
National Insurance Co. Ltd. Vs Smt. Asha Devi and Others

F.A.F.O. No"s. 1210 and 1211 of 1999

Court: Allahabad High Court

Date of Decision: Nov. 18, 2002

Acts Referred:

Motor Vehicles Act, 1988 " Section 149, 149(2), 166, 170, 96

Citation: (2003) 1 ACC 226 : (2004) ACJ 418 : (2003) 2 AWC 1227

Hon'ble Judges: S.P. Srivastava, J; M.P. Singh, J

Bench: Division Bench

Advocate: M.S. Haq, for the Appellant; Anil Kumar Misra and V.K. Jaiswal, for the Respondent

Final Decision: Dismissed

Judgement

S.P. Srivastava, J.

Heard the learned counsel for the insurer-appellant as well as the learned counsel representing the claimants-respondents.

2. Perused the record.

3. Feeling aggrieved by the grant of the award of an amount of Rs. 4,25,000 along with simple interest @ 9% per annum in the proceedings u/s

166 of the Motor Vehicles Act as compensation to the claimants-respondents on account of the untimely death of Ravindera Singh Chauhan and

an amount of Rs. 2,94,000 on account of the death of Babbu alias Ram Bilas in the same accident involving the offending Motor Vehicle bearing

registration No. MKA 9723, the appellant has now come up in appeal seeking redress praying for setting aside of the impugned award.

4. The facts in brief shorn of details and necessary for the disposal of this appeal lie in a narrow compass.

5. The deceased Babbu was employed as a driver of the Motor Vehicle--a Truck bearing registration No. MKA 9723 which was owned by

Devendra Kumar Mishra and was insured with the National Insurance Company--the present appellant.

6. The aforesaid driver along with a mechanic of the Truck was coming in the aforesaid Truck towards Mirzapur. At the place of occurrence of the

accident, the aforesaid Truck got stopped due to shortage of fuel. The deceased driver parked the Truck at the road side. This happened at about

1.00 a.m. in the night. The driver of the Truck sent the Khalasi Sattan to get diesel and both the driver and the mechanic spreading a blanket lied

down in front of the Truck. All of a sudden another motor vehicle--a Truck--bearing registration No. UGZ 885 came from behind at a fast speed

which was being driven by Vishwadhari Lal and collided with the Truck bearing registration No. MKA 9723 which was standing standstill. This

Truck was hit from behind. The impact was so strong that the stationary Truck moved ahead and crushed the driver Babbu and mechanic

Ravindra Singh Chauhan both of whom died on the spot. Ravindra Singh Chauhan at the time of the death was aged about 26 years while Babbu

the driver was aged about 30 years.

7. The insurer appellant contested the claim on various grounds asserting that it had no knowledge of the alleged accident as no immediate

information was communicated to it about the same and, therefore, the occurrence of the alleged accident was being denied. The amount claimed

by the claimants was claimed to be highly excessive. It was further asserted that on the own showing of the claimant it was a case where the Truck

bearing registration No. UGZ 885 on account of the negligence of the driver of the said Truck had dashed against Truck bearing registration No.

MKA 9723 which was standing on the left side patri and, therefore, the insurer was not liable at all to indemnify the insured. This was so stated in

paragraph No. 25 of the written statement.

8. The Tribunal after carefully considering the evidence and the materials brought on the record came to the conclusion that the claimants had

successfully established the involvement of the offending vehicle the truck bearing registration No. MKA 9723 in the accident. It was also found

that the driver of the Truck No. MKA 9723 had stopped the Truck on the road and had not even taken care to keep the parking light on. The

Truck bearing registration No. UGZ 885 was not insured. The plea of the "insurer that the driver had no valid licence for driving the Truck was

negatived. Drawing support on the decision of the Rajasthan High Court in the case of United India Insurance Company Limited v. Smt. Beta

Marya 1996 (2) TAG 519 the Tribunal came to the conclusion that the manner in which the driver of the Truck bearing registration No. MKA

9723 had acted was sufficient to indicate that he had been grossly negligent.

