SUPREME COURT OF INDIA

NEW INDIA ASSURANCE CO. LTD.

Vs.

C.M. JAYA & ORS.

17/01/2002

(CJI, Syed Shah Mohammed Quadri, U.C. Banerjee, S.N. Variava & Shivaraj V. Patil.)

Appeal (civil) 4566-4567 of 1996

JUDGMENT

Shivaraj V. Patil J.

1. These appeals are placed before us pursuant to the order of reference made in New India Assurance Co. vs. C.M. Jaya and others [(1999) 2 SCC 47], which reads: -

"The question involved in these appeals is whether in a case of insurance policy not taking any higher liability by accepting a higher premium, in case of payment of compensation to a third party, the insurer would be liable to the extent limited under Section 95(2) or the insurer would be liable to pay the entire amount and he may ultimately recover from the insured. On this question, there appears to be some apparent conflict in the two three-Judge Bench decisions of this Court (1) New India Assurance Co. Ltd. v. Shanti Bai [(1995) 2 SCC 539] and (2) Amrit Lal Sood v. Kaushalya Devi Thapar [(1998) 3 SCC 744].

2. In the latter decision, unfortunately the decision in New India Assurance case (supra) has not been noticed though reference has been made to the decision of this Court in National Insurance Co. Ltd. v. Jugal Kishore [(1988) 1 SCC 626], which was relied upon in the earlier three-Judge Bench judgment. In view of the apparent conflict in these two three-Judge Bench decisions, we think it appropriate that the records of this case may be placed before my Lord, the Chief Justice of India to constitute a larger Bench for resolving the conflict. We accordingly so direct. The record may now be placed before the Hon'ble the Chief Justice of India."

3. In the first place, we think it appropriate to have a closer look at the three decisions referred to in the above order.

4. In New India Assurance Co. Ltd. v. Shanti Bai and others [(1995) 2 SCC 539], the facts were that on 3.1.1989 the deceased Laxman Singh, who was sitting on the top of the bus with the permission of the bus driver, respondent No. 5, who hit a tree by his rash and negligent driving. The legal heirs of Laxman Singh filed claim for compensation amounting to Rs.7,81,000/- before the Motor Accident Claims Tribunal. The Tribunal, by its order, awarded compensation of Rs.1,10,000/- together with interest and directed the insurance company (the appellant before this Court) and the respondent Nos. 4 and 5, being the owner and driver of the bus, to pay the same. The appeal filed by the appellant before the High Court was dismissed. The short question that came up for

consideration before this Court was whether the appellant was liable to pay compensation to the tune of Rs.1,10,000/- together with interest thereon in the light of the contention of the appellant that its liability was limited to Rs.15,000/- .

The owner of the bus had taken a comprehensive insurance policy on the estimated value of the vehicle at Rs.2,50,000/-. In the schedule of premium an additional payment of Rs.600/- in respect of 50 passengers was shown. The appellant-company contended that this additional payment @ Rs.12/- per passenger was to cover its limited liability of 50 passengers under Section 95 of the Motor Vehicles Act, 1939 (for short 'the Act').

Following the case of National Insurance Co. Ltd., New Delhi vs. Jugal Kishore and others [(1988) 1 SCC 626] and referring to the provisions of Section 95 of the Act, the Court stated thus: -

"These provisions were interpreted by this Court in the case of National Insurance Co. Ltd. v. Jugal Kishore. 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: -

"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."

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."

(emphasis supplied)

The Court went on to say that "The mere fact that the insurance policy is 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 Kishore, 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." In this view this Court allowed the appeal and held that the liability of the appellant was limited to Rs.15,000/-.

