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due from him and remaining unpaid on the date of the application and not on the date of the first hearing.

Gurdev Singh, J.

The point of law arising out of the reference having been answered, the case shall go back to the learned Single Judge, for disposal.

Falshaw, J.

FALSHAW, J.—I agree.

B.R.T.

APPELLATE CIVIL.

Before D. Falshaw and Gurdev Singh, JJ.

THE MOTOR AND GENERAL INSURANCE, CO., LTD.,—*Appellant.*

versus

HOTA RAM AND OTHERS,—*Respondents.*

Regular First Appeal No. 209 of 1954.

Motor Vehicles Act (IV of 1939)—Ss. 94 and 96—Suit by a passenger suffering injuries as a result of accident to the vehicle in which he was travelling—Vehicle insured with an Insurance Company—Insurance Company made a defendant in the suit—Whether proper—Policy of Insurance containing term that liability of insurer will extend to Rs. 2,000 in respect of any one person—Decree for a higher amount than Rs. 2,000—Whether can be passed against the insurer—Code of Civil Procedure (Act V of 1908)—Order XLI Rule 33—Lower court awarding decree against the Insurance Company only—Appellate Court—Whether can pass decree against other defendants.

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August., 31st.

Held, that under section 96 of the Motor Vehicles Act, 1939, the Insurance Company is under a statutory liability to indemnify the insurer. It has further been given a right to receive notice of the proceedings against the insured and to be impleaded as a party at its own request with liberty to take up such defences as are specified in

sub-section (2) of section 96 because of its vital interest in the outcome of the suit brought by a third party for injury sustained in the motor accident. Though under this section it is not necessary for the plaintiff in such a suit to implead the Insurance Company as a defendant, yet he is under a duty to serve a notice of the proceedings on the Insurance Company so that it could join as a defendant and watch its interests. If the plaintiff in those circumstances impleads the Insurance Company as a defendant it would certainly be open to the Insurance Company to object to its being joined as a party, but if it does not do so and actually defends the action, it cannot later complain that no order regarding its liability should be passed after it has unsuccessfully contested the plaintiff's claim. Under section 96 of the Motor Vehicles Act, 1939, once the claim is decreed against the insured, the Insurance Company is under a statutory obligation to satisfy the liability of the insured under that judgment. In view of this situation it would be idle to contend that no decree could be passed against the Insurance Company, who had been joined as a defendant and had fought out the case. Even if there was any technical difficulty in passing a decree against the Insurance Company in such a suit, the Court would be perfectly within its powers to grant the decree against the insured and declare at the same time that, in view of the provisions of secion 96 of the Motor Vehicles Act, 1939, the decree would be executable against the Insurance Company and this would hardly make any difference to the result of the suit.

Held, that where the policy of insurance provided "In consideration of the payment of an additional premium it is hereby understood and agreed that this policy shall cover liability to passengers carried in the vehicle described in the Schedule for hire or reward *to the extent of Rs. 2,000 in respect of any one person* and subject to the limit of Rs. 20,000 in respect of any number of claims arising out of one case", the Insurance Company would be liable to pay only Rs. 2,000 in respect of loss suffered by a passenger in a bus and no decree in excess of that amount can be passed against the Insurance Company. If damages in excess of Rs. 2,000 are awarded, the plaintiff may recover the same from the other defendants but not from the insurer.

Held, that where the trial court passed a decree for Rs. 5,250 against the Insurance Company only when a decree for Rs. 2,000 only could be passed against it, the appellate court, acting under the provisions of Order XLI, rule 33 of the Code of Civil Procedure, can pass a decree against the other defendants as well.

...First Appeal from the decree of Shri William Augustive, Senior Sub-Judge, Amritsar, dated the 30th day of August, 1954, granting the plaintiff a decree for Rs. 5,250 with proportionate costs against the Insurance Company defendant No. 3 and further ordering that the defendants Nos. 1 and 2 were not liable for payment of any amount as defendant No. 3 was liable for payment of the entire amount awarded under the decree on account of Insurance Policy Ex. D. 13 and further ordering that the Court fee on the plaint would be paid by the defendant No. 3 and it would constitute first charge on the decree and a copy of the decree sheet would be forwarded to the Collector, Amritsar, for information.

J. S. WASU AND LALIT MOHAN SURI, ADVOCATES, *for the Appellant.*

BHAGIRATH DASS, GANGA PARSHAD AND S. S. MAHAJAN, ADVOCATES, *for the Respondents.*

JUDGMENT.

