GUJARAT HIGH COURT

Premier Insurance Co.

Vs.

Gambhirsing

First Appeal No. 566 of 1971

(J.B. Mehta and T.U. Mehta, JJ.)

06.08.1974

JUDGEMENT

T.U. Mehta, J.

1. This appeal arises out of the award passed by the Motor Accidents Claims Tribunal, Baroda, in Motor Accident Claim Application No. 8/70 of his file. The learned Tribunal has passed the award of Rs. 8,000 with proportionate costs thereon against the original opponents Nos. 1 to 4 in favor of the respondents Nos. 1 and 2 who are the original claimants. The case of the claimants is that the deceased Ganpat alias Ebho, who was aged about 19 years, was serving the appellant No. 2 as a labourer and was accompanying the goods vehicle belonging to the second appellant as a laborer for the purpose of loading and unloading the said vehicle. On 28th November, 1969 at about 5.30 p.m. the present respondent No. 3, Ramanbhai Jitabhai Baraiya, was driving the motor truck belonging to the second appellant and was going from village Godhar. The truck was loaded with sand and it is an admitted position that the deceased Ganpat was sitting on the sand which was loaded in the truck. It is said that the driver of the truck (respondent No. 3) suddenly applied the brakes to the truck but the truck was dragged on its left hand side and fell in a nearby pit. The truck turned on its side and deceased Ganpat, who was sitting on the sand loaded in the truck fell down and received serious injuries which resulted in his death. Along with the driver there was one another labourer named Chhotabhai Somabhai ex. 66, who was sitting in driver's cabin. After the truck fell down in the pit, the driver Ramanbhai and Chhotabhai got out of it unhurt but the deceased Ganpat received serious injuries as a result of which he ultimately died. Thus, the case of the claimants is that the deceased died on account of the rash and negligent driving of the truck by respondent No. 3 Ramanbhai Jitabhai Baraiya.

x x x x

7. During the course of the hearing of this appeal, Shri Zaveri, who appeared on behalf of the first appellant, the Premier Insurance Co. Ltd., raised two points of law. He first contended that

the Tribunal had no jurisdiction to decide this claim petition which was exclusively triable by the Commissioner working under the Workmen's Compensation Act, 1923. His second contention was that even if it is believed that the Tribunal had jurisdiction to try this claim petition, the Insurance Co. could not be held liable to indemnify against any amount which is more than the amount which could be awarded to the insured under the provisions of the Workmen's Compensation Act, 1923. According to Shri Zaveri, even if it is believed that the deceased was making the earning of Rs. 100 per month, the Insurance Co. could be held liable only for the amount of Rs. 7,000 because according to Schedule 4 of Workmen's Compensation Act, the workman who makes the earning of more than Rs. 100 per month but less than Rs. 150 per month, can be awarded the compensation of only Rs. 7,000 on account of his death.

8. On behalf of the second and the third appellants, who are the owners of the truck, it was contended that the driver had not committed any negligence and that the learned Judge of the Tribunal has committed an error in coming to the conclusion that the deceased was handing over to the claimants the amount of Rs. 100 per month.

9. We first propose to deal with the legal contentions raised by Shri Zaveri on behalf of the Insurance Co. Shri Zayeri's contention regarding the jurisdiction of the Tribunal to try this matter was based on the wording of the first proviso to sub-section (1) of Section 95 which says that a policy of insurance shall not be required to cover the liability in respect of death arising out of and in the course of employment of the employee of a person insured by the policy other than a liability arising under the Workmen's Compensation Act, 1923, in respect of death of such employee. He pointed out that the liability of the employer of a workman, whose case is covered by Workmen's Compensation Act, 1923, is required to be worked out, according to this proviso, in accordance with the provisions of Workmen's Compensation Act and since claims under Workmen's Compensation Act cannot be decided by any one except the authority contemplated by that Act, the Tribunal functioning under the Motor Vehicles Act has no jurisdiction to decide such liability.