5. The facts of the case in Amrit Lal Sood and Another vs. Kaushalya Devi Thapar and others [(1998) 3 SCC 744], were that on 25.8.1970, the Fiat car owned by the second appellant collided with a goods carrier. The car was being driven by the first appellant, a brother of the second appellant. The car was insured with the fifth respondent. One Kishan Sarup Thapar, traveling in the car, got injured and was hospitalized for some time. He made claim for Rs.1,25,000/- as

compensation before the Motor Accident Claims Tribunal. The Tribunal awarded Rs.15,800/- as compensation. The claimant filed an appeal before the High Court for enhancement of compensation. The insurer (fifth respondent) filed appeal disputing its liability to satisfy the claim. In claimant's appeal compensation was enhanced to Rs.20,800/-. In the appeal filed by the insurance company the learned Judge held that the claimant was a gratuitous passenger traveling in the car and, therefore, the insurance company was not liable. Two Letters Patent appeals were filed one by the legal representatives of the claimant and another by the driver of the vehicle. The appeal filed by the driver was dismissed and in the appeal filed by the legal representatives of the claimant compensation was increased to Rs.56,000/- by the Division Bench of the High Court. The driver and the owner of the car filed appeals in this Court. The question that came up for decision before this Court was whether the insurer was liable to satisfy the claim for compensation made by a person traveling gratuitously in the car. In deciding this question the Court took the view that the liability of the insurer in the case depends on the terms of the contract between the insured and the insurer as evident from the policy. Section 94 of the Motor Vehicles Act, 1939 compels the owner of a motor vehicle to insure the vehicle in compliance with the requirements of Chapter VIII of the Act. Section 95 of the Act provides that a policy of insurance must be one which insures the person against any liability which may be incurred by him in respect of death or bodily injury to any person or damage to any property of third party caused by or arising out of the use of the vehicle in a public place. The section does not however require a policy to cover the risk to passengers who are not carried for hire or reward. The statutory insurance does not cover injury suffered by occupants of the vehicle who are not carried for hire or reward and the insurer cannot be held liable under the Act. But that does not prevent an insurer from entering into a contract of insurance covering a risk wider than the minimum requirement of the statute whereby the risk to gratuitous passengers could also be covered. In such cases where the policy is not merely a statutory policy, the terms of the policy have to be considered to determine the liability of the insurer."

The relevant clauses of the policy are reproduced in paragraph 6 of the said judgment. Clause 1(a) under Section II relating to liability of third party reads:-

"1. The Company will indemnify the insured in the event of accident caused by or arising out of the use of the motor car against all sums including claimant's cost and expenses which the insured shall become legally liable to pay in respect of

(a) death of or bodily injury to any person but except so far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act, 1939, the Company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured."

Looking to this clause the Court in paragraph 8 has held: -

"Thus under Section II(1)(a) of the policy the insurer has agreed to indemnify the insured against all sums which the insured shall become legally liable to pay in respect of death of or bodily injury to "any person". The expression "any person" would undoubtedly include an occupant of the car who is gratuitously traveling in the car. The remaining part of clause (a) relates to cases of death or injury arising out of and in the course of employment of such person by the insured. In such cases the liability of the insurer is only to the extent necessary to meet the requirements of Section 95 of the Act. Insofar as gratuitous passengers are concerned there is no limitation in the policy as such. Hence under the terms of the policy, the insurer is liable to satisfy the award passed in favour of the claimant. We are unable to agree with the view expressed by the High Court in this case as the terms of the policy are unambiguous."

Distinguishing the judgment in Pushpabai Purshottam Udeshi and others vs. Ranjit Ginning & pressing Co. (P) Ltd. and another [(1977) 2 SCC 745], the Court observed that the said judgment was based upon the relevant clause in the insurance policy, which restricted the legal liability of the insurer to the statutory requirements under Section 95 of the Act and so that decision had no application to the case as the terms of the policy stated in paragraph 6 of the judgment were wide enough to cover a gratuitous occupant of the vehicle. The Court also referred to the case of Jugal Kishore (supra) in which it is held that though it is not permissible to use a vehicle unless it is covered at least under "act only" policy, it is not obligatory for the owner to get a comprehensive policy but it is open to the insurer to take a policy covering a higher risk.