Gurdev Singh, J.

GURDEV SINGH, J.—This appeal is directed against the judgment and decree of the Senior Subordinate Judge, Amritsar, dated the 30th of August, 1954, awarding against the appellant, the Motor and General Insurance Company, Ltd., Calcutta, Rs. 5,250, as damages and compensation for the injuries suffered by Hota Ram, in a motor accident. The appellant has also been burdened with proportionate costs of the suit.

The plaintiff, Hota Ram was employed as Assistant Sub-Inspector, Police, at Amritsar. In the course of his official duties on the 6th of August, 1951, at Kathunangal, he boarded bus No. PNA 2376, belonging to the Amritsar National

Motor Transport Co-operative Society, Ltd., bound for Jaintipur. Gurdial Ram respondent, the driver of the bus, not only drove it at a high speed, but rashly as well, despite protests of the plaintiff. About four miles away from Kathunangal, the bus got out of the control of the driver, drifted to the *Kacha* part of the road on the right side, its front wheels went into a depression and on account of jerks and jolts the rear window opened as a result of which the plaintiff Hota Ram fell down and instantaneously the bus overturned. The plaintiff, who had come under it, was extricated and removed to the Victoria Jubilee Hospital, Amritsar. He sustained a number of injuries on various parts of his body, including the right leg, right cheek and temple and left side of the chest. His X-ray examination revealed fracture of the 3rd, 4th and 5th ribs of the left side and pelvis bone, necessitating his stay in the hospital for 53 days. Even after his discharge from the hospital on the 27th of September, 1951, he was advised two months' rest.

The plaintiff came to the Court alleging that the accident was due to the gross negligence and carelessness of Gurdial Ram, driver of the bus for whose acts his employer, the Amritsar National Transport Co-operative Society, was also responsible. He claimed Rs. 15,000, as compensation for the injuries suffered by him asserting that on account of these injuries his efficiency as a police officer had been lowered and his chances of promotion affected. In addition he claimed Rs. 500, on account of expenses incurred from his own pocket on his illness. The Motor and General Insurance Company, Ltd., (the appellant) was impleaded as a defendant in the suit as the bus in question had been insured with this company against third party risk.

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The suit was contested by all the three defendants, who, while denying that the accident was the result of rash and negligence driving, attributed it to an act of God asserting that while the bus was being driven with due care its tie-rod suddenly loosened and it went out of control. It was further pleaded that the plaintiff was guilty of contributory negligence because when the bus got out of control instead of sticking to his seat, as advised by the driver, he opened the rear window and jumped out of it.

The Insurance Company (defendant No. 3) further contested the suit on the plea that the plaintiff was travelling without a ticket and was not a *bona fide* passenger in the bus and even if it was proved that the accident was the result of rash and negligent driving the Insurance Company was not answerable for any damages caused to the plaintiff in excess of Rs. 2,000. The trial before the Subordinate Judge, proceeded on the following issues :—

(1) Whether the plaintiff was on the day of occurrence travelling in Bus No. 2367 P.N.A. as a *bona fide* passenger ?

(2) Whether bus met with an accident at the place between Kathunangal and Jaintipura, on account of the negligence of Gurdial Ram, driver, defendant No. 2 ?

(3) Whether the plaintiff was guilty of any contributory negligence ?

(4) Whether on account of the accident, the plaintiff sustained serious injuries if so, what ?

(5) What amount the plaintiff had to spend on his treatment and medicines ?

(6) To what damages is the plaintiff entitled on account of his physical injuries, mental worry and decrease in efficiency ?

(7) Is not the company defendant No. 3 liable for more than Rs. 2,000 ?

(8) Relief and against whom ?

Accepting the plaintiff's plea, the learned trial Judge, found that the plaintiff had sustained serious injuries as a result of the accident occasioned by rash and negligent driving of the bus by Gurdial Ram, defendant No. 2 and he was entitled to Rs. 5,000, as damages in addition to a sum of Rs. 250, that he had incurred on his treatment. The learned Senior Subordinate Judge, further held that the Insurance Company (defendant No. 3), under the terms of its policy, Exhibit D. 13, was liable to pay the entire amount. He passed a decree for Rs. 5,250, with proportionate costs against it and refused to make any order against the other defendants.