10. In our opinion this contention is totally misconceived because the Tribunal functioning under the Motor Vehicles Act and the Commissioner working under the Workmen's Compensation Act, have to operate in totally different and distinct fields and have to give their decisions on totally different considerations. It is obvious that the liability contemplated by Workmen's Compensation Act for paying of compensation to a workman, who has either died or has received injuries during the course of his employment, is a liability of an absolute nature, while the liability for compensation which a Tribunal functioning under the Motor Vehicles Act has to take into account is the liability which is based on tort. In other words, the liability which a Tribunal working under the Motor Vehicles Act is supposed to take into account is a fault based liability which involves the consideration of the question whether the alleged tortfeasor has committed any act of negligence. The Commissioner working under the Workmen's Compensation Act for the purpose of fixation of liability is not expected to go into the question whether the injury to or death of a workman during the course of his employment is the result of

any negligence on the part of anybody else. So far as the liability which arises under the provisions of the Motor Vehicles Act is concerned, it is only the Tribunal established under that Act which has jurisdiction to deal with the matter. Under the circumstances, whenever a question of compensation arises on account of some act of tort and is required to be determined under the provisions of the Motor Vehicles Act, it is only the Tribunal established under that Act which has got jurisdiction to deal with the matter. It is open to the workman to make a claim either under the Workmen's Compensation Act or under the provisions of the Motor Vehicles Act. He can avail of any of these two remedies because such a claimant is dominus litis and has got a right to choose his forum. If he chooses to avail of the forum contemplated by Motor Vehicles Act, then it does not lie in the mouth either of the insurer or of the insured to say that he should be compelled to avail of his remedies under the parallel legislation, namely, the Workmen's Compensation Act. In *Northern India Motor Owners Insurance Co. Ltd. v. Magan Shanaji Solanki*[1], this court had an opportunity to consider the distinction between the two remedies available to a workman under these two Acts. My learned brother speaking for the Division Bench in that case has pointed out that the absolute liability under the Workmen's Compensation Act can be determined only by the Commissioner under that Act and this liability can never be gone into either by the Motor Claims Tribunal or by the Civil Court, where only liability would be in a negligent action. He has further pointed out that if it is his absolute liability under the Workmen's Compensation Scheme, the judgment would be of the Commissioner while if it is a fault based liability on the ground of negligent action, the judgment would be of the Motor Claims Tribunal, created under the Motor Vehicles Act, or if no such Tribunal is created, it would be that of the Civil Court. Therefore, whichever may be the court or authority which determined the liability of the insured in such Motor Vehicles accident, if the judgment is in respect of such liability which is required to be covered by the policy under Section 95 (1) that judgment must be satisfied by the insurance company. It is thus clear that simply because the first proviso attached to sub-section (1) of Section 95 speaks about the liability arising under the Workmen's Compensation Act, 1923, it cannot be said that that liability can be determined only under the Workmen's Compensation Act. Reference to Workmen's Compensation Act in this proviso is obviously with a view to satisfy the compulsory nature of the extent of the liability, if the matter is covered by the provisions of the Motor Vehicles Act. Under these circumstances, we find no substance in the first legal point raised by Shri Zaveri.

11. The second point which was raised by Shri Zaveri was that since the liability contemplated by the above referred proviso to sub-section (1) of Section 95 is limited by the liability of the insured employer under the Workmen's Compensation Act, the Insurance Co. cannot be required to indemnify such an insured beyond the limits of the liability arising under the Workmen's Compensation Act. With regard to this contention it should be mentioned that if the policy issued by the insurer is what is known as "Act policy" which limits the liability of the insurer only to the statutory limitation contemplated by Section 95 of the Act, the above referred contention of Shri Zaveri would be acceptable. But here we find by reference to the insurance policy itself that by a special contract between the insurer and the insured, the liability of the insurer is made

"unlimited". The insurance policy is found at ex. 60. This policy is mainly in the printed form and reference to it shows that originally the limit of the amount of company's liability for death or injury to any person was limited to Rs. 20,000 as required by sub-section (2) of Section 95, as it stood at the relevant time. The figure of Rs. 20,000 which was printed in the policy has been scored out, and in its place the word "unlimited" is typed. The result, therefore, is that on payment of additional premium the insurer has agreed to indemnify against the liability arising out of the death or bodily injury to any person without any limits. We drew the attention of Shri Zaveri to this clause of the policy but Shri Zaveri's contention was that this unlimited clause of the policy refers to Section 11 (1) of the policy and hence this clause should be construed as lifting the limits of total compensation which the insured would be entitled to be indemnified under

