

Before S. S. Sodhi, J.

SURINDER KUMAR JAIN,—Appellant.

versus

SUKH DEVI AND OTHERS,—Respondents.

First Appeal from Order No. 217 of 1982

October 24, 1985.

*Motor Vehicles Act (IV of 1939)—Sections 95(1)(b) proviso (i) and 110—Workmen's Compensation Act (VIII of 1923)—Section 4—Accident involving a motor vehicle resulting in the death of a workman—Claim for compensation under Section 110 by the heirs of the deceased—Liability of the insurer—Whether limited to the amount payable under the Workmen's Compensation Act.*

*Held*, that a reading of the provisions in Section 95 of the Motor Vehicles Act, 1939, would show that there is no provision contained therein which can be read to limit the liability of Insurance Company to that payable under the Workmen's Compensation Act, 1923. The reference to the liability of the Insurance Company under the Workmen's Compensation Act, 1923 in proviso (i) to Section 95(b) of the Motor Vehicles Act is merely to indicate the existence of the liability of the insurance company under that Act, but not the extent thereof. The limit of liability of the insurance company is prescribed under Section 95(2) (a) of the Motor Vehicles Act which includes liability payable under the Motor Vehicles Act as also under the Workmen's Compensation Act. Thus, the liability of the insurance company must extend to the entire amount awarded and the owner, driver as also the insurance company would be jointly and severally liable for the compensation awarded to the claimants.

(Para 7)

Venkataraman and another *vs.* Abdul Munsaf Sahib and others, 1971 A.C.J. 77.

The General Assurance Society Ltd. *vs.* Jaya Lakshmi Ammal and others, 1975 A.C.J. 159.

The Orisa Co-operative Insurance Society Ltd. *vs.* Sarat Chandra Champati and another, 1975 A.C.J. 196.

Subasini Panda and others *vs.* State of Orissa and others, 1984 A.C.J. 276.

New India Assurance Co. Ltd. Anantapur *vs.* Kamparaju Sunkamma and others, 1981 A.C.J. 441.

(Dissented from)

*First Appeal from the order of the Court of Shri A. P. Chowdhri, District and Sessions Judge, Faridabad, dated the 15th day of February, 1982 allowing the petition and the petitioners shall be paid Rs. 40,000 together with interest at the rate of 6 per cent per annum from the date of institution of the petition i.e., 26th July, 1980 to the date of payment besides costs.... To the extent of Rs. 18,000 together with proportionate casts and interest the another shall be payable by the Insurance Co., respondent No. 3 and respondents 1 and 2 will be liable jointly and severally to pay the balance amount together with proportionate costs and interest.*

The amount awarded shall be receivable in the following proportions :—

Smt. Sukhdevi (widow)	...	Rs. 15,000
Virender (minor child)	...	Rs. 15,000
Smt. Gopali (mother)	...	Rs. 10,000
Total	...	Rs. 40,000

The amount payable to the minor shall be deposited in a Scheduled Bank to be named by the petitioner under the Fixed Deposit Scheme. Interest accruing due shall be payable to the mother of the minor for the maintenance of the minor. On attaining majority the minor will be entitled to receive that amount.

Arun Jain, Advocate, *for the Appellant.*

Shri G. S. Chawla, Advocate, *for the Respondent No. 4.*

C. B. Goel, Advocate with L. M. Jindal, Advocate, *for Respondents No. 1 to 3.*

#### JUDGMENT

S. S. Sodhi, J.

(1) The controversy in appeal here is with regard to the extent of the liability of the Insurance Company. The point in issue being—whether in a claim for compensation under Section 110 of the Motor Vehicles Act, 1939, (here-in-after referred to as 'the Act'), arising out of the death of a workman, the liability of the Insurance Company is limited to the amount payable under the Workmen's Compensation Act, 1923.

Surinder Kumar Jain v. Sukh Dai and others (S. S. Sodhi, J.)

(2) The facts relevant to this matter are that on January 27, 1980 at about 5 A.M. the truck HRC-5443, suddenly went off the road and hit into a tree. This happened near village Bhangola in District Faridabad. Maim Singh who was employed as a labourer on this truck, sustained serious injuries in this accident, as a result of which he later died. It was the finding of the Tribunal that the accident had been caused due to the rash and negligent driving of the truck-driver. A sum of Rs. 40,000 was awarded as compensation to the claimants; they being the mother, widow and minor son of Maim Singh deceased. The liability of the Insurance Company was fixed at Rs. 18,000, this being the amount payable under the Workmen's Compensation Act, 1923 and for the balance the truck-owner and driver were held to be jointly and severally liable.