9. Taking into consideration the facts as established on record, the Tribunal held that the driver of Truck bearing registration No. MKA 9723 was

not only negligent but had taken no care for the protection of his own Truck and himself which resulted in the accidental death of two individuals.

10. The Tribunal found Ravindra Singh Chauhan to be aged about 26 years at the time of the accident and holding his income to be Rs. 3,000 per

month and taking into account that his family consisted of 6 units and determining the extent of dependency at figure of Rs. 27,000 per annum, the

amount of compensation was calculated applying the multiplier of sixteen. So far as Babbu alias Ram Bilas was concerned, his age was found to be

30 years at the time of accident and his income was determined to be Rs. 2,000 per month. Holding the extent of dependency at figure of Rs.

19,600 per year taking into account the family members including drivers. So far as the multiplier is concerned, the Tribunal considering the age of

the deceased applied a multiplier of fifteen for determining the amount of compensation.

11. The learned counsel for the appellant has vehemently urged that in the present case, the accident on the own showing of the claimants had

occurred on account of the rash and negligent driving of the Truck bearing registration No. UGZ 885 which had hit the Truck bearing registration

No. MKA 9723 from behind and since the aforesaid motor vehicle, i.e., Truck bearing registration No. MKA 9723 had not been insured by the

present insurer-appellant, no liability could be fastened upon it for the payment of the compensation.

12. The learned counsel for the claimants has, however, urged that on the facts found and established on record, the death had occurred on

account of the movement of the Truck bearing registration No. 9723 which movement was caused on account of the impact of Truck bearing

registration No. UGZ 885. The contention is that the death had arisen out of the use of the Motor Vehicle bearing registration No. MKA 9723

and, therefore, the insurer could not escape from the liability to pay the amount of compensation.

13. According to the learned counsel for the claimants-respondents the fact that the source of the force for moving the truck which had resulted in

the accidental death of 2 individuals was the Truck bearing registration No. UGZ 885 was wholly immaterial and could not be taken to exonerate

the insurer who had insured the offending motor vehicle the Truck bearing registration No. MKA 9723 as the death was caused on account of the

movement of this Truck. The contention is that the source of power for this movement was wholly immaterial.

14. It has further been urged by the learned counsel for the appellant that the amount of compensation awarded by the respondent-Tribunal,

considering the facts and circumstances of the case, is excessive and the amount of compensation deserved to be reduced.

15. The learned counsel for the claimants has, however, contended that considering the number of the dependants and the amount which the

deceased was contributing to his family the quantum of compensation determined by the motor accident claims Tribunal is just and sustainable in

law.

16. We have given our anxious consideration to the rival submissions of the learned counsel for the parties.

17. Before proceeding further, it may be noticed that vide an order dated 15.11.2002 this appeal has already been dismissed as against

respondent Nos. 4 and 5 the driver and the owner in F.A.F.O. No. 1211 of 1999 and respondent Nos. 7 and 8 in F.A.F.O. No. 1210 of 1999.

18. The Apex Court in its decision in the case of Smt. Rita Devi and Ors. v. New India Assurance Company Limited and Anr. 2000 (5) SCO 113

while noticing the implications arising u/s 163A of the Motor Vehicles Act, had emphasised that a victim of the motor accident or his heirs are

entitled to claim from the owner/Insurance company, a compensation for death or permanent disablement suffered due to accident arising out of

the use of the motor vehicle without having to prove wrongful act or neglect or default of anyone. Observing so, it was indicated that if it is

established by the claimants that the death or disablement was caused due to an accident arising out of the use of the motor vehicle, then they will

be entitled for payment of compensation. Going further while interpreting the implications, it was clarified that from the expression ""death due to

accident arising out of the use of the motor vehicle"", a distinction was drawn between accidental murder and death holding that if during the course

of duty of the driver of the motor vehicle, the passengers decided to commit an act of felony of stealing the motor vehicle and in the course of