[1](1973) 14 Guj LR 921

Section 95 (2) (a) of the Motor Vehicles Act. In the submission of Shri Zaveri, therefore, this unlimited liability clause has no reference to the limits which Section 95 puts regarding the compensation which is expected to be given to employees and passengers travelling in the vehicle. In support of this contention, Shri Zaveri also put reliance upon the endorsement No. 1 and provisos (b) and (c) attached to Section 11 (1) (i) of the policy.

12. In order to appreciate this contention of Shri Zaveri, it would be necessary to quote the relevant clauses of the policy. The clause as regards "limits of liability" which is found in the Schedule, attached to the policy, reads as under: "Limit of the amount of company's liability under Section 11 (1) (i) in respect of any one accident - Unlimited."
Section 11 (1) (i) of the policy reads as under:

> "Section 11- Liability to third parties:
> 1. Subject to the Limits of Liability the Company will indemnify the Insured against all sums including claimant's costs and expenses which the insured shall become legally liable to pay in respect of:
> (i) death of or bodily injury to any person caused by or arising out of the use (including the loading and/or unloading) of the motor vehicle."

(emphasis supplied)
Endorsement No. 1 which is dated 19-10-68, and which is attached to the policy by a separate slip reads as under:

> "It is hereby understood and agreed that notwithstanding what is contained in cl. No. 3 of the General Exceptions of this policy, the company shall indemnify the insured against his legal liability under the Workmen's Compensation Act, 1923 and subsequent amendments of the Act prior to the date of this Endorsement in respect of death of or bodily injury to the paid driver/attendants whilst engaged in the service of the insured in such occupation in connection with the motor vehicle described in the Schedule hereto provided always

that:

(1) This Endorsement does not indemnify the insured in respect of any liability in cases where the insured holds or subsequently effects with any insurance company or group of underwriters a policy of insurance in respect of liability as herein defined for his general employees.

(2) The insured shall take reasonable precautions to prevent accidents and shall comply with all statutory obligations.

(3) The insured shall keep a record of the name of the driver, cleaner or conductor employed and the amount of wages, salary and other earnings paid to such employees and shall at all times allow the company to inspect such record."

This Endorsement refers to cl. No. 3 of the General Exceptions. These General Exceptions are found in the body of the policy and cl. No. 3 thereof reads as under:

"GENERAL EXCEPTIONS.

The Company shall not be liable under this policy in respect of-

(1) .....

(2) xx xx xx

(3) any accident, loss, damage and/or liability caused, sustained or incurred whilst the motor vehicle is:

(a) being used otherwise than in accordance with the limitations as to use or;

(b) being driven by any person other than a driver."

It is this Exception to which the abovequoted endorsement No. 1 makes a reference. Provisos (b) and (c) which are attached to Section 11 are as under:

"(Provided always that)

(a) xx xx xx

(b) 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 in respect of death of or bodily injury to any person in the employment of the insured arising out of and in the course of such employment.

(c) Except so far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act, 1939, in relation to liability under the Workmen's Compensation Act, 1923, the company shall not be liable in respect of death of or bodily injury to any person (other than a passenger carried by reason of or in pursuance of a contract or employment) being carried in or upon or entering or alighting from the motor vehicle at the time of the occurrence of the event out of which any claim arises."

13. These are the relevant clauses of the policy which are required to be considered while appreciating the above referred contentions raised by Shri Zaveri. A plain reading of Section 11

(1) of the policy shows that the Insurance Company in this case has undertaken to indemnify the insured against all sums which the insured shall become liable in respect of death of or bodily injury to any person caused by the use of the vehicle concerned, subject, of course, to the limits of the liability fixed either by contract or by statute. It is Section 95 (2) which fixes compulsory limits of liability. This section, as stated above, at the relevant time, fixed two types of limits of liability, namely, (1) the limit of Rupees 20,000 as total compensation in case of goods vehicle and the vehicles in which passengers are carried either for hire or pursuant to a contract of employment. This is the overall limit of total compensation; (2) limit as regards the compensation to be paid to individuals such as workmen, other employees and passengers. These are the two types of statutory liabilities against which every Insurance Company is bound to indemnify the insured.