(3) There is a conflict of judicial opinion on whether the liability of the Insurance Company is so limited. This arises mainly from the interpretation of proviso (i) to Section 95(1) (b) of the Act which reads as under : —

“Provided, that a policy shall not be required to cover liability in respect of the 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 (8 of 1923), in respect of the death of, or bodily injury to, any such employee—

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This has to be read with Section 95(2) (a) which is in the following terms :—

“(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) where the vehicle is a goods vehicle, a limit of one lakh and fifty thousand rupees in all, including the liabilities, if any, arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death

of, or bodily injury to, employees (other than the driver), not exceeding six in number, carried in the vehicle;"

(4) The basic authority for the proposition that the liability of the Insurance Company is limited to the amount payable under the Workmen's Compensation Act, 1923, is the judgment of the Single Bench of the High Court of Madras in *Venkataraman and another v. Abdul Munsaf Sahib and Others*, (1). This was followed in *The General Assurance Society Ltd. v. Jaya Lakshmi Ammal and others*, (2). It was later also followed by the High Court of Orissa in *The Orissa Co-operative Insurance Society Ltd. v. Sarat Chandra Champati and another*, (3), and, *Subasini Pando and others v. State of Orissa and others*, (4). A similar view was taken by the High Court of Andhra Pradesh in *New India Assurance Co. Ltd., Anantapur v. Kamparaju Sunkamma and others* (5).

(5) The contrary view finds its expression in the judgment of the Division Bench of the High Court of Allahabad in *Oriental Fire and General Insurance Co. Ltd. and another v. Ram Sunder Dubey and others*, (6), where it was observed that there was nothing in the Act to show that while awarding compensation to an employee, the Tribunal was bound to apply the Schedules framed under the Workmen's Compensation Act, 1923, for determination of the compensation payable. It was further observed that the words in Section 95(2) (a) of the Act, "— — a limit of one lakh and fifty thousand rupees in all, including the liabilities, if any, arising under the Workmen's Compensation Act, 1923", indicate that the provision was inclusive, that is, it provided for the liability for the Insurance Company, both under the Motor Vehicles Act, 1939 as also under the Workmen's Compensation Act, 1923. It was observed in this behalf that if the words "— — if any arising under the Workmen's Compensation Act, 1923, had not been in this Section, it would be open to the Insurance Company to urge that its liability was limited to that under the Motor Vehicles Act, 1939, only and did not extend to the Workmen's Compensation Act, 1923.

(1) 1971 A.C.J. 77.

(2) 1975 A.C.J. 159.

(3) 1975 A.C.J. 196.

(4) 1984 A.C.J. 276.

(5) 1981 A.C.J. 441.

(6) 1982 A.C.J. 365.

Romesh Kumar v. Bhagwan Dass Ahuja (J. V. Gupta, J.)

(6) Later, a Division Bench of High Court of Bombay in *National Insurance Co. Ltd. v. Gonti Eliza David and Others*, (7) also held to the same effect, namely; that the words “— — the liability, if any, arising under the Workmen’s Compensation Act, 1923” occurring in clause (a) of sub-section (2) of Section 95 of the Act, implied that the insurer was liable for common law damages also and not only in respect of the liabilities arising under the Workmen’s Compensation Act, 1923.

(7) A reading of the provisions in Section 95 of the Act would show that there is no provision contained therein which can be read to limit the liability of the Insurance Company to that payable under the Workmen’s Compensation Act, 1923. The reference to the liability of the Insurance Company under the Workmen’s Compensation Act, 1923 in proviso (i) to Section 95(b) of the Act is merely to indicate the existence of the liability of the Insurance Company under that Act, but not the extent thereof. The limit of liability of the Insurance Company is prescribed under section 95(2) (a) of the Act, which was rightly construed by the Division Benches of the High Courts of Allahabad and Bombay as inclusive of liability both under the Motor Vehicles Act, 1939 as also under the Workmen’s Compensation Act, 1923. Respectfully agreeing with this view, the conclusion is inescapable that in the present case, the liability of the Insurance Company must extend to the entire amount awarded. In other words, the truck-owner, driver as also the Insurance Company are jointly and severally liable for the compensation awarded to the claimants.

(8) This appeal is accordingly hereby accepted with costs. Counsel fee Rs. 300.

N.K.S.

Before J. V. Gupta, J.

ROMESH KUMAR,—Petitioner.

versus

BHAGWAN DASS AHUJA,—Respondent.

Civil Contempt Petition No. 123 of 1985

October 25, 1985.

Contempt of Courts Act (LXX of 1971)—Sections 12 and 20—  
petition for contempt filed after more than one year from the date

(7) 1984 A.C.J. 8.