

FULL BENCH

*Before S. S. Dulat, Daya Krishan Mahajan and Prem Chand,
Pandit, JJ.*

THE NORTHERN INDIA TRANSPORTERS INSURANCE CO.,
LTD.,—Appellant.

versus

AMRA WATI AND ANOTHER,—Respondents.

First Appeal from Order No 145 of 1960.

1965.

February, 10th.

Motor Vehicles Act (IV of 1939)—S. 95(2)—Liability of insurer issuing insurance policy in respect of a passenger bus—extent of—Whether confined to Rs. 20,000 in respect of all the passengers taken together and Rs. 2,000 in respect of each injured passenger—Apportionment of compensation among the injured persons—How to be made.

Held, that if an insurance policy is taken out in respect of a large passenger bus and is limited to the terms of section 95 of the Motor Vehicles Act and that bus meets with an accident resulting in injuries to several persons, the liability of the insurer is not to exceed Rs. 20,000 in respect of all the passengers taken together and it is not to exceed Rs. 2,000 in respect of each injured passenger. If compensation recoverable from the insurer has to be apportioned among the injured, then the distribution must be made in proportion to the compensation awarded to each passenger by the Tribunal.

Case referred by the Hon'ble Mr. Justice D. K. Mahajan, on 5th March, 1962 to a larger bench for decision owing to an important question of law being involved in the case. The Division Bench consisting of the Hon'ble Mr. Justice S. S. Dulat and the Hon'ble Mr. Justice P.C. Pandit by order dated 11th March, 1964, further referred the case to the Full Bench. The case was returned to the Division Bench by a Full Bench consisting of the Hon'ble Mr. Justice S. S. Dulat, the Hon'ble Mr. Justice D. K. Mahajan, and the Hon'ble Mr. Justice P. C. Pandit, on 10th February, 1965.

First Appeal from the order of Shri G. S. Gyani, Motor Accidents Claims Tribunal, Punjab (Under Section 110 of the Motor Vehicles Act as amended by Act 100 of 1956) dated the 11th October, 1959, awarding Rs. twenty-two thousand and eight hundred with costs in favour of the applicants and against the respondents but directing that by virtue of section 96 of the Motor Vehicles Act the amount of compensation will be paid by the insurers, i.e., the Northern India Transporters Insurance Company, Near Railway Station, Jullundur City.

H. R. SODHI, A. M. SURI, L. M. SURI, S. S. DHINGRA AND MAHARAJ BAKHSH SINGH, ADVOCATES, for the Appellants.

D. S. NEHRA, K. S. NEHRA, D. C. GUPTA AND M. R. AGNIHOTRI, ADVOCATES, for the Respondents.

JUDGMENT OF THE FULL BENCH.

DULAT, J.—A passenger bus, belonging to the Sheikhpura Transport Company Ltd., met with an accident and two passengers were killed. Their widows and other heirs made claims for compensation before the Tribunal appointed under the Motor Vehicles Act. The bus was insured against third party risks necessary under the Motor Vehicles Act, the insurer being the Northern India Transporters Insurance Company. The Tribunal found that a sum of Rs. 8,000 was payable as compensation to one widow and Rs. 14,000 to the other and directed under section 96 of the Motor Vehicles Act that the whole of this compensation be recovered from the Insurance Company. Against that decision two appeals were filed by the Insurance Company and two cross-appeals by the claimants, who prayed for higher compensation. The appeals were heard in the first instance by one of us, and the main point

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taken on behalf of the Insurance Company was that the insurance concerning passengers was limited to the terms of the Motor Vehicles Act under section 95(2), and in terms of that section the liability of the insurer was limited to Rs. 20,000 in respect of all the passengers and it was further limited in the case of each injured or deceased passenger to Rs. 2,000. It was found that the question was sufficiently important to be considered by a larger Bench, and the appeals were, therefore, made over to a Division Bench. That Bench, of which two of us were members in turn, thought that this important question ought to be settled by a Full Bench, and the question of law has, therefore, come before us.