achieving the said stealing the motor vehicle, they had to eliminate the driver of the motor vehicle, then it could not be said that the death so caused

to the driver of the motor vehicle was an accidental murder, finding that the death of the driver was caused accidentally in causing the theft of the

motor vehicle and further that the expression ""caused by"" and the expression ""arising out or had a wider connotation. Reiterating its earlier view

that the casual relationship between the use of the motor vehicle and the accident resulting in death or permanent disablement was not required to

be direct and proximate and indicating that it can be less immediate, the award of the Motor Accidents Claims Tribunal was upheld holding that the

murder of the deceased driver was due to an accident arising out of the use of the motor vehicle.

19. We are of the clear opinion that taking into consideration the observations made by the Apex Court in its decision in the case of Gujarat State

Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, as well as Smt. Rita Devi and others (supra), there can be no

escape from the conclusion that the provisions contained in Section 140 or 163A of the Act, cannot be taken to be procedural in nature and from

the apparent legislative intent, it has to be held that there has been a departure from the usual common law principle that a claimant should establish

negligence on the part of the owner or driver of the motor vehicle before claiming any compensation for the death or permanent disablement

caused on account of a motor vehicle accident and to that extent, the substantive law of the country stands modified.

20. In its decision in the case of New India Assurance Co., Shimla v. Kamla and Ors. 2001 (2) AWC 1405 : AIR 2001 SCW 1340 the Hon"ble

Apex Court on a consideration of Sections 145 to 164 of the New Motor Vehicles Act, 1988, had observed that it was the duty of the insurer to

satisfy the judgments and awards in respect of third party claims as provided u/s 149 of the Act, wherein it has been stipulated that the insurer shall

pay to the person entitled to the benefit of a judgment or award as if the insurer were the Judgment debtors in respect of the liability, when any

such Judgment or award is obtained against the insured in whose favour a certificate of insurance has been issued, indicating further that ""of course,

the said liability of the insurer is subject to the maximum sum assured payable under the policy.

21. Referring to Sub-sections (4) and (5) of the Section 149 of the new Act which correspond to Section 36(3) and 96 (4) of the old Act, the

Apex Court had clarified that these provisions would indicate that they are intended to safeguard the interest of an insurer who otherwise has no

liability to pay any amount to the insured but for the provisions contained in Chapter XI of the Act. It was also observed that ""this means, the

insurer has to pay to the third parties only on account of the fact that a policy of insurance has been issued in respect of the vehicle, but the insurer

is entitled to recover any such sum from the insured if the insurer were not otherwise liable to pay such sum to the insured by virtue of the

conditions of the contract of insurance indicated by the policy.

22. Indicating the effect of the above provisions, it was pointed out by the Apex Court that when a valid insurance policy has been issued in

respect of a vehicle as evidenced by a certificate of insurance, the burden is on the insurer to pay to third parties, whether or not there has been

any breach or violation of the policy conditions. But the amount so paid by the insurer to third parties can be allowed to be recovered from the

insured if as per the policy conditions the insurer had no liability to pay such sum to the insured.

23. Referring to its earlier decision, it was clarified by the Apex Court that the insistence of the Legislature that a motor vehicle can be used in a

public place only if that vehicle is covered by a policy of insurance is not for the purpose of promoting the business of the Insurance Company but

to protect the members of the community who become sufferers on account of accidents arising from use of motor vehicles. Such protection would

have remained only a paper protection if the compensation awarded by the Courts were not recoverable by the victims or dependents of the

victims of the accident. This was indicated to be *raison d'être* for the Legislature making it prohibitory for motor vehicles being used in public places

without covering third party risks by a policy of insurance.

24. It may be noticed that the provisions contained in Section 96 of the old Act now retained as Section 149 in the new Act are intended to enable

the third parties who suffered on account of the user of the motor vehicle to get the damages/ compensation which has not been made dependent

on the financial condition of the driver of the offending motor vehicle or the contractual rights and obligations between the insurer and the insured.