In this appeal on behalf of the Motor and General Insurance Company, Ltd., the learned counsel made just a faint attempt to assail the findings of the trial Court on issues Nos. 1 to 5 and advisedly so. Apart from the statement of the plaintiff, Hota Ham, P.W. 10, there is abundant and unimpeachable evidence on the record to prove that Hota Ram, sustained injuries in the accident, which was occasioned by the rash and negligent driving of the vehicle by Gurdial Ram, defendant No. 2. Kundan Lal, P.W. 5 and Faqir

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Chand, P.W. 7, who were travelling in the same bus, fully corroborated the statement of the plaintiff. They deposed that Gurdial Ram, defendant No. 2, drove the bus rashly and at a reckless speed as he intended to overtake another bus, which had left earlier. It is further in their evidence that hardly had they gone about four miles from Kathunangal, when the bus got out of the control of the driver, the rear window opened by jerks and jolts, the plaintiff was thrown out and the bus over-turned and fell upon him. They categorically denied the defence suggestion that the plaintiff had himself opened the window and jumped out of it when the bus got out of the driver's control. The defendants' witnesses who deposed to the accident are Gurdial Ram, D.W. 6, Khushi Ram, D.W. 3 and Rattan Chand, D.W. 4. Gurdial Ram would obviously be interested in denying the allegation of negligence and rashness, especially when he is one of the parties against whom the damages have been claimed. Khushi Ram, D.W. 3, is a Ticket Checker of the defendant Transport Society and there is nothing surprising in his supporting the defendants' plea. Rattan Chand, D.W. 4, is obviously a got-up witness. He was never cited as a witness in the criminal case in which the driver Gurdial Ram was prosecuted for rash and negligent driving.

Apart from what has been said about the manner in which the bus was driven by Gurdial Ram-defendant, the evidence adduced by the defendants themselves leaves no manner of doubt that the accident was the result of negligence of the employees of the Transport Society. Buta Singh D.W. 1, who is a member of the Managing Committee of the defendant Thansport Society, tells us that soon after the accident when he inspected the vehicle at the spot he found that its tie-rod had become loose and was almost worn

out. It is in the evidence of the driver Gurdial Ram, defendant that the bus got out of his control because the tie-rod had become loose. He admitted that that morning before he took out his vehicle it was checked and found that its tie-rod was loose. Though he asserted that the defective tie-rod was removed and replaced by another before he started for the journey from Amritsar to Pathankot, yet this part of his statement stands falsified by the records of the defendant Society itself. D.W. 7, Shri Inder Dev Bhatia, Secretary of the defendant Transport Society, admitted that there was no entry about the purchase of the tie-rod in the records of the Society on the 6th of August, 1951, the day on which this unfortunate accident took place. The records produced by Gurcharan Singh D.W. 5, Store-keeper of the Transport Society also do not disclose that any tie-rod was in store or had been issued in connection with the repairs of bus No. PNA 2376 on the 6th of August, 1951. On the other hand the entry in Exhibit D. 7, goes to show that a tie-rod was purchased on the 18th of August, 1951, i.e., several days after the accident. This evidence proves beyond any manner of doubt that on the day of the accident, Gurdial Ram defendant had taken out the bus for plying between Amritsar and Pathankot notwithstanding the fact that it had a loose and defective tie-rod. In fact the admission of Buta Singh, D.W. 1, that after the accident when he inspected the vehicle he found that its tie-rod was loose and worn-out leaves no manner of doubt that the tie-rod was never replaced on the day of the accident before the vehicle was taken out by Gurdial Ram and his statement to the contrary is false. It was on account of this defective tie-rod and rash and negligent driving that the bus got out of his control and met with an accident. The defendants thus cannot escape the liability for the same.

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There has been no dispute before us about the quantum of damages awarded to the plaintiff. Though he claimed Rs. 15,000, the learned Senior Subordinate Judge has awarded him Rs. 5,000, only as damages. Considering the fact that the plaintiff had sustained fracture of three ribs and pelvis bone and injuries on various other parts, which necessitated his confinement in the hospital for 53 days, there is no denying the fact that his efficiency and prospects of promotion in the police force in which he was employed must have been affected and for these injuries a sum of Rs. 5,000 that has been awarded by the trial Court, cannot be considered excessive. In addition he has been rightly held to be entitled to Rs. 250, which he has proved to have spent on medical treatment.