The controversy turns on the meaning of sub-section (2) of section 95 of the Motor Vehicles Act, 1939, and the precise question referred to us for decision runs thus—

“If an insurance policy is taken out in respect of a passenger bus and is limited to the terms of section 95 of the Motor Vehicles Act and the bus meets with an accident resulting in injuries to several passengers, is the liability of the insurer not to exceed Rs. 20,000 in respect of all the passengers taken together, and is it limited to Rs. 2,000 in respect of each injured passenger, and, if so, how is compensation recoverable from the insurer to be apportioned among the injured persons?”

The second part of the question concerning apportionment presents no great difficulty and everybody before us is agreed that if there is to be an apportionment it should be in proportion to the compensation awarded by the Tribunal to each injured persons. The first part of the question, however, is in serious controversy.

It is admitted that a passenger bus cannot be run without being insured against, what is called ‘third party risk’. Section 94 of the Motor Vehicles Act makes that quite clear. Sub-section (1) of section 95 then says that “in order to comply with the requirements of this Chapter, a policy of insurance” must comply with certain conditions and one of those is that the person or classes of person specified in the

policy must be insured to the extent specified in sub-section (2). Then we go to sub-section (2) which says—

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“(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 vehicles, a limit of twenty thousand rupees in all including the liabilities, if any, arising under the Workmen's Compensation Act, 1923, in respect of the death of, or bodily injury to, employees (other than the driver), not exceeding six in number, being carried in the vehicle;

(b) 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, in respect of persons other than passengers carried for hire or reward, a limit of twenty thousand rupees; and in respect of passengers a limit of twenty thousand rupees in all, and four thousand rupees in respect of an individual passenger, if the vehicle is registered to carry not more than six passengers excluding the driver or two thousand rupees in respect of an individual passenger, if the vehicle is registered to carry more than six passengers excluding the driver.”

There is clause (c) also which is not, however, material. The relevant provision is in clause (b). Does it mean that in the case of a bus carrying more than six passengers excluding the driver, the liability of the insurer in respect of an individual passenger, who may be injured, is only Rs. 2,000 and in respect of all the passengers taken together is it only Rs. 20,000 and no more? According to the Insurance Company concerned in the present cases, the liability of the insurer is limited in this manner, provided of course the insurance policy is itself limited to the terms of the Act. It is admitted, that any bus owner or driver may

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take out an insurance policy which goes beyond the terms of the Act and covers more risk than the minimum required to be covered by the statute, but with that situation we are not concerned here. We have to assume that the insurance policy is limited to the terms of the Act and the question is whether that limit, as mentioned in sub-section (2) (b) of section 95, is not required to exceed Rs. 20,000 in respect of all the passengers and not to exceed Rs. 2,000 in the case of an individual passenger. The plain words of the Act support the view put forward on behalf of the Insurance Company. As against this it is urged on behalf of the Transport Company and also the injured parties, that this apparent meaning drawn from the words of the Act is not the correct meaning and that the true meaning is that the minimum limit of the insurer's liabilities is Rs. 20,000 plus another Rs. 2,000 per passenger who may be injured and in the alternative Rs. 20,000 plus Rs. 2,000 multiplied by the carrying capacity of the bus. Neither of these interpretations is, however, borne out by the language of the Act. Resort is, therefore, had to the supposed object behind the Act and the suggestion is that Parliament intended, when providing for compulsory third party insurance, that persons travelling in public vehicles should be adequately insured and further that if such passengers are insured, they should be able to recover adequate compensation from not only the negligent transporter but also and at once from a solvent insurer. Reference in this connection is made to section 96 which makes an insurer liable directly to the injured party in spite of the fact that there is no privity of contract between them. The scheme of that section is that where a properly insured bus within the terms of the Motor Vehicles Act meets with an accident and passengers are injured and the Tribunal finds that compensation is payable to the injured parties, then that compensation can to the extent that it is covered by the policy is directly recoverable by the injured parties from the insurer, that is, the insurance Company. There is a provision that the insurer is sent notice of the proceedings and can resist such proceedings before a Tribunal on certain limited grounds but once an order for payment of compensation is made, then to the extent it is covered by the policy of insurance it is recoverable from the insurer. That fact, however, does not and cannot mean that every bit of compensation that may be awarded to an injured

