

British Indian General Insurance Co. Ltd., Bombay

Vs

Maya Banerjee and Others

Civil Appeal No. 776 of 1971

(Ranganath Misra, S. Natarajan JJ)

21.07.1986

ORDER

1. The insurer is in appeal by special leave. The short point canvassed by it before us is as to whether the insurer would have statutory liability beyond a sum of Rs 20,000 as had been provided in Section 95(2)(b)(i) of the Motor Vehicles Act of 1939 at the time the claim arose in 1961. That provision confined the liability of the insurer to a sum of Rs 20,000 in respect of persons other than passengers carried for hire or reward. Admittedly, the deceased was a third party and had been knocked down by the bus when riding on a cycle. In the face of the provision contained in Section 95(2) of the Motor Vehicles Act, the liability of the insurer could not be in excess of the statutory limit. We are inclined to agree with learned counsel for the appellant that the High Court was in error in fixing the liability of the insurer at a sum above Rs 20,000.
2. Counsel for the owner-respondent contended that the liability of the insurer was co-extensive with that of the owner and it was open to the claimant to recover the entire compensation from the insurer and the insurer in its turn could claim recovery of the excess amount above the statutory limit from the insured. Reliance was placed on a judgment of this court in *New Asiatic Insurance Co. Ltd. v. Pessumal Dhanmal Aswani* ((1964) 7 SCR 867 : AIR 1964 SC 1736), in support of this proposition. We have examined the judgment and are inclined to take the view that the facts involved therein were absolutely different. That was a case of comprehensive insurance in respect of a motor car and relying on the terms of the policy the court held that the liability was not limited by the statute. Though some parts of the provision of Section 95 of the Act were extracted, yet as no reference to sub-section (2) thereof was necessary in view of the ambit of the dispute raised before the court. Sub-section (2) had not even been extracted.
3. In this view of the matter we agree with learned counsel for the appellant that the insurer's liability in the instant case could not have been beyond Rs 20,000 and to that extent the High Court was wrong.
4. Even though we have accepted the appellant's contention about the extent of liability, yet we do not propose to interfere with the direction that the insurer would pay the entire amount Rs 30,000 as at this belated point of time, it may be difficult for the widow of the victim to recover the compensation from the owner. We direct that the insurer-appellant shall satisfy the award by payment of the appropriate amount to the claimant-respondent within two months from today. Parties are directed to bear their own costs in this Court.

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