charged premium of Rs. 30/- per passenger and as per tariff, the liability of appellant company per passenger is only Rs. 30,000/- and on this point, he cited decisions of Apex Court reported as New India Assurance Co. Ltd v. Shanti Bai and Ors. I (1995) ACC 667 (SC) and New India Assurance Company Limited v. C.M. Jaya and Ors. I (2002) ACC 299 (SC).

8. The other contention of learned Counsel for the appellant is that the Insurer/owner failed to produce the original insurance policy in spite of notice given by the appellant company and as such the liability of the appellant is restricted to the extent of Rs. 30,000/- per passenger only and on this point, this Court learned Counsel for the appellant cited the case report as Oriental Fire and General Insurance Co. Ltd. Vs. Veena Pruthi and others, .

9. Lastly, it is contended by learned Counsel for the appellant that appellant has proved on record, tariff Exhibit RW 1/6 according to which the liability of the Insurance Company per passenger would be Rs. 30,000/- only, as the premium charged in this case is Rs. 30/- per passenger.

10. The short question which arises for consideration is as to whether the liability of appellant-company per passenger is limited to the extent of Rs. 30,000/- or not.

11. The Tribunal in its order has held that the liability of Insurance Company to pay compensation is "unlimited". The relevant findings are:

In this case the respondent No. 3 has tried to show that the insurance policy Exhibit RW-1/3 is the carbon copy of the original policy issued to the owner respondent No. 2 but from the cross examination of RW-1 it become clear that RW- 1/3 is not the complete and true copy of the original insurance policy issued to respondent No. 2 by the respondent No. 3 due to following reasons; RW-1 in

his cross examination has admitted that policy Exhibit RW-1/3 is subject to endorsement No. 26 etc. marked at point "Y" on Exhibit RW-1/3 but the present carbon copy of the policy RW-1/3 does not have the details of those endorsements. Respondent No. 1 has also admitted that he has not brought the proposal form submitted by respondent No. 1 on the basis of which the foundation of the contract of insurance was laid between the respondent No. 3 and respondent No. 2.

Thus, I am of the opinion that respondent No. 3 has failed in establishing that the insurance policy Exhibit RW-1/3 was the true and complete copy of the original insurance policy issued by the respondent No. 3 to respondent No. 2 and consequently the respondent No. 3 have also failed in establishing that its liability to pay compensation was limited to Rs. 30,000/- on the basis of the policy and premium receipt relied upon by respondent No. 3. Thus, it is held that the liability of insurance company to pay compensation to the petitioners was unlimited.

12. RW-1, is the Assistant Division Manager of appellant-company. He in his cross-examination he states that the policy is subject to endorsement No. 26 etc. and this policy Exhibit RW-1/3 does not have details of these endorsements. He further states that he has not brought the proposal form as the same was not traceable and denied the suggestion that he had intentionally not brought the proposal form because the insured had mentioned in that form that the liability of the passengers to be insured as "unlimited".

13. It is true that the insurance company has given notice to the insured to produce the original policy but insured did not produce the same and thus appellant has proved on record copy of the policy as Exhibit RW-1/3.

14. Exhibit RW-1/3 is a comprehensive policy and it is nowhere mentioned in it that the liability per passenger, is limited to the extent of Rs. 30,000/- . Further, the insurance policy, Exhibit RW-1/3 is subject to the endorsements No. 26, 23, 22, 21, 13,16, and 57. However, the appellant has not placed or proved on record these endorsements. As such insurance policy Exhibit RW-1/3 filed by appellant appears to be incomplete.

15. In Shanti Bai case (supra), the appellant issued a comprehension policy in respect of a bus which was used for carrying passengers for hire and it met with an accident and one passenger died. The Tribunal directed the insurance company and owner/Driver to pay compensation. Aggrieved with the order, insurance company filed an appeal. Held;

The short question that we have to consider is whether the appellant is liable to pay compensation to the tune of Rs. 1,10,000/- together with interest thereon at the rate of 12% from the date of the presentation of the petition to respondents 1 to 3. The appellant contends that its liability in this regard is limited to Rs. 15,000/-.

The insurance policy taken out by the owner of the said bus i.e. respondent No. 4 herein, and which was in force at the relevant time, was a comprehensive policy. This policy has been produced before us. It shows that the insured estimated value of the vehicle is Rs.2,50,000/-. In the schedule of Premium, there is additional payment of Rs. 600/- in respect of 50 passengers. The claim against this amount states: for L.L. to passengers as per Ednt. No. I.M.T. 12". The appellant-company has contended that it has charged premium at the rate of Rs. 12/- per passenger in respect of 50 passengers to cover its limited liability u/s 95 of the Motor Vehicles Act, 1939 which was then in force.

