
(1968) 12 AHC CK 0001
In the Allahabad High Court
Case No : First Civil Appeal No. 41 of 1953

Vangaurd Insurance Co. Ltd.

APPELLANT

Vs

Shafali Mnkherji and Others

RESPONDENT

Date of Decision : 18-12-1968

Acts Referred:

Motor Vehicles Act, 1988 — Section 105, 96(2), 96(6)
Motor Vehicles Act, 1988 — Section 105, 96(2), 96(6)
Motor Vehicles Act, 1988 — Section 105, 96(2), 96(6)

Citation : (1970) ACJ 245

Hon'ble Judges : G.S Lal, J;G.D. Sahgal, J

Bench : Division Bench

Advocate : K.B. Sinha, for the Appellant; V.B. Mathur, for the Respondent

Final Decision : Dismissed

Judgement

G.D. Sabgal, J.—A public Carrier Motor Truck bearing No. USJ 4081 belonged to Respondent No. 5 Triloki Nath Jaiota Respondent No. 6 Babu Lal was its driver. This truck met with an accident on the 14th of February 1950. It was travelling on the Jail Road in Lucknow from north to south when on the junction of that road with Alambagh Road it turned on the right towards west. One Shiba Bilas Mukherjee was travelling on a bicycle on that road on the left side of the road by the side of a Nala. i.e. a drain in the north. He was coming from west to east. The truck dashed against him. He tried to save himself so much so that he even crossed the Nala and then struck against the wire fencing of the compound of the house on the other side of the Nala. The truck reached even there with the result that he was crushed and died as a result of the accident. He died almost instantaneously as a result of shock and multiple injuries including, fracture of ribs, heart, lungs and liver wounds. The position as to how the accident occurred would become clear from a sketch map of the locality on page 6 of the printed paper book.

2. The vehicle was insured against third party risk with the Appellant insurance

company. The result was that a suit was filed by the heirs of the deceased Shiba Bilas Mukherjee against the owner of the truck, the driver and the insurance company. The heirs on whose behalf the suit was filed were Mrs. Shafali Mukherjee widow of the deceased, Dilip Kumar Mukherjee and Gautam Mukherjee, minor sons of the deceased and Miss Bannya Mukherjee, a minor daughter of the deceased. The claim was for a sum of Rs 40,000/-. The suit was contested by all the Defendants and the following issues were struck for determination in the case which would indicate the pleas taken before the learned Civil Judge who tried the case:

- (1) was the accident caused by the negligence of the driver as alleged ?
- (2) Was it caused by an unpreventable cause as alleged in para 24 of the written statement of Defendant No. 3 ?
- (3) Was there contributory negligence on the part of the deceased ?
- (4) To what amount and against which Defendants are the Plaintiffs entitled ?

3. The plea giving rise to issue No. 2 was that the accident was due to unforeseen and unpreventable cause beyond the control of the driver, namely, accidental snapping of the tie rod.

4. The findings of the learned Civil Judge were that the accident was caused by the negligence of the driver ; that it was not caused by any unpreventable cause and that there was no contributory negligence on the part of the deceased. As to the amount though the claim was made for Rs. 40,000/-the claim was decreed for a sum of Rs. 20,000/- only. It is against this judgment and decree passed as a result thereof that this appeal has been filed by the insurance company. The legal representatives of the deceased are Respondents 1 to 4 to this appeal. The owner of the truck is Respondent No. 5 and the driver is Respondent No. 6.

5. In the appeal the Company has taken the same grounds which gave rise to the various issues struck by the trial court.

6. A preliminary point has been raised on behalf of Respondents I to 4 that this defence was not open to the Appellant in view of the provisions of Section 96(2) read with Sub-section (6) of Section 96 of the Motor Vehicles Act and in support of his contention the learned Counsel has relied on an authority of the Supreme Court, namely, British India General Insurance Co. Ltd. v. Captain Itbar Singh 1959 S.C. 1331. It has been laid down therein 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 of the Act, 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 necessarily depends on the provisions of the statute. 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 When the grounds of defence have been specified, they cannot be added to. The only manner of avoiding liability provided for in Sub-section (2) is through

the defences therein mentioned. Therefore when Sub-section (6) talks of avoiding liability in the manner provided in Sub-section (2), it necessarily refers to these defences. 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. Sub-section (2) of Section 96 provides:

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 proceeding is so 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 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 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 public service vehicle or a goods vehicle, or

(d) without side-car being attached, where the vehicle is 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 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.

It would thus appear that none of the defences taken in the case is covered by this provision of law.

8. No doubt, as has been pointed in the Supreme Court case above referred to, an insurer had a right provided he reserved it the policy to defend an action in the name of the insured and if he did so all defences by open to the assured could then be urged by him but in this case no such right has been reserved by the policy. Apart from it the case was not defended by the Appellant in the name of the assured nor has this appeal been filed in the name of the assured. The result is that this appeal must fail.

9. The appeal fails and is hereby dismissed with costs.