

THE NEW INDIA ASSURANCE CO. LTD.

v.

SMT. SHANTI BAI AND ORS.

FEBRUARY 6, 1995

[A.M. AHMADI, CJ, S.P. BHARUCHA AND
SUJATA V. MANOHAR, JJ.]

Motor Vehicles Act, 1939—S. 95—Liability of Insurer—Comprehensive policy issued by Insurer—Accident—Death of a passenger—Third party risk—Payment of compensation—Held, does not automatically cover the liability to the value of the Vehicle in the absence of express agreement—Otherwise liability not to exceed the statutory limit.

The appellant issued a comprehensive insurance policy in respect of a bus which was used for carrying passengers and owned by respondent No. 4. While the insurance policy was in force the bus met with an accident due to rash and negligent driving of its driver respondent no. 5, resulting in the death of one L, who was sitting on the roof top of the bus with the permission of the driver. The legal heir of L filed a claim for compensation amounting to Rs. 7,81,000 before the Motor Accident Claims Tribunal, which awarded a compensation of Rs. 1,10,000 with interest @12% p.a. from the date of presentation of the petition, and directed the respondents 4 and 5 to pay the same.

The High Court dismissed the appeal.

In this appeal, the question that arose for consideration was whether the appellant was liable to pay the entire compensation with interest or its liability is limited to the statutory liability of Rs. 15,000.

Allowing the appeal, this Court

HELD : 1.1. In the present case, 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. [875-A]

1.2. 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

A thousand rupees per passenger under Section 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. [875-E-F]

2. Though, the liability of the appellant is limited to Rs. 15,000 it does not affect in any manner the liability of respondents 4 and 5 to pay the amount of the award. [876-B]

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1312 of 1995.

From the Judgment and Order dated 11.2.94 of the Madhya Pradesh High Court in Misc. A. No. 444 of 1991.

D Man Mohan Sarin and Pramod Dayal for the Appellant.

S.S. Tiwari and B.S. Banthiya for the Respondent.

A.K. Sanghi for the Respondent Nos. 4-5.

E The Judgment of the Court was delivered by

SUJATA V. MANOHAR, J. Leave granted.

F This appeal by special leave arises from a judgment and order dated 11th of February, 1994 passed by the High Court of Madhya Pradesh in Misc. Appeal No. 444 of 1991. The appellant before us is the New India Assurance Company Ltd. It had issued a comprehensive insurance policy in respect of a bus which was used for carrying passengers for hire and bearing Registration No. CIK-8108, owned by respondent No. 4. This insurance policy was in force at the material time.

G On 3rd of January, 1989, this bus, while it was being driven by respondent No. 5, met with an accident. The deceased, Laxman Singh, who was sitting on the roof top of the bus with the permission of the bus driver, respondent No. 5, hit a tree on account of the alleged rash and negligent driving of the said bus by respondent No. 5. He was admitted to hospital

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and died on 7.1.1989 on account of the injuries received in the accident. The legal heirs of Laxman Singh, who are respondents 1 to 3 before us, filed a claim for compensation amounting to Rs. 7,81,000 before the Motor Accident Claims Tribunal, Narsinghpur. The Motor Accident Claims Tribunal, by its order dated 10.4.1991, awarded to respondents 1 to 3 compensation of Rs. 1,10,000 together with interest at the rate of 12% per annum from the date of the presentation of the petition and directed the appellant and respondents 4 and 5 to pay the same.

Being aggrieved by this order, the appellant filed Misc. Appeal No. 444 of 1991 before the High Court of Madhya Pradesh. The High Court, by its order dated 11th February, 1994, dismissed the appeal of the appellant and confirmed the findings of the Tribunal. The present appeal arises from this order of the Madhya Pradesh High Court.

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 an 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 had charged premium at the rate of Rs. 12 per passenger in respect of 50 passengers to cover its limited liability under Section 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. Under Section 95, in order to comply with the requirements of this 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). Under Section 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.

A Sub-section (2) (b) provides as follows :-

"Section 95(1) : x x x x x x x x

B (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 x x x

C (b) Where the vehicle 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;

D (ii) in respect of passengers, a limit of fifteen thousand rupees for each individual passenger;"

E 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 v. Jugal Kishor & Ors.*, [1988] 1 SCC 626. 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 it 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 :-

G "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."

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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. A

It was contended before the High Court that a separate premium has been paid for the passengers. This shows that there was a special contract to cover unlimited liability in respect of passengers between the appellant-company and respondent No. 4. The Tribunal as well as the High Court seem to have proceeded on the basis that the appellant-company had charged an extra premium of 0.50 paise per passenger to cover the risk of unlimited liability towards passengers. This seems to be an error. The premium of Rs. 600 has been paid in respect of 50 passengers. The policy clearly shows this. It is not 0.50 paise per passenger. It is pointed out by the appellant-company with reference to its tariff in respect of "Legal Liability for Accidents to Passengers" that if the limit of liability for any one passenger is fifteen thousand rupees, the rate of annual premium per passenger is Rs.12. If the limit is twenty thousand rupees, the rate of premium per passengers is Rs. 23 per annum and so on. In respect of unlimited liability, the premium payable per passenger is Rs. 50. B C D

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 under Section 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 Kishor & 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 specific 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 v. P.A. Ahmedkutty & Ors.*, [1987] 3 SCR 1149. The appellant company is, therefore, entitled to succeed to the extent that it has been directed to pay E F G H

A to respondents 1 to 3 any amount in excess of Rs. 15,000.

The appeal is, therefore, allowed to this extent. The liability of the appellant and respondents 4 and 5 to pay the amount of the award was joint and several. We make it clear that the fact that the appeal is allowed and the liability of the appellant is limited to Rs. 15,000 does not affect in

B any manner the liability of respondents 4 and 5 to pay the amount of the award. There will be no order as to costs.

G.N.

Appeal allowed.