14. Now the Motor Vehicles Act does not prohibit the insurer and the insured to enter into a contract to extend the above stated limits. Since the law prescribes compulsory coverage of liabilities up to the above stated statutory limits, the contracting parties cannot enter into any contract which would further restrict the above referred limits of liabilities. But the extension or total removal of these limits is not prohibited by the Act. Therefore, the insurer can totally remove these limits and can undertake to indemnify the insured upto the unlimited extent by charging higher premium for such unlimited risk. This principle is accepted by the Supreme Court in *M/s. Sheikhupura Transport Co. Ltd. v. Northern India Transporters Insurance Co. Ltd*[2]*.,* wherein the court has observed as under:

[2] AIR 1971 SC 1624

> "The limit of insurer prescribed under Section 95 (2) (b) of the Motor Vehicles Act can be enhanced by any contract to the contrary. Therefore we have to see whether the contract of insurance entered into between the appellant and the insurance company provided for the payment of enhanced amount in case the owner of the bus involved in an accident is required by the decree of a court to pay any higher amount as compensation. The insurance policy issued by the insurer is marked as Ex. R. W. 3/B. Clause (1) of that policy says:
>
> "Subject to the limit of liability the company will indemnify the insured in the event of accident caused by or arising out of the use of the motor vehicle in a public place against all sums including claimant's costs and expenses which the insured shall become legally liable to pay in respect of death of or bodily injury to any person."

The opening words of this clause "subject to the limit of liability the company" evidently refer to the limit prescribed under Section 95 (2) (b) of the Motor Vehicles Act. No clause in the insurance policy specifically providing for the payment of any amount higher than that fixed under Section 95 (2) (b) was brought to our notice." It is therefore necessary to see whether the statutory limits of liability are lifted by any of the clauses of the contract of insurance between the insurer and the insured. Such a contract is found in the above referred clause as regards limits of liability. It is thus evident that Section 11 (1) (i) should be read as subject to no limits as to

liability and when so read, the expressions "all sums" and "any person" which are underlined by us while quoting this clause, assume a great importance. Section 11 (1) (i) of the policy would then read as saying that the insurer has accepted the liability to indemnify the insured against all sums which he (insured) becomes legally liable to pay in respect of bodily injury to or death of any person whatever. The expression "any person" is wide enough to include even a workman employed by the insured. Therefore, if such a workman receives injuries or dies during the accident caused by the use of a vehicle and the employer of such a workman becomes legally liable to pay any damages to him or to his legal representatives then the insurer of such employer becomes liable to indemnify him to the extent of the whole amount.

15. Section 96 of the Act gives further support to this view. This section casts a duty on the insurers to satisfy judgments against the insured persons in respect of third party risks. This section speaks in parenthesis of "a liability covered by terms of the policy" and thus provides for the satisfaction of not only the statutory liabilities but also of the contractual liabilities 'in terms of the policy'. Therefore, if the terms of the policy reveal no limits as to the liability, the insurer should indemnify the insured to the fullest extent to which he (insured) has been found liable to all third parties including a workman employed by him. In *Sakinabibi v. Gordhanbhai Prabhudas Patel*[3], my learned brother speaking for the Division Bench constituted by himself and S. H. Sheth J. has interpreted the above referred parenthetical clause as under at page 440 of the report:

> "In 1st Appeal No. 261 of 1967 decided by the Division Bench consisting of myself and S. N. Patel J. decided on *(I. S. Bhavsar v. Chhotabhai Isverbhai Patel*[4]) wherein it was in terms laid down that if the insurance company gives a wider coverage than minimum required under the Act, the statutory liability

