

# KARNATAKA HIGH COURT

S. Sanjiva

Vs.

Anantha

Misc. First Appeals Nos. 179 and 211 of 1973

(D.M. Chandrashekhar, C.J., E.S. Venkataramiah and M.K. Srinivasa Iyengar, JJ.)

30.06.1978

## JUDGMENT

**M.K. Srinivasa Iyengar, J.**

1. The question referred to the Full Bench for a decision is :

"Where under a motor vehicle's insurance policy issued prior to 2-3-1970 (i.e. before the Amendment of that provision by the Amending Act 56 of 1969) to which Section 95 of the Motor Vehicles Act, 1939 is attracted, a claim is made arising out of an accident occurring after 2-3-70 (the date on which the said section was amended by Act 56 of 1969) has the extent of the pecuniary limit of liability of insurer to be determined on the basis of the provisions of Section 95 as it stood at the date of the issue of the policy or is the higher limit provided by Section 95 as amended attracted."

The relevant facts bearing on the question are : The accident giving rise to the claims under Section 110-A of the Motor Vehicles Act, 1939 (hereinafter referred to as the Act) occurred on 18-4-70. The Indian Mercantile Insurance Company Ltd., had issued a policy of Insurance dated 9-1-70 in respect of the motor vehicle owned by the Appellant against whom the claim was made and which was involved in the accident. Prior to the coming into force of the Amending Act 56 of 1969 the limit of the liability under Section 95(2)(b) of the Act was Rs. 20,000/-. By Act 56 of 1969 the limit of liability was increased to Rs. 50,000/-. The Amendment came into force with effect from 2-3-1970.

2. Section 94(1) of the Act provides. "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 this Chapter."

3. Section 95(1) of the Act provides that in order to comply with the requirements of this Chapter, a policy of insurance must (*inter alia*) be a policy which is issued by a person who is an authorized insurer and insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2)(a) against any liability which may be incurred by him in respect of the death or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. In *Shelkupura Transport Co. v. N. L. T. Insurance Co<sup>1</sup>*, The Supreme Court observed in para 8 of its judgment :

"This takes us to the question as to the extent of the liability of the Insurance Company. The measure of liability of the Insurer has to be ascertained with reference to Section 95(2) of the Motor Vehicles Act. Section 94 of that Act requires that every passenger bus should be insured against third party risk. Section 95(1) prescribes the requirements of policies..." (In that case the vehicle involved was a passenger bus).

Section 95(4) provides for the necessity to issue a certificate of insurance in the prescribed form. Section 96(1) provides that the insurer shall satisfy judgment against persons insured in respect of third party risks. Section 96(3) provides "where a certificate of insurance has been issued under Sub-section (4) of Section 95 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any conditions other than those in clause (b) of Sub-section (2) shall as respects such liabilities as are required to be covered by a policy under clause (b) of Sub-section (1) of Section 95 be of no effect :

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue of only this Sub-Section shall be recoverable by the insurer from that person."

4. Section 96(4) provides "If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person."

5. It is seen from the above provisions that the liability of the insurer to the person entitled to compensation is imposed statutorily. The measure of liability is to be ascertained from the relevant provision in force at the time the liability arises.

6. The cause giving rise to a claim for compensation arises on the death or injury to a third party and the liability to compensate also arises on that event and gets fastened to the insurer if the insured is held liable to so compensate. Explaining the scheme of the provisions of Chapter VIII of the Act the Supreme Court observed in *New Asiatic Insurance Co. V. Pessumal*, AIR 1964 Supreme Court 1736 (at page 1739)

"Chapter VIII of the Act, it appears from the heading, makes provision for insurance of the vehicle against third party risks, that is to say, its provisions ensure that third parties who suffer on account of the user of the motor vehicle would be able to get damages for injuries suffered and that their ability to get the damages will not be dependent on the financial condition of the driver of the vehicle whose user led to the causing of the injuries. The provisions have to be construed in such a manner as to ensure this object of the enactment."

<sup>1</sup>AIR 1971 SC 1624

In para 22 of the judgment it was observed :

"We are of opinion that once the company had undertaken liability to third parties incurred by the persons specified in the policy, the third parties' right to recover any amount under or by virtue of the provisions of the Act is not affected by any condition in the policy.."

