(1988) 08 MP CK 0021

Madhya Pradesh High Court

Case No: None

United India Fire and General Insurance Company Ltd.		APPELLANT
	Vs	
Natvarlal and Others		RESPONDENT

Date of Decision: Aug. 10, 1988

Acts Referred:

- Motor Vehicles Act, 1988 - Section 95, 96, 96(1), 96(2)

Citation: (1989) 1 ACC 9 : (1988) JLJ 639 : (1988) MPLJ 676

Hon'ble Judges: G.G. Sohani, Acting C.J.; V.D. Gyani, J; R.K. Verma, J

Bench: Full Bench

Judgement

G.G. Sohani, Ag. C.J.

This full Bench has been constituted on a reference made by a learned Single Judge of this Court to decide the following questions of law:

(1) Whether, in a claim case for compensation exceeding the minimum statutory limit, as prescribed u/s 95 of the Motor Vehicles Act, the claimant cannot be awarded a sum higher than the said minimum statutory limit against the Insurance Company unless he pleads and proves that the insurer provided in the contract of insurance for a sum higher than that fixed u/s 95(2)(b)?

(2) Whether the Tribunal can award against the Insurance Company a compensation amount in excess of the minimum statutory limit, as provided u/s 95 of the Motor Vehicles Act when neither the claimant nor the insurer has pleaded or proved the terms and conditions of the Insurance policy?

The material facts giving rise to this reference, briefly, are as follows:

Respondent No. 1, who was travelling in a passenger bus owned by respondent No. 2 and driven by respondent No. 3, sustained injuries in an accident caused by the

rash and negligent driving of the bus. On an application made by respondent No. 1 before the Motor Accident Claims Tribunal, Mandleshwar, under the provisions of Section 110-A of the Motor Vehicles Act, 1939 (hereinafter referred to as "the Act"), the Tribunal found that respondent No. 1 was entitled to compensation amounting to Rs. 15000/-. The Tribunal held that the respondents No. 2 and 3 alongwith the appellant Insurance Company, which was subsequently impleaded as non-applicant No. 3, were jointly and severally liable to pay the amount of compensation. Aggrieved by the award made by the Tribunal, the appellant Insurance Company preferred an appeal before this Court. When that appeal came up for hearing before a learned Single Judge of this Court, the only ground raised on behalf of the appellant was that even though the maximum liability imposed on the appellant under the provisions of Section 95(2)(b) of the Act was Rs. 5000/-, as more than six passengers were allowed to be carried in the passenger bus in question, the Tribunal erred in law in holding the appellant liable to pay the sum of Rs. 15,000/-, the entire amount of compensation, even though the claimant had neither pleaded nor proved that the contract of insurance entered into between the owner of the vehicle and the insurance Company provided for payment of any sum in excess of that fixed by the statute. The appellant also produced before the learned Single Judge a true copy of the policy of insurance to substantiate its contention. The learned Single Judge held that the appellant Insurance Company could not be allowed to adduce additional evidence at the appellate stage as the appellant had failed to plead that its liability under the policy of insurance did not exceed the amount fixed by the statute u/s 95(2)(b) of the Act. The learned Single Judge held that on the question as to whether the burden of proof lies on the Insurance Company or on the applicant to prove that the liability of the insurance company was in excess of the statutory limit fixed by Section 95(2)(b) of the Act, there was conflict between two Division Bench decisions of this Court in Sushiladevi and Ors. v. Ibrahim and Anr. 1974 ACJ 150 and Rehana v. Abdul Majeed and Ors. L.P.A. No. 6 of 1981 Indore Bench. To resolve that conflict, the learned Single Judge has made this reference.

Shri Jain, learned Counsel for the appellant, contended that the burden to prove the negative, that there was no terms in the policy of Insurance, which made the insurance company liable to pay any amount higher than that fixed by Section 95(2)(b) of the Act, could not be placed on the insurance company, especially when the claimant had not alleged that there was any such term; that in any event, for a proper decision on the question of the liability of the appellant, the appellant had placed on record a true copy of the policy of insurance before the learned Single Judge and that from a perusal of the terms of that policy, it would be clear that the appellant had not undertaken any liability to pay any amount higher than that fixed by the Statute u/s 95(2Xb) of the Act. In reply, Shri Samdani, learned Counsel for the claimant-respondent, contended that as the appellant had failed to plead in the written statement that its liability did not exceed the statutory limit fixed by Section

95(2)(b) of the Act, it could not be allowed to produce the policy of insurance at the appellate stage and that the tribunal was justified in holding the appellant Company liable to pay the entire amount of compensation.