6. Thus, a careful reading of these decisions clearly shows that the liability of the insurer is limited, as indicated in Section 95 of the Act, but it is open to the insured to make payment of additional higher premium and get higher risk covered in respect of third party also. But in the absence of any such clause in the insurance policy the liability of the insurer cannot be unlimited in respect of third party and it is limited only to the statutory liability. This view has been consistently taken in the other decisions of this Court.

7. In Shanti Bai's case (supra), a bench of three learned Judges of this Court, following the case of Jugal Kishore, has held that (i) a comprehensive policy which has been issued on the basis of the estimated value of the vehicle does not automatically result in covering the liability with regard to third party risk for an amount higher than the statutory limit, (ii) 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 and (iii) that the limit of liability with regard to third party risk does not become unlimited or higher than the statutory liability in the absence of specific agreement to make the insurer's liability unlimited or higher than the statutory liability.

8. On a careful reading and analysis of the decision in Amrit Lal Sood (supra), it is clear that the view taken by the Court is no different. In this decision also, the case of Jugal Kishore is referred to. It is held (i) that the liability of the insurer depends on the terms of the contract between the insured and the insurer contained in the policy; (ii) there is no prohibition for an insured from entering into a contract of insurance covering a risk wider than the minimum requirement of the statute whereby risk to the gratuitous passenger could also be covered; and (iii) in such cases where the policy is not merely statutory policy, the terms of the policy have to be considered to determine the liability of the insurer. Hence, the Court after noticing the relevant clauses in the policy, on facts found that under Section II-1(a) of the policy, the insurer has agreed to indemnify the insured against all sums which the insured shall become legally liable to pay in respect of death of or bodily injury to "any person". The expression "any person" would undoubtedly include an occupant of the car who is gratuitously traveling in it. Further, referring to the case of Pushpabai Purshottam Udeshi (supra), it was observed that the said decision was based upon the relevant clause in the insurance policy in that case which restricted the legal liability of the insurer to the statutory requirement under Section 95 of the Act. As such, that decision had no bearing on Amrit Lal Sood's case as the terms of the policy were wide enough to cover a gratuitous occupant of the vehicle. Thus, it is clear that the specific clause in the policy being wider, covering higher risk, made all the difference in Amrit Lal Sood's case as to unlimited or higher liability. The Court decided that case in the light of the specific clause contained in the policy. The said decision cannot be read as laying down that even though the liability of the insurance company is limited to the statutory requirement, an unlimited or higher liability can be imposed on it. The liability could be statutory or contractual. A statutory liability cannot be more than what is required under the statute itself. However, there is nothing in Section

95 of the Act prohibiting the parties from contracting to create unlimited or higher liability to cover wider risk. In such an event, the insurer is bound by the terms of the contract as specified in the policy in regard to unlimited or higher liability as the case may be. In the absence of such a term or clause in the policy, pursuant to the contract of insurance, a limited statutory liability cannot be expanded to make it unlimited or higher. If it is so done, it amounts to re-writing the statute or the contract of insurance which is not permissible.

8. In the light of what is stated above, we do not find any conflict on the question raised in the order of reference between the decisions of two benches of three learned Judges in Shanti Bai and Amrit Lal Sood aforementioned and, on the other hand, there is consistency on the point that in case of an insurance policy not taking any higher liability by accepting a higher premium, the liability of the insurance company is neither unlimited nor higher than the statutory liability fixed under Section 95(2) of the Act. In Amrit Lal Sood's case, the decision in Shanti Bai is not noticed. However, both these decisions refer to the case of Jugal Kishore and no contrary view is expressed.

9. In New India Assurance Co. Ltd. vs. Ram Lal & Ors. [1988 (supp.) SCC 506] looking to the insurance policy that the appellant had undertaken to indemnify the insured to the extent of Rs. 50,000/- only, it was held that the High Court was in error in holding that the appellant was liable to pay the entire amount of compensation which was more than Rs. 50,000/- and that the liability of the appellant was limited to Rs. 50,000/.

10. In a recent judgment in National Insurance Co. Ltd. vs. Nathilal & Ors. [1999 1 SCC 552], this Court, following the case of Jugal Kishore aforementioned, held that in view of the fact that no extra premium was paid towards unlimited liability as could be seen from the policy produced, the liability of the insurance company was limited to Rs. 15,000/-. The Court set aside the award of the Tribunal and affirmed by the High Court.