The material date is the date of accrual of the liability though the liability arises by virtue of the insurance policy and it being in force as at the date of accrual of the liability. This is also the view taken by the High Court of Andhra Pradesh in *H. I. Insurance Co. Ltd. v. A. Vijayalakshmi*<sup>2</sup>, and the *Orissa High Court in Sabita Pati v. Rameshwar Singh*<sup>3</sup>

7. The Division Bench has referred the question to the Full Bench noticing that the decisions of this Court were not uniform. In an unreported judgment in *Smt. Jayanthi S. Rao v. Mariamma*<sup>4</sup> in which an analogous provision in Section 95(2)(a) raising the limit of liability was for consideration it was held that the liability of the insurer is to be ascertained with reference to the date of accident. In M.F.A. 373/73, (*B.R. Kamath v. Devaki*<sup>5</sup>) the liability on the basis of the amended provision was enforced. The relevant portion of the judgment is :

"It is contended for the appellants that in view of the amendment of Section 95 of the Motor Vehicles Act effected by the Motor Vehicles (Amendment) Act, 1969 (Act No. 56 of 1969), the limit of liability of the insurer has been raised to Rs. 50,000/- and therefore the direction of the Tribunal below has to be modified fixing the liability for payment of the entire sum of Rs. 28,500/- on the insure in view of the amended law in force. It is not denied that the said amendment of Section 95 had come into force prior to the date of the accident, on 2-3-1970 itself. That the true legal position arising from the amendment of Section 95 by the aforesaid Act is, as contended for the appellants, not denied on behalf of the 6th respondent insurer i.e. the Concord of India Insurance Co. Ltd. We are also satisfied that the contention is well founded in law."

The accident had occurred subsequent to the amendment by Act 56 of 1969 coming into force though the policy had been issued earlier. However, in *Premier Insurance v. Padma Srinivasan*

reported in<sup>6</sup> another Bench expressed itself thus (at page 189 of AIR) :

"The liability of the insurer is that under the insurance policy issued by him. But in the present case, the liability is determined by the terms of Ex. P-9 the Certificate of Insurance. It states that the liability is limited to that under Chapter VIII of the Motor Vehicles Act, 1939. It means that the liability was limited to Rs. 20,000/- according to Section 95(2) as it then stood. If retrospective effect is given to the amendment Act, it will have the effect of enhancing the liability of the insurer to Rs. 50,000/-. In other words it affects adversely the existing obligation of the insurer under the terms of the contract entered into by the insurer with the insured. There are no express words giving retrospective effect to the amendment of

<sup>2</sup> AIR 1976 And Pra 39

<sup>4</sup>(M. F. A. 525 of 1973 decided on 12-12-74)

<sup>3</sup>(1973 Acc CJ 319)

<sup>5</sup> decided on 2-7-1974

<sup>6</sup>(1976) 1 Kant LJ 168

Section 95(2) of the Motor Vehicles Act. In the amendment Act, there are no other indications to show that it was the intention of the Legislature to give a retrospective effect to this amendment. Hence the amendment must be held to apply only to policies of insurance or liabilities of the insurer created after the date the amendment came into effect viz., 2-3-1970."

8. In our opinion, the observations in this judgment in regard to the nature of the liability of the insurer to third parties would not be correct in the light of the observations of the Supreme Court quoted above and the scope of the provisions of the Act noticed. By applying the amended provision which was in force at the date the liability accrued no retrospective effect is given. The reasoning assuming the contrary cannot be supported. The other reason given that by giving effect to the amendment the existing obligation of the insurer under the contract entered into by it with the insured is adversely affected would also not be correct in the light of the provisions in Section 96(3) and (4) which entitle the insurer to recover from the insured any amount paid by the former to discharge its liability in excess of the amount covered by the policy. Under the circumstances similar to those in the instant case the Andhra Pradesh High Court has held that the higher limit prescribed by Section 95(2) as amended was attracted, AIR 1978 Andhra Pradesh 90, *M. Vengamma v. K. Durvasulu*.

9. Dissenting from the view expressed in (1976) 1 Kant LJ 168, *we hold that the material date for ascertaining the extent of liability of the insurer is the date of the accrual of the cause of action for a claim arising out of an accident, which in general would be the date of the accident and so in respect of a claim arising out of an accident on or after 2-3-70 the extent of the pecuniary limit of liability of the insurer is to be determined on the basis of the provisions of Section 95 as at that date and in the instant case the higher limit provided by Section 95 as amended with effect from 2-3-70 is attracted. The question is answered accordingly.*

*Answered accordingly.*