The learned counsel for the appellant has urged that no decree should have been passed against the Insurance Company as there was no privity of contract between the plaintiff and the company and his suit against it was not competent. Reliance in this connection has been placed on *Des Raj Pahwa and another* v. *The Concord of India Insurance Co., Ltd.*, (1), *Barrala Ramaswamy v. Bhamidipati Satyanarayana*, (2), and *British India General Insurance Co., Ltd.*, v. *Janardan Vishwanath Naik* (3). No such plea was raised at the trial, nor any issue framed thereon, and we hardly find any justification for permitting the appellant to take up this new plea at this stage.

Apart from this, I do not find much force in this contention. It is true that the plaintiff was not a party to the insurance policy, Exhibit D. 13, which was taken out by the Amritsar National Transport Co-operative Society, under the provisions of section 94 of the Motor Vehicles Act, and

(1) A.I.R. 1951 Punj. 114.
(2) A.I.R. 1958 A.P. 309
(3) A.I.R. 1938 Bom. 217.

he would not be entitled to sue the Insurance Company straightaway without impleading the insured Transport Society, but I see nothing in law that could prevent the plaintiff from impleading the appellant Insurance Company as a defendant in the suit. It is not disputed that under the terms of the policy, Exhibit D. 13 the appellant Company had undertaken to indemnify the passengers travelling in this bus of the Amritsar National Transport Society for injuries suffered in the course of the motor accident. It is also beyond dispute that once a decree for damages was passed against the Transport Society the insurer would be liable to pay the amount to the decree-holder though up to the limit of its liability as laid down in the insurance policy. The relevant provision as contained in sub-sections (1), (2) and (6) of the section 96 of the Motor Vehicles Act, 4 of 1939 runs as under :—

> "96 (1) If, after a certificate of insurance has been issued under sub-section (4) of section 95 in favour of the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 95 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment-debtor, in respect

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of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgment.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment unless before or after the commencement of the proceedings in which the judgment is given the insurer had notice through the Court of the bringing of the proceedings, or in respect of any judgment so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled *to be made a party thereto and to defend the action* on any of the following grounds :—

* * * *
* * * *

(6) No insurer to whom the notice referred to in sub-section (2) [or sub-section (2A)] has been given shall be entitled to avoid *his liability to any person-entitled to the benefit of any such judgment* as is referred to in sub-section (1) [or sub-section (2A)] otherwise than in the manner provided for in sub-section (2)

* * * *
* * *"

From the above it would be evident that when a person institutes a suit against a transport company, or the owner of a motor vehicle which is insured under section 94 of the Motor Vehicles Act, he has to serve a notice of the proceedings on

the Company with whom the vehicle in question is insured and this notice may be served either before the suit or the proceedings are lodged or after they are commenced. On receiving such notice it is open to the Insurance Company to apply to the Court to be made a party and to defend the action on the grounds specified in clauses (a) (b) and (c) to sub-section (2) of section 96. The object of providing for a notice is twofold; firstly, it is to enable the Insurance Company to defend the action in its own right on the grounds which are open to it under sub-section (2) of section 96; and secondly, to ensure that a decree behind the back of the Insurance Company is not passed as a result of collusion between the plaintiff and the insured.

In the present case what has been done is that the plaintiff while instituting the suit against the insured Transport Society impleaded the insurer Company as a defendant. The summons in the name of the Insurance Company were thereupon issued and in respone to the same the Insurance Company not only appeared without any objection but also availed of the apportunity and contested the plaintiff's claim tooth and nail, even on grounds which were not available to it under sub-section (2) of section 96. The summonses issued to it can be considered as a substitute for the notice of the proceedings under section 96 of the Motor Vehicles Act and when the appellant Insurance Company put in a written statement and contested the plaintiff's claim its conduct was tantamount to a prayer that it be made a party to the suit. In these circumstances when sub-section (1) of section 96 of the same Act lays down that a decree obtained against the insured would be executable against the insurer, even though the latter was not a party to the suit, I fail to see how the appellant Company can now object

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that it should not have been impleaded as a party in the suit.

Coming to the authorities relied upon by the appellant's learned counsel we find that the decision in *British India General Insurance Co. Ltd.* v. *Janardan* (1), was given prior to the enactment of the Motor Vehicles Act (Act IV of 1939) when there was no provision similar to the one contained in section 96 of the Motor Vehicles Act. It is based upon the English rule about the contracts of insurance as stated in Halsbury, Volume 18, para 879, which has been stated thus :—

> "The person who has suffered the injury or damage for which the assursd is liable is not a party or privy to the contract of insurance, and had not, either at Common Law or in equity, any right to the money payable under the policy which he could enforce directly against either the insurers or the assured."