11. In the premise, we hold that the view expressed by the bench of three learned Judges in the case of Shanti Bai is correct and answer the question set out in the order of reference in the beginning as under:- In the case of insurance company not taking any higher liability by accepting a higher premium for payment of compensation to a third party, the insurer would be liable to the extent limited under Section 95(2) of the Act and would not be liable to pay the entire amount.

12. In these appeals presently before us, the judgment and order of Delhi High Court are under challenge. The deceased was riding the pillion seat of a two-wheeler when it met with a truck insured by the appellant. On the claimants approaching the Motor Accident Claims Tribunal, it awarded a sum of Rs.1,03,360/- as compensation and held that the liability of the appellant was limited to Rs.50,000/- and the balance amount was recoverable from the driver and owner of the truck jointly and severally. The truck owner (the respondent no. 4) preferred an appeal to the High Court. The High Court held that the liability of the appellant was unlimited as the vehicle was comprehensively insured. The High Court also allowed cross-objections preferred by the claimants/Respondents Nos. 1 to 3 solely against the appellant under Order XLI Rule 22 CPC for the full pecuniary liability to be placed upon the insurer while enhancing the amount of compensation from Rs.1,03,360/- to Rs.3,60,000/- with interest @ 15% per annum from the date of application. Hence, these two appeals are brought by the appellant, aggrieved by the judgment and order of the High Court. The submissions were made before us by the learned counsel for the parties in support of the respective contentions citing the decisions aforementioned as to the extent of liability of the appellant to pay the amount of compensation to Respondents 1 to 3. It is not in dispute from the admitted copy of the insurance policy produced before the Court that the liability

of the appellant is limited to Rs.50,000/- in regard to the claim in question. The relevant clause in the policy relating to limits of liability reads:-

Limits of Liability: Limit of the amount of the Company's liability under Section II-1(i) in respect of any one accident. - Rs. 50,000/- Limit of the amount of the Company's liability under Section II-1(ii) in respect of any claim or series of claims arising out of one event - Rs. 50,000/-

13. It is also not the case that any additional or higher premium was paid to cover unlimited or higher liability than the statutory liability fixed as found in the term of the policy extracted above. In the light of the law stated above, it necessarily follows that the liability of the appellant is limited to Rs.50,000/-, as was rightly held by the Tribunal. The High Court committed an error in taking the contrary view that the liability of the appellant was unlimited merely on the ground that the insured had taken a comprehensive policy. In Shanti Bai's case, this Court has clearly expressed the opinion that a comprehensive policy issued on the basis of the estimated value of the vehicle does not automatically result in covering the liability with regard to third party risk for an amount higher than the statutory limit in the absence of specific agreement and payment of separate premium to cover third party risk for an amount higher than the statutory limit. This position is accepted in Amrit Lal Sood's case as well though no reference is made to this case. As already stated above, in Amrit Lal Sood's case, the Court found an express term in the policy for covering wider risk and to meet the higher liability unlike in the case of Shanti Bai. Therefore, the High Court was not right in holding that the liability of the appellant insurance-company was unlimited merely on the ground that the vehicle in question, i.e., the truck, was covered by a comprehensive insurance policy.

14. In the circumstances, we hold that the liability of the appellant insurance-company is limited to Rs. 50,000/-, as held by the Tribunal. In the view we have taken, it is unnecessary to go into the question relating to either maintainability of cross-objections before the High Court against the appellant alone or as to the enhancement of compensation when the owner and driver have not filed appeal against the impugned judgment.

15. The appeals are, therefore, allowed to the extent of limiting the liability of the appellant insurance- company to Rs.50,000/-, making it clear that it does not affect in any manner the liability of the respondents 4 and 5 (the truck owner and the driver) to pay the full amount of the award. The judgment and order of the High Court under challenge in these appeals shall stand modified accordingly. Parties to bear their respective costs.