[3](1974) 15 Guj LR 428

[4] December 1,8, 197

> created by the Act of this statutory indemnity which has to
> be satisfied by the insurer would be the liability actually covered by the policy both under Section 95 (5) and Section 96 (1) unless it is escaped by the insurer on any of the relevant statutory defences and in the manner specifically provided, as laid down in the case of *British India General Insurance Co. v. Captain Itabar Singh*[5], In that decision we had in terms relied on the parenthetical clause of Section 95 (1) where the liability to satisfy the judgment against the insured is in respect of "any such liability as is required to be covered by a policy under Section 95 (1) (b) (being a liability covered by the terms of the policy). This parenthetical clause was held to be by way of clarification given by the legislature as to the meaning of the liability which is to be satisfied if the judgment in respect of the liability is given in respect of the person insured by the policy. We, therefore, pointed out that Section 95 (1) and Section 96 (1) have the same ambit of statutory indemnity viz. "of the liability which is covered by the terms of the policy". If,

> therefore, in any particular policy the insured undertakes a wider coverage than the minimum Act liability it would be that liability which he has undertaken to satisfy under the contract of policy, which is now crystallised in the statutory indemnity both in Section 95 (5) and in the duty to satisfy the judgment for that liability under Section 96 (1). We had also referred to Sections 97 to 99 for this construction. Therefore, in view of that decision, it would be hardly open to the insurer who had in terms covered the appellant's liability to urge that the liability was only the statutory minimum liability. In fact in *Shekhupura Transport Co. Ltd. v. N. I. T. Insurance Co*[6]*.,* at page 1627 where also the question was of the passenger risk, their Lordships had in terms gone into this question whether the limit of the insurer prescribed in Section 95 (2) (b) of the Motor Vehicles Act was enhanced by a contract to the contrary."

It is thus clear that by a special contract between the insured and the insurer, the limits of the statutory liabilities for which a policy of insurance is made compulsory by Section 95 read with Section 94 of the Act, have been lifted and the insurer company has undertaken to indemnify the insured fully to the extent of his own liability to his employees and other parties.

16. Shri Zaveri's contention as regards the contractual lifting of the limits of liabilities is with reference to the overall liability, the statutory ceiling of which was Rs. 20,000 at the relevant time. According to him, therefore, the limits of liability to the individuals such as an employee, workman, and passengers has remained untouched. In support of this contention Shri Zaveri first put reliance upon the above quoted endorsement No. 1. We have pointed out in the foregoing portion of this judgment that this endorsement refers to cl. No. 3 of General Exceptions. This clause is also quoted by us. We find that it is clear that when endorsement No. 1 is read with General Exception cl. No. 3, it merely emphasizes the liability of the insurer to indemnify the insured for his liability under the Workmen's Compensation Act, 1923. This endorsement, therefore says nothing about the imposition of limits of liabilities which has been made unlimited by a special contract

[5] AIR 1959 SC 1331

[6] AIR 1971 SC 1624

between the insured and she insurer company. The endorsement merely says that General Exception cl. No. 3 will not come in the way of the liability of the insurer company for claims arising under Workmen's Compensation Act. It does not say that whenever a liability under the Workmen's Compensation Act arises, the said liability shall remain confined only to the limits of compensation which could be awarded under that Act.

17. Shri Zaveri then relied upon the above quoted provisos (b) and (c) attached to Section 11 (1) (i) of the policy. Even these provisos are quoted by us. Reference to them shows that they nowhere say that the insurer shall bear a limited liability for the compensation to be paid to an employee under the Workmen's Compensation Act, 1923. It should be noted that both these provisos are the reproduction of the statutory liabilities contemplated by the proviso attached to Section 95 (1) of the Act. This proviso is in the following terms:

"Provided that a policy shall not be required-
(i) to cover liability in respect of death, arising out of and in the course of his employment of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923, in respect of the death of, or bodily injury to, any such employee-
(a) engaged in driving the vehicle, or
(b) if it is a public service vehicle, engaged as a conductor of the vehicle or in examining tickets on the vehicle, or
(c) if it is a goods vehicle, being carried in the vehicle, or
(d) .....
(ii) except 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, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises, or
(iii) to cover any contractual liability."