In *Barrala Ramaswamy* v. *Bhamidipati Satyanarayana and another*, (2), a Division Bench of that Court rejected the contention that in a contract of insurance for third party risks, the third party could be regarded as *cestui que trust* on whose behalf the policy was effected, and was thus competent to sue the Insurance Company for damages sustained by him in a motor accident. The learned Judges relied upon the Bombay decision quoted above and on *Des Raj Pahwa and another* v. *The Concord of India Insurance Co. Ltd.* (3). This Punjab decision was given by my learned brother Falshaw, J. The question that came up for consideration before his Lordship in that case was whether the third party, who had

(1) A.I.R. 1938 Bom. 217.
(2) A.I.R. 1958 And. Pra. 309.
(3) A.I.R. 1951 Punj 114

sustained injuries in a motor accident could avail of an arbitration clause contained in the insurance policy. In answering this question in the negative my learned brother was mainly influenced by the fact that under ordinary law only a party to a contract could enforce it. In this connection it was observed :—

> "Under the ordinary law the only persons who can take legal steps to enforce the terms of contract are the parties to the contract, but there are undoubtedly some Indian cases relied on by the claimants in which it has been held that in certain circumstances a contract can be enforced by some one other than a party to it.....
>
> On behalf of the claimants it was contended that in a contract of insurance for third party risks there was a kind of trust created for the benefit of any third party who might suffer injury or loss, but I cannot believe that this is the kind of trust contemplated in the decisions relied on by them."

Noticing the provisions of section 96, Motor Vehicles Act, 1939, his Lordship proceeded to say :—

> "It seems to me, however, that the provisions of this section would only come into operation if the claimants had brought a suit against Mr. Tawakley, or the owner of the car at the time of the accident, and I cannot interpret the section as extending the ordinary principle of law that legal proceedings based on a contract can only be instituted by a party to the contract."

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From what has been said above it would be evident that the question which faces us in the present case, namely whether the Insurance Company could be impleaded as a defendant along with the insured did not arise in the Punjab case and that decision is no authority in support of the proposition urged on behalf of the appellants.

Under section 96 of the Motor Vehicles Act, 1939, the Insurance Company is under a statutory liability to indemnify the insurer. It has further been given a right to receive notice of the proceedings against the insured and to be impleaded as a party at its own request with liberty to take up such defences as are specified in sub-section (2) of section 96 because of its vital interest in the outcome of the suit brought by a third party for injury sustained in the motor accident. Though under this section it is not necessary for the plaintiff in such a suit to implead the Insurance Company as a defendant, yet he is under a duty to serve a notice of the proceedings on the Insurance Company so that it could join as a defendant and watch its interests. If the plaintiff in those circumstances impleads the Insurance Company as a defendant it would certainly be open to Insurance Company to object to its being joined as a party, but if it does not do so and actually defends the action, it cannot later complain that no order regarding its liability should be passed after it has unsuccessfully contested the plaintiff's claim. As has been observed earlier, under section 96 of the Motor Vehicles Act, 1939, once the claim is decreed against the insured the Insurance Company is under a statutory obligation to satisfy the liability of the insured under that judgment. In view of this situation it would be idle to contend that no decree could be passed against the Insurance Company, who had been joined as a defendant and had

fought out the case. Even if there was any technical difficulty in passing a decree against the Insurance Company in such a suit, the Court would be perfectly within its powers to grant the decree against the insured and declare at the same time that, in view of the provisions of section 96 of the Motor Vehicles Act, 1939, the decree would be executable against the Insurance Company and this would hardly make any difference to the result of the suit.

In some cases it has been ruled that though under section 96(2), Motor Vehicles Act, 1939, an Insurance Company cannot be impleaded as a defendant, except on its own request, it may be permitted to defend the suit in the name of the insured and to take up even those pleas in defence of the action which would not be open to the Insurance Company itself under sub-section (2) of secion 96, Motor Vehicles Act. Reference in this connection may be made to *Royal Insurance Co. Ltd.*, v. *Abdul Mohomed Meheralli* (1), and *Vimlabai D. Vashishtha* v. *General Assurance Society Ltd.* (2). This view was followed by a Division Bench of this Court in *Itbar Singh* v. *P. S. Gill and others* (3), where Harnam Singh, J., who wrote the judgment ruled :—

> "Insurers in the several matters on showing sufficient cause may be permitted to defend the action affecting them on merits in the name of the original defendant or defendants as the case may be."

