

**(2004) 08 AHC CK 0316****Allahabad High Court****Case No:** F.A.F.O. No. 197 of 1991

Oriental Insurance Co.

APPELLANT

Vs

Smt. Champa Devi and Others

RESPONDENT

**Date of Decision:** Aug. 11, 2004**Acts Referred:**

- Motor Vehicles Act, 1939 - Section 95(2)
- Motor Vehicles Act, 1988 - Section 149

**Citation:** (2005) 1 ACC 74 : (2005) ACJ 1439 : (2005) 1 AWC 548**Hon'ble Judges:** Prakash Krishna, J**Bench:** Single Bench**Advocate:** A.K. Banerji and S.K. Kakkar, for the Appellant; K.N. Rai, for the Respondent**Final Decision:** Partly Allowed**Judgement**

@JUDGMENTTAG-ORDER

Prakash Krishna, J.

This appeal is at the instance of Insurance Company against the judgment and order dated 3rd December, 1990, passed by the Motor Accident Claims Tribunal, Azamgarh in Claim Petition No. 61 of 1988. The Motor Accident Claims Tribunal has awarded a sum of Rs. 1,17,600.00 as compensation out of this amount the liability of the present appellant to pay a sum of Rs. 15,000 was determined by the Claims Tribunal. Challenging this part of the order, the present appeal has been filed.

2. One Brij Hari Prasad boarded vehicle No. UGM 7911 on 18th April, 1988. The driver of the said vehicle collided with a tree, on account of which Brij Hari Prasad received severe injuries and was admitted in District Hospital, Azamgarh. Thereafter on the medical advice of doctors of District Hospital, Azamgarh, his brother took Shri Brij Hari Prasad for medical treatment to Gorakhpur, but unfortunately Sri Brij Hari Prasad died on the way before ten kilo meters from Gorakhpur. A claim petition

claiming a sum of Rs. two lacs as compensation was filed against the Insurance Company with which the vehicle in question was insured. The owner and driver of the vehicle were also impleaded in the claim petition. The said claim petition after contest has been allowed in part by the Claims Tribunal. The Tribunal has held that the Insurance Company is liable to pay a sum of Rs. 25,000. The said order was passed on the concession. Learned counsel for the Insurance Company submitted that the liability of the company has been enhanced from Rs. 15,000 to 25,000 under the Motor Vehicles Act, 1988.

3. Learned counsel for the Insurance Company raised only one argument in support of the appeal. He submitted that the liability of the Insurance Company was up to the extent of Rs. 15,000 indemnifying the owner of the vehicle u/s 95 (2) (b) of Motor Vehicles Act, 1939. The accident took place in the year 1988 and the claim petition itself was filed in the year 1988, therefore, the liability of the Insurance Company has to be determined with reference to the provisions of old Motor Vehicles Act, 1939.

4. The new Motor Vehicles Act, 1988 came into force on 1st July, 1989. Learned counsel for the respondent could not dispute the proposition placed by the learned counsel for the Insurance Company that the present case would be governed by the provisions of the old Motor Vehicles Act. Learned counsel for the appellant has also placed reliance upon the few judgments of the Supreme Court, in M.K. Kunhimohammed Vs. P.A. Ahmedkutty and Others, and New India Assurance Co. Ltd. Vs. Smt. Shanti Bai and others, . In support of the aforesaid argument the learned counsel for the appellant submitted that the provisions of the old Motor Vehicles Act would apply as the accident took place prior to the commencement of the new Motor Vehicles Act and the claim petition was also filed under the old Motor Vehicles Act. This argument of the learned counsel for the appellant could not be disputed by the learned counsel for the respondent. The case was heard on 3rd August, 2004 and time was given to the learned counsel for the respondent to make his submission on the next date. He accepted the aforesaid proposition of the learned counsel for the appellant. In the result the order of the Tribunal fixing liability of Insurance Company at Rs. 25,000 requires modification. It is held, that the Insurance Company is liable to pay only a sum of Rs. 15,000 to the claimants/respondents out of sum of Rs. 1,17,600. Thus, the owner and driver of the vehicle are liable to pay a sum of Rs. 1,02,600 however, the other part of the award remains intact.

5. In the result, the appeal is allowed in part, as indicated above.

6. No order as to cost.