25. It may further be noticed that the liability of the insurer to pay the compensation to the third parties in accordance with the provisions contained

in Section 149 of the Act and the right of the third parties to recover the amount of compensation from the insurer flows from the statute.

26. The liability of the insurer to pay the compensation which becomes due under an award given on the application u/s 166 of the Motor Vehicles

Act, 1988 (Section 110A of the old Act) is in the capacity of a Judgment-debtor which flows from the statute as there is no privity of contract

between the insured and the third parties. The liability to this extent which stands cast upon the insurer and the right of the third parties to recover

the compensation from the insurer clearly indicates that such liability is the statutory liability. However, this statutory liability is subject to the

condition stipulated in Section 96 (4) of the old Act now retained as Section 149(5) in the new Act, which protects the interest of the insurer to the

extent that if the amount which an insurer becomes liable to pay in respect of a liability incurred by a person insured by a policy exceeds the

amount for which the insurer would, apart from the provisions of Section 96 of the old Act now retained as Section 149 in the new Act, be liable

under the policy in respect of that liability, the insurer shall be entitled to recover the excess amount from that person.

27. The statutory liability contemplated u/s 149(5) of the Motor Vehicles Act (corresponding to Section 96 (4) of the old Act) means and extends

only to the making of the payment of the amount of award to the victim/claimant for which ultimate liability has been fastened on the owner. It, in its

real meaning, is a statutory measure to give a speedy relief to the claimant in the matter of recovery of the amount of award. In doing so, the insurer

does not in any way indemnify the owner's liability inasmuch as that the amount so paid by the insurer is recoverable by it from the insured. The

insurer does not stand exonerated of its liability to make the payment of award. The payment of the amount by the insured remains only deferred

by the intervention of the insurer, in other words it is a stop-gap arrangement towards payment of the compensation amount fixing a statutory

liability on the insurer in the interest of the claimant.

28. It may be noticed at this stage that in its decision in the case of Oriental Insurance Co. Ltd. v. Cheruyakkara Nafeesu and Ors. 2001 (1)

AWC 574 : (2001) 2 SCC 491 after examining various provisions of the Motor Vehicles Act, the Apex Court had reiterated the position in law as

indicated in its earlier decision in the case of New Asiatic Insurance Co. Ltd. Vs. Pessumal Dhanamal Aswani and Others, pointing out that ""The

Act contemplates the possibility of the policy of insurance undertaking liability to third parties providing such a contract between the insurer and the

insured, that is, the person who effected the policy, as would make the company entitled to recover the whole or part of the amount it has paid to

the third party from the insured. The insurer thus acts as security for third party with respect to its realising damages for the injuries suffered, but

vis-a-vis the insured, the company does not undertake that liability or undertakes it to a limited extent.

29. The High Court of Madhya Pradesh in its decision rendered by a Division Bench in the case of Nani Bai and others v. Ishaque Khan and

others, 1994 JLJ 296. had observed that the words unless there is in force in relation to the use of the vehicle of that person..... a policy of

insurance clearly indicated that it is the vehicle that is required to be insured and not the person or the owner of the vehicle and in such a situation,

the Insurance Company cannot escape its liability. Drawing support from the observations made by the Apex Court in its decision in the case of

Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan AIR 1987 SC 1184 it was pointed out that the law may provide for compensation to

victims of the accidents who sustain injuries in the course of an automobile accident or compensation to the dependants of the victims in the case of

a fatal accident. However, such protection would remain a protection on paper unless there is a guarantee that the compensation awarded by the

Courts would be recoverable from the persons held liable for the consequences of the accident and it was clearly indicated that the insurance is

liable to pay compensation to the heirs of the deceased and to the injured in the accident if they are aggrieved by the concealment of fact or

misrepresentation or fraud, if any, they can make a grievance before the appropriate forum separately.