Before we proceed to appreciate the contentions advanced on behalf of the parties, it would be useful to bear in mind that claims for compensation made before a Motor Accident Claims Tribunal, are essentially claims arising out of accidents by motor vehicles. The liability for payment of compensation in such case is normally that of the driver of the vehicle and of the owner of the vehicle on the principle of vicarious liability. The parties to such a claim would ordinarily be the claimant, the driver and the owner of the vehicle. However, in course of time, it was found that with the increasing number of accidents on account of increasing use of motor vehicles, hardship was caused in a number of cases, where the person influcting the injury was devoid of sufficient means to compensate the person affected. Compulsory insurance was, therefore, introduced by amending the Act. The following observations of the Supreme Court in Minu B. Mehta and Another Vs. Balkrishna Ramchandra Nayan and Another, are pertinent:

The Indian Law introduced provisions relating to compulsory insurance in respect of third party insurance by introducing chapter VIII of the Act. These provisions almost wholly adopted the provisions of the English law. The relevant sections found in the three English Acts-Road Traffic Act, 1939, the Third Parties (Rights against Unsurers) Act, 1930; and the Road Traffic Act, 1934-were incorporated in Chapter VIII. Before a person can be made liable to pay compensation for any injuries and damage, which have been caused by his action, it is necessary that the person damaged or injured should be able to establish that he has some cause of action against the party responsible.

The purpose of enactment of Road Traffic Acts and making insurance compulsory is to protect the interests of the successful claimant from being defeated by the owner of the vehicle, who has not enough means to meet his liability. The safeguard is provided by imposing certain statutory duties, namely, the duty not to drive or permit a car to be driven unless the car is covered by the requisite form of third party insurance. Section 94 of the Act provided that no person shall use except as a passenger or cause or allow any other person to use a motor vehicle in a public place unless there is in force, in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of the Chapter. Section 95 of the Act is very important and that specifies the requirements of policies and limits of liability.

Now, making a provision for compulsory insurance of a motor vehicle was, however, not sufficient to remove the hardship caused to a claimant. The Insurance Policy being a contract of indemnity, between the insurer and the insured, ordinarily, an Insurance Company could not have been made a party in an application for compensation made by a claimant, because a claimant has no right under the

contract of idemnity to which he was not a party, to obtain the benefit of insurance. With a view to meet this difficulty, Section 96(1) of the Act was enacted. That section provides that when a judgment in respect of such a liability, as is required to be covered by a policy, is obtained against any person insured by the policy, then the insurer shall pay to the person entitled, the benefit of the decree as if he were a judgment-debtor. As observed by a Full Bench of this Court in Mangilal v. Parasram and Ors. 1970 M.P.L.J. 1, Section 96 is a substantive provision, which declares the liability of the insurer to pay the claimant directly. The Statute has thus created a liability in the insurer to the injured person.

But then, there was a further difficulty. A claimant would not ordinarily be aware of the name of the insurer and the terms of the Insurance Policy. To enable him to know the name of the insurer and the terms of the policy of insurance, Section 98(1) of the Act cast a duty on the person against whom a claim is made, to disclose, on demand being made in that behalf by the claimant, the particulars of insurance. Subsection (4) of Section 98 of the Act provides that the duty to give the information shall include a duty to allow all contracts of insurance and other relevant document in the possession or power of the person, on whom the duty is so imposed, to be inspected and copies thereof to be taken. Withholding of information in that behalf is made punishable by Section 113(2) of the Act. Thus, the Act enables a claimant to obtain all relevant information regarding the contract of indemnity entered into by the owner of the vehicle so that liability for payment of compensation, in terms of the policy, could be fastened on Insurance Company.

Provision however, had to be made in the Act, that before an insurance company could be held liable to the claimant, the Insurance Company should have notice of the claim to enable it to contend whether it could be held liable in terms of the policy of insurance. Therefore, a provision was made by Sub-section (2) of Section 96 of the Act. Section 96(2) of the Act provides that no sum would be payable by an insurer u/s 96(1) of the Act 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. That provision further provides that the insurer, to whom such a notice is given, is entitled to be made a party to the proceedings and to defend the action on the grounds specified in that provision, which are as follows:

96. (2). xxx xxx xxx

(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 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 heir 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 transport vehicle, or

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

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From a perusal of the aforesaid provisions, it is clear that the right of the insurer to defend any action commenced before a Motor Accident Claims Tribunal is limited to the defences available to it u/s 96(2) of the Act. As held by the Supreme Court in British India General Insurance Co. Ltd. v. Captain Itbarsingh and Ors. 1959 AIR SC 1331, "the Statute has no doubt created a liability in the insurer to the injured person but the Statute has also expressly conferred the right to assail the liability to certain grounds specified in it."