It is clear that provisos contained in clauses (b) and (c) of Section 11 (1) (i) of the Policy only emphasize what is already statutorily provided by the above quoted proviso to Section 95 (1) of the Act. Clauses (b) and (c), in our opinion, merely emphasize the fact that the insurer shall not be liable in respect of death of or bodily injury to any employee or to other passengers except in so far as he is statutorily liable to indemnify under Section 95. This emphasis on non-liability beyond the statutory liability cannot be construed as limiting the terms of the contract by which all limits as regards the liability are thrown away. It merely points out the minimum limits of liability and keeps the maximum limit untouched. Thus, in our opinion, none of the provisos (b) and (c) of Section 11 (1) (i) of the Policy controls the unlimited liability of the insurer to indemnify the insured against all sums payable to any persons.

18. This view is further fortified by reference to the premium computation which is found in the policy for the period from 3-10-69 to 2-10-70, found at ex. 61. This computation is as under:

"Comprehensive basic premium	... Rs. 900-00
Add for 2 tons extra	... Rs. 300-00
Add + % on I. E. V. Rs. 20.000/-	... Rs. 100-00
Add for Unlimited liability	... Rs. 50-00
Add for driver cleaner	... Rs. 10-00
Add for 4 coolies	... Rs. 20-00
Total	... Rs. 1380-00."

The initials I. E. V. mean 'insured estimate of value'. This break up of premium amount of Rs. 1,380 clearly shows that the insurer company has charged additional premium not only for the total unlimited liability but also for the additional liability on account of driver, cleaners and four coolies. Thus this break up supports our view that limits as regards the statutory liabilities contemplated by Section 95 of the Act have been raised not only with regard to the total liability contemplated by Section 95 (2) (a) of the Act but also with regard to the compensation which could be given to individual employees and passengers. In our opinion, therefore, even this second contention of Shri Zaveri cannot be sustained.

19. We find that if Shri Zaveri's contention, that the unlimited liability of the insurer is confined only to the general and overall liability and does not refer to the liability to pay compensation to individual workman and passenger is accepted, it would lead to greatly anomalous results. If this contention is accepted it would follow that the insurer would be liable to indemnify fully against the compensation payable to a third party other than a workman- employee or a passenger carried for hire or in pursuance of a contract of employment, but his liability to indemnify against the compensation to be paid to a workman employee or a passenger would be limited. We don't find any reason which would explain such a distinction between the case of a workman- employee or a passenger on one hand and the case of any other third party. In fact Section 95 of the Motor Vehicles Act does not make any such distinction because sub-section (1) thereof contemplates the coverage of the liability arising out of death of or injury to "any person". Even Section 11 (1) (i) of the policy contemplates the coverage of death of or injury to "any person". The whole idea behind enacting the provisions of compulsory coverage contemplated by Section 95 is to see to it that the victims of car accidents should not find themselves helpless in recovering the amount of compensation awardable to them. If this was the idea there would be no sense in making a distinction between the death of, or injury to, a workman or a passenger on one hand, and the death of, or injury to, any other third party on the other. It cannot be said that the death of a workman or a passenger entails a suffering which is in any degree less than that of a third party who is not a workman or a passenger. The legislature cannot be attributed with an intention of having entertained any such absurd intention while enacting Section 95 of the Motor Vehicles Act.

20. What Section 95 really does is to provide for some compulsory coverage in certain specified cases. Since it provides for a compulsory coverage, it fixes the minimum limits of such compulsory coverage. But it thereby does not say that the minimum limits of compulsory coverage which it has fixed in certain specified cases must always remain unaltered even by voluntary contract between the parties.

21. When, therefore, the parties voluntarily agree by a special contract to lift the limits of statutory liability contemplated by Section 95, the rights of the parties are required to be adjusted only in terms of this contract. As already seen, the terms of the contracts between the parties lift

all statutory limits, including the limits as regards total compensation and individual compensation to be indemnified by the insurer.

22. We therefore don't find it possible to accept this contention of Shri Zaveri that unlimited liability clause of the policy refers only to the total and! overall liability arising out of the accident and keeps the limits of liability for the accident caused to workman employee and a passenger, intact.

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Order accordingly.