30. It will be noticed that earlier the view expressed was that the provision for recovery of the amount of compensation from the person held liable

for the consequences of the accident and the statutory liability in this respect being cast on the insurer was to provide a guarantee in respect of the

payment of the compensation. However, this position stands amply clarified by the later decision of the Apex Court wherein it has been indicated

that the insurer acts as a security for the third party with respect to its realising damages for the injuries suffered but vis-a-vis the insured, the

company does not undertake that liability or undertakes it to a limited extent.

31. Obviously, to protect the interest of insurer, provision had to be made enabling him to recover any amount paid in excess of the amount which

was liable to be paid to the insured towards indemnifying him and the provision in Section 149(5) of the new Act (corresponding to Section 96 (4)

of the old Act) was incorporated to achieve this object.

32. If the matter is viewed from this angle and that being the only view possible, we have no hesitation to hold that the status of the insurer in law so

far as the statutory liability sought to be fastened upon him under the Act is concerned, it cannot be more than that of a guarantor and he acts as a

security for the third party with respect to its realising damages for the injuries suffered but a right to get any amount paid in excess refunded to it

by the insured stands secured. The ultimate burden always remains cast or fastened on the insured/owner of the motor vehicle.

33. There is yet another aspect of the matter. Where the liability stands cast upon the insurer to pay the third parties the amount due under the

award, a statutory liability is also cast upon the insured to pay back to the insurer the amount so paid by the insurer to the third parties in all those

cases where in fact on account of any breach of the conditions either no amount is required to be paid by the insuree or any amount in excess of the

amount secured under the insurance policy had in fact been paid by the insurer to the third parties.

34. As has already been noticed hereinabove, the compulsory insurance in the coverage of third party risks is provided to ensure the third parties

to get the compensation in the event of an accident resulting in injuries even without reference to the financial condition of the driver or the owner of

the motor vehicle.

35. The expression ""against any liability which may be incurred by him"" as used in Section 147 of the new Act (corresponding to Section 95 of the

old Act) is clearly indicative of the fact that what is intended to be covered by the policy of insurance is the risk of a person who has incurred

liability for the death or bodily injury or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place.

The policy covering a third party risk, therefore, comes into play and is enforceable when it is proved that the insured had incurred the liability. This

legal liability may be vicarious liability and the owner may be responsible for the negligent act of his driver or the owner-servant. In the

circumstances, therefore, if the owner has not incurred any liability in respect of the death or bodily injury to any person or damage to the property

of a third party, there is no liability which is intended to be covered by the insurance.

36. It is, therefore, obvious that the insurer cannot be held liable even u/s 149 of the new Act (corresponding to Section 96 of the old Act) where

the insured himself stands exonerated of any such liability.

37. The statutory liability indicated hereinabove, therefore, has to be understood to be subject to the aforesaid condition. The statutory liability is,

thus, limited to the extent that the insured must have been proved to be under a liability first and the liability cast on him must be covered by the

insurance policy. If the insured himself stands exonerated of any liability, the question of forcing the insurer to make payment whether within the

limits of the insurance policy or in excess thereof even on the terms and conditions subject to which the policy had been issued in favour of the

insured cannot be said to arise. This is so as the role of the insurer primarily is that of an indemnifier. Further as observed by the Apex Court in its

decision in the case of Bakhshish Singh Brar Vs. Gurmej Kaur and Another, the liability of the insurer arises only when the liability of the insured

has been upheld for the purpose of indemnifying the insured under the contract of insurance.

38. Further, if the liability of the insured is proved to be irrespective of the limit of the liability or even in the case of any breach of the conditions

subject to which the policy had been issued, the liability of the insurer has been made enforceable protecting its right to recover the amount so paid

to discharge the liability cast upon it, from the insured. In the circumstances, therefore, notice to the insured before enhancing the statutory liability

whether cast under the terms and conditions of the policy or in excess of the amount secured thereunder or irrespective of the breach of the terms

and conditions subject to which the insurance policy had been given to the insured is a matter where the insured ought to be afforded an

opportunity of being heard as his interest is necessarily bound to be affected adversely in case there is any enhancement of the amount of

compensation which under the statutory provision becomes recoverable from the insured.