It is thus clear that in an action commenced by a claimant for obtaining compensation from the driver and the owner of motor vehicle on account of injury caused by an accident, an insurer is made a party so that liability for compensation, if any, can be fastened on the insurer. The insurer is also given a right to defend that action on the limited grounds that the policy of insurance has been cancelled or that there has been a breach of certain specified conditions of policy or that the policy is void on the ground of non-disclosure of a material fact. The question as to whether a policy of insurance covers or does not cover liability in excess of that fixed by the Statute would not normally arise before the Tribunal unless it is made an issue. On the question as to who should plead and prove that the liability of the Insurance

Company is in excess of the Statutory limit fixed by Section 95(2)(b) of the Act, there is no doubt, a conflict of decisions of this Court, as observed by the learned Single Judge. It is true that while impleading the insurance Company the claimant is enabled by law to know the exact terms of the policy, even though he was not a party to the contract of indemnity. If the claimant, however, fails to inspect the policy of insurance and to allege that the insurance policy covers liability in excess of the statutory limit, the matter should not in our opinion be decided on technicalities of pleadings, in view of the peculiar circumstances, in which an insurer is impleaded in an action for compensation. From this point of view, both the decisions in 1974 ACJ 150 (supra) and L.P.A. 6 of 1981 (supra) need re-consideration. In the interest of justice, without relying on the abstract doctrine of burden of proof, the Insurance Company should produce a true copy of the policy of the Insurance. If the Insurance Company fails to do so, the Tribunal should direct the Insurance Company to produce the same. If the correctness of that copy is disputed by the claimant as a result of information obtained by him, by inspecting the policy of insurance u/s 98(4) of the Act, the Tribunal should give a finding in that behalf. But to enable the Tribunal to do justice, if is absolutely necessary that in cases, where a question raises as to whether the policy of insurance covers liability in excess of that fixed by the Statute, the original policy or its true copy should be on record to put the matter beyond any pale of controversy. Looked at from this point of view, there is no reason why the appellate Court should not, in the interest of justice, permit the Insurance Company to produce a copy of insurance policy at the appellate stage, if the Tribunal had not directed the Insurance Company to produce, it. If its correctness is disputed by the claimant for cogent reasons, a finding in that behalf can be called by the appellate Court from the Tribunal. It cannot be lost sight of that production of insurance policy, in such cases, is absolutely necessary in the interest of justice. That is why the Supreme Court in National Insurance Company Limited v. Jugal Kishore and Ors. 1968 ACJ 270 permitted the Insurance Company to file a copy of the insurance policy before the Supreme Court. The Supreme Court also made it clear that the Insurance Company should not rely on the abstract doctrine of burden of proof and it was its duty to produce a copy of the policy. The following observation of the Supreme Court are pertinent:

Before parting with the case, we consider it necessary to refer to the attitude often adopted by the Insurance companies, as was adopted even in this case, of not filing a copy of the policy before the Tribunal and even before the High Court in appeal. In this connection what is of significance is that the claimants for compensation under the Act are invariably not possessed of either the policy or a copy thereof. This Court has consistently emphasised that it is the duty of the party which is in possession of a document, which would be helpful in doing justice in the cause, to produce the said document and such party should not be permitted to take shelter behind the abstract doctrine of burden of proof. This duty is greater in the case of instrumentalities of the State, such as the appellant, who are under an obligation to

act fairly. In many cases, even the owner of the vehicle, for reasons known to him, does not choose to produce the policy or a copy thereof. We accordingly wish to emphasise that in all such cases, where the insurance company concerned wishes to take a defence in a claim petition that its liability is not in excess of the statutory liability, it should file a copy of the Insurance policy along with its defence. Even in the instant case, had it been done so at the appropriate stage, necessity of approaching stage, necessity of approaching this Court in civil appeal would in all probability have been avoided. Filing a copy of the policy, therefore not only cuts short avoidable litigation but also, help the Court in doing justice between the parties. The obligation on the part of the State or its instrumentalities to act fairly can never be overemphasised.

In the light of the aforesaid observations of the Supreme Court, the insurance company shall file a true copy of the policy of insurance in all cases where it wants to contend that its liability is not in excess of the Statutory liability. In case the insurance company failed to do so, the Tribunal should direct the Insurance Company to file such copy. Failure to comply with this direction would justify drawing of an adverse inference against an insurance company.

For all these reasons, our answer to the questions referred to by the learned Single Judge is that a Motor Accident Claims Tribunal can held an insurance Company liable to pay an amount in excess of the Statutory limit prescribed by Section 95(2)(b) of the Act if the policy covers that liability ; that the question as to whether an insurance Company is or is not so liable, should not be decided on the abstract doctrine of burden of proof that the Insurance Company should produce in such cases before the Tribunal, a true copy of the policy of insurance ; that in the event of failure of the insurance company to do so, the Tribunal should direct the insurance company to produce such copy and that failure to comply with the direction of the Tribunal in that behalf would justify drawing of an adverse inference against the insurance company.

In the instant case, the appellant Insurance Company sought leave to bring the true copy of the policy of Insurance on record but the leave was, however, refused. In the light of our opinion, the appellant would now be entitled to bring on record the true copy of the policy of insurance. The claimant will be given opportunity to controvert the correctness of the copy and in case of any dispute, a finding can be called in that behalf from the Tribunal.

Let the matter be now placed before the learned Single Judge for deciding the appeal. Parties shall bear their own costs of this reference.

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