This power to permit an Insurance Company to defend a suit even on pleas which are not open to it under sub-section (2) of section 96 of the

(1) A.I.R. 1955 Bom. 39.
(2) A.I.R. 1955 Bom. 278.
(3) A.I.R. 1955 Punj. 187.

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Motor Vehicles Act, is based on the inherent powers of the Court. If that is so, I fail to see why when the Insurance Company has been joined as a defendant and has fought out the case even on pleas which are not open to it under section 96 of the Motor Vehicles Act, no decree can be passed against it as the party who is under a statutory liability to satisfy the judgment passed against the insured. Here the suit was primarily against the driver of the bus, whose rash and negligent act resulted in injury to the plaintiff, and his employer the Amritsar National Transport Society. The appellant Company as insurer was impleaded because ultimately the damages awarded to the plaintiff could be recovered from it in accordance with the terms of the policy, Exhibit D. 13. By impleading the Insurance Company as a defendant in the case, the plaintiff has afforded an opportunity to the Company to defend itself. Though the appellant Company was not a necessary party to the suit, the fact that it was interested in the result of litigation between the plaintiff and the other two defendants would make it a proper party and it has in no way been prejudiced by its being made a party.

There is, however, considerable force in the appellant's contention that its liability was confined to Rs. 2,000, and a decree in excess of that amount could not be passed against it. Clause (1) of the Insurance policy, D. 13, runs as follows :—

> "1. 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 cost and expenses which the insured shall become

legally liable to pay in respect of death of or bodily injury to any person."

Endorsement No. 3, which forms part of the policy reads as under :—

"In consideration of the payment of an additional premium it is hereby understood and agreed that this policy shall cover liability to passengers carried in the vehicle described in the Schedule for hire or reward *to the extent of Rs. 2,000 in respect of any one person* and subject to the limit of Rs. 20,000, in respect of any number of claims arising out of one case."

From the above it is clear that in respect of loss suffered by a passenger in a bus, the Insurance Company is liable to pay only Rs. 2,000. Accordingly no decree in excess of that amount could be passed against the appellant. If damages in excess of Rs. 2,000 are awarded, the plaintiff may recover the same from the other defendants but not from the insurer.

As a result of the above discussion I would accept the appeal and modifying the judgment and decree of the trial Court direct that the appellant Company shall be liable only to the extent of Rs. 2,000. The learned Senior Subordinate Judge was clearly in error in not passing any decree against the other defendants who on his own findings were primarily responsible for the damages suffered by the plaintiff. Acting under the provisions of 0.41, rule 33 of the Code of Civil Procedure, I would grant the plaintiff a decree for Rs. 5,250 against defendants Nos. 1 and 2 as well.

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In view of the partial success of the appellant, the parties are left to bear their own costs in this Court.

Gurdev Singh, J.
Falshaw, J.

FALSHAW, J.—I agree.

B.R.T.

LETTERS PATENT APPEAL.

Before G. D. Khosla, C.J., and Shamsher Bahadur, J.

NAWAB ZAHIR-UDDIN AHMED AND ANOTHER,—*Appellants.*

versus

THE APPELLATE OFFICER, DELHI PROVINCE AND OTHERS,—*Respondents.*

L.P.A. No. 12-D of 1958.

Evacuee Interest (Separation) Act (LXIV of 1951)—S. 9 (1)—Benefit of the reduced rate of interest—Whether available to evacuee mortgagor only in the composite mortgaged property—Object of the Act stated.

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Sept. 7th.

Held, that the benefit of the reduced rate of interest as prescribed in section 9(1) of the Evacuee Interest (Separation) Act, 1951, can be availed of only by the evacuee mortgagor and not by the non-evacuee mortgagor of the composite mortgaged property. The evacuee mortgagors, being unable to supervise their properties, have been absolved from the duty of paying the contractual interest and the Custodian, who had taken charge of their properties, was, thus, required only to pay interest at the rate of five per cent per annum. The words "mortgaged property of an evacuee" can only mean the interest of an evacuee in the mortgaged property.

Held, that as a matter of principle, the integrity of a mortgage has to be respected but the Evacuee Interest (Separation) Act, 1951, is designed to split the evacuee and non-evacuee interests of a mortgage, thereby destroying the principle of the integrity of a mortgage. The Act was made for special and peculiar circumstances resulting from