39. As has already been indicated hereinabove, the appeal has already been dismissed as against the respondent-owner and driver of Truck No.

UGZ 885.

40. In view of what has been indicated hereinabove, the insurer-appellant could not be exonerated from the statutory liability fastened upon it for

payment of the amount of compensation in question awarded in respect of the accident involving the death of the person caused by and arising out

of the use of the motor vehicle in a public place.

41. In our considered opinion, it would be safe to proceed to assess the compensation by adopting the method of multiplier making a judicious use

of the appropriate number of the years of purchase. The multiplier is to be chosen having regard to the peculiar facts of each case. If it is found that

the deceased prematurely died at a very young age and if it is further revealed that the longevity in his/her family was more, then it would be safe to

take a higher multiplier with a view to arrive at a figure of total compensation.

42. So far as the use of multiplier is concerned, it may be noticed that for the purpose of calculating the just compensation, the annual dependency

of the dependants has to be determined in terms of the annual loss due to the abrupt termination of life. The suitable multiplier has to be determined

by taking into consideration the number of years of the dependency of various dependants as well as the number of years by which the life of the

deceased was cut short and the various imponderable factors, such as the early natural death or the deceased becoming incapable of supporting

the dependants due to illness or other natural handicap or calamities, the age of the dependants and their developing, their independent sources of

income etc. excluding, however, the amount of insurance policies of the deceased to which the dependants may become entitled on account of its

maturity on account of the death. It must further be emphasized, however, that the method of multiplying the amount of annual loss to the

dependants with the number of years by which the life has been cut short without anything else cannot be sustained.

43. The choice of multiplier has, however, to be made by the Court using its own experience and having due regard to the peculiar facts of each

case because the ultimate goal is not to adhere to any rigid formula, but to award a compensation which is just. The age of the deceased person

cannot be taken to be either a conclusive or a paramount factor in the determination of the compensation, except in those cases where the

remaining years of the life expectancy are less than the multiplier which is sought to be applied.

44. As the determination of the question of compensation depends on several imponderables and there is always a likelihood of there being a

margin of error, if the assessment made by the Tribunal is not considered to be unreasonable, it will not be proper to interfere in the same.

45. Since it is the just compensation which is required to be awarded, no method of calculation of compensation would be justified if it does not

result in awarding the amount which is not Just" looking to the peculiar facts of each case.

46. However, it is open to the insurer to claim refund from the owner the amount paid in excess, if any, on establishing its right by initiating

appropriate proceeding before the Motor Accident Claims Tribunal where this dispute can be decided effectively after affording an opportunity to

the owner/insurer of being heard.

47. At this stage, it may also be noticed that an insurer who has been made a party to a proceeding for recovery of compensation can resist the

claim only on those grounds mentioned in Sub-section (2) of Section 149 of the Act and it is not open to it to raise any other plea. The consensus

of judicial opinion is to the same effect. See Vanguard F & G.I. Company v. H.G.I. Society, Vanguard Insurance Co. Ltd. v. Shajali Mukherji and

B.J.G. Insurance Co. v. Itbar Singh (supra) in support of the contention that under the terms of the policy, the right to defend the claim proceeding

has been reserved to the insurer.

48. The situation where for reasons to be recorded in writing, the insurer is permitted to contest the claim on all or any of the grounds that are

available to the person against whom the claim has been made as contemplated u/s 170 of the aforesaid Act will, however, be entirely different. In

the present case, no such permission had been obtained which could be taken to entitle the insurer to contest the claim raising a different defence

on the statutory defences permitted under the Act.

49. The contentions urged by the learned counsel for the appellant are devoid of merit and the submissions made are not at all acceptable.

50. Taking into consideration the totality of the circumstances, we are of the considered opinion that the impugned award cannot be held to be

vitiating in law so as to warrant an interference by this Court in the present proceedings.

51. These appeals consequently fail and are dismissed in limine.