party against a negligent transport can be directly covered from the insurer, and it is admitted that it is only that damage, that is insured under section 95(2) that is so recoverable, so that we go back to the meaning of sub-section (2) of section 95. It is, of course, legitimate to think that the object behind this legislation was that injured parties may be able to recover some compensation directly from the insurer, but it does not help us to determine the extent of that compensation and the precise extent is mentioned only in sub-section (2) of section 95. It is said on behalf of the passengers and the transporters that if all that is recoverable from the insurer by an injured passenger is Rs. 2,000 and no more and even that amount may have to be reduced in case a large number of persons are injured, as there is the second overall limit of Rs. 20,000, then the provision would seem to be hardly adequate. This is, however, only looking at one side of the picture. On the other side is the consideration that Parliament may well have thought it unreasonable to impose a heavy burden on the transporters arising out of insurance, for obviously if the Act requires them to insure their vehicles in such a way that a large amount of compensation would become payable by the insurer, then the burden of insurance will increase and that burden has necessarily to be borne by the transporter. That consideration may well have led parliament to limit the amount to Rs. 20,000 in all in connection with any one single accident and may further have led to the limit of Rs. 2,000 in respect of an individual passenger who may be injured. As I have said, the words of the Act do not seem capable of the meaning attributed to them on behalf of the transporters and the passengers, and there seems no justification why the plain words should be subjected to any violence. What sub-section (2) of section 95 seems to say is that where a vehicle is a goods vehicle, the limit is Rs. 20,000 and that includes liability under the workman's Compensation Act payable to workman not exceeding six and where the vehicle is carrying passengers that is a bus carrying passengers then the limit is Rs. 20,000 in all and there is a further limit in respect of individual passengers which is Rs. 4,000 if the vehicle can carry not more than six passengers and is Rs. 2,000, if the vehicle can carry more than six passengers. It was said that there is no rational ground for making this distinction between a vehicle

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carrying six passengers and a vehicle carrying more than six passengers, but there is little doubt that the Act does make a clear distinction between these two kinds of vehicles and consequently mentions Rs. 2,000 for each passenger where the vehicle is large and Rs. 4,000 for each passenger where the vehicle is small. It is conceivable that Parliament thought that the kind of passengers travelling in a smaller vehicle would be different from those travelling in a large bus and consequently a distinction in the limit in each case was made. It is impossible to obliterate this distinction and to read the Act as if it intended to make no such distinction. The argument, therefore, that these two figures mentioned at two places, that is, Rs. 4,000 in respect of one kind of vehicle and Rs. 2,000 in respect of another kind of vehicle do not relate to the amount covered in respect of each passenger but are merely a formula for calculating the overall amount of liability, cannot stand. The suggestion is that the Legislature here is merely saying that in respect of smaller vehicles the limit of liability is Rs. 20,000 plus Rs. 4,000 multiplied by the number of passengers carried and in respect of larger buses the limit of liability is Rs. 20,000 plus Rs. 2,000 multiplied by the number of passengers carried. It is this conclusion which I find it difficult to agree with. The straightforward course is to take the language of the Act as it stands and a reading of that leaves no doubt that in the case of a bus carrying more than six passengers the limit of the liability is Rs. 20,000 in all and there is a further limit in respect of each individual passenger which is Rs. 2,000. I would, therefore, say in answer to the question posed for our decision that if an insurance policy is taken out in respect of a large passenger bus and is limited to the terms of section 95 of the Motor Vehicles Act and that bus meets with an accident resulting in injuries to several persons the liability of the insurer is not to exceed Rs. 20,000 in respect of all the passengers taken together and it is not to exceed Rs. 2,000 in respect of each injured passenger. Secondly, I would say that if compensation recoverable from the insurer has to be apportioned among the injured, then the distribution must be made in proportion to the compensation awarded to each passenger by the Tribunal.

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D. K. MAHAJAN,—I agree.

PREM CHAND PANDIT, J.—So do I.

B.R.T.