Section 95 forms part of Chapter VIII of the Motor Vehicles Act, 1939 which deals with insurance of motor vehicles against third party risks. u/s 95, in order to comply with the requirements of Chapter, a policy of insurance must be a policy which, inter-alia, insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2). u/s 95 (1)(b)(ii), the insurance policy must cover the death 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. Sub-section (2)(b) provides as follows:

Section 95(1):

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

(a) x x x x x (b) Where the value 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;

These were the provisions at the relevant time. These provisions were interpreted by this Court in the case of National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, . This Court observed that even though it is not permissible to use a vehicle unless it is covered at least under an "act only" policy, it is not obligatory for the owner of a vehicle to get if comprehensively insured. In case, however, it is got comprehensively insured, a higher premium is payable depending on the estimated value of the vehicle. Such insurance entitles the owner to claim reimbursement of the entire amount of loss or damage suffered up to the estimated value of the vehicle calculated according to the rules and regulations framed in this behalf. It has further observed as under;-

Comprehensive insurance of the vehicle and payment of higher premium on this score, however, does not mean that the limit of the liability with regard to 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.

In the present case, Therefore, a comprehensive policy which has been issued on the basis of the estimated value of the vehicle of Rs. 2,50,000/- does not automatically result in covering the liability with regard to third party risk for an amount higher than the statutory limit.

In the present case, the premium which has been paid is at the rate of Rs. 12/- per passenger and is clearly referable to the statutory liability of fifteen thousand rupees per passenger u/s 95(2)(b)(ii) of the Motor Vehicles Act, 1939. In the present case, there is no special contract between the appellant-company and respondent No. 4 to cover unlimited liability in respect of an accident to a passenger. In the absence of such an express agreement, the policy covers only the statutory liability. The mere fact that the insurance policy is a comprehensive policy will not help the respondents in any manner. As pointed out by this Court in the case of National Insurance Co. Ltd. v. Jugal Kishore and Ors. (supra) comprehensive policy only entitles the owner to claim reimbursement of the entire amount of loss or damage suffered up to the estimated value of the vehicle. It does not mean that the limit of liability with regard to third party risk becomes unlimited or higher than the statutory liability. For this purpose, a specified agreement is necessary which is absent in the present case. Reference in this connection may also be made to the case of M.K. Kunhimohammed Vs. P.A. Ahmedkutty and Others, . The appellant-company is, Therefore, entitled to succeed to the extent that it has been directed to pay to respondent 1 to 3 any amount in excess of Rs. 15,000/-

16. In C M Jaya and Ors. (supra), the insurance policy was produced before the Court and liability was limited to the extent of Rs. 50,000/-. It was held:

that the insurance company not taking any higher liability by accepting higher premium for payment of compensation to third party, would be liable to the extent limited u/s 95(2) of the Act, and would not be liable to pay the entire amount.

17. In Veena Pruthi's case (supra), owner of offending vehicle did not produce the original although he was claiming that the entire liability was that of the insurance company and insurance company produced office copy of the last page of the policy showing the premium paid and the risk covered as rest of the terms are standard terms. The Tribunal held that the sheet produced by the insurance company without the terms and conditions cannot be accepted, the question was whether the office copy produced is acceptable in evidence? The Apex Court held that:

The approach of the Tribunal was wholly erroneous. The Tribunal ought to have weighed the circumstances and evidence before it. When the owner had not produced the original copy, it was erroneous on the part of the Tribunal to hold

the insurance company also jointly and severally liable for the entire amount. As stated above, the normal practice of the insurance companies is to keep the relevant page or pages on the file of each insured, showing how much of the premium is paid and risk of what amount is covered. The Tribunal also overlooked the fact that it is supposed to make a summary enquiry where it cannot insist upon the technical rules of evidence. I have, Therefore, no hesitation to accept the office copy of the policy produced by the insurance company.

18. The above decisions of the Apex Court are not applicable to the facts of the present case since, the Appellant has not placed on record even the complete copy of the insurance policy nor it has placed on record the proposal form, on the basis of which the foundation of contract of insurance was made between the appellant and the insured. Admittedly, the proposal form would be in the possession of Appellant-Insurance Company only.

19. Since the appellant has failed to prove that insurance policy Exhibit RW-1/3 is a true and complete copy of the original insurance policy issued by it to the insured nor it has proved on record the proposal form, which is the very foundation of the contract between the Appellant and the insured, under these circumstances, I have no hesitation in holding that appellant has failed to establish that its liability to pay compensation is limited to the extent of Rs. 30,000/- only.

20. Accordingly, it is held that the liability of the Appellant- Insurance Company to pay compensation is unlimited.

21. Hence, this appeal is hereby dismissed.