

directed through their counsel to appear before the trial Court on 22nd August, 1977. The records of the case be sent back forthwith.

K. T. S.

APPELLATE CIVIL

Before M. R. Sharma and S. S. Sidhu, JJ.

NEW INDIA ASSURANCE COMPANY,—Appellant.

versus

NORATI DEVI,—Respondent.

First Appeal From Order No. 218 of 1977.

July 29, 1977.

Motor Vehicles Act (IV of 1939)—Section 96—Insurer not impleaded as a party in claim proceedings—Insurance Company—Whether can be held liable to meet the claim.

Held, that if the Insurance Company is allowed to contest the claim in accordance with the principles of natural justice or the procedure envisaged by the Act and the rules on the subject, it is not open to it to escape liability on the basis of a hypertechnical plea that the insurer was not pleaded as a party in the claim proceedings because in the ultimate analysis it alone has to satisfy the claim. Section 96 of the Motor Vehicles Act 1939 only clarifies that if an award is made, it would be the duty of the Insurance Company to meet the claim. It nowhere lays down that if the Insurance Company is allowed to contest the liability in the absence of the insurer it should not be held liable. Thus, the Insurance Company will be held liable even if the insurer is not impleaded as a party to the proceedings or having been impleaded his name is ordered to be struck off from the array of respondents. (Para 2).

First Appeal from the order of the Court of Shri Jai Singh Sekhon, Motor Accident Claims Tribunal (District Judge) Patiala, dated the 31st March, 1977, awarding compensation to the tune of Rs. 11,000 to Smt. Norati Devi from the Insurance Company and shall also be entitled to the costs of this litigation as well as interest at the rate of Rs. 6 per cent per annum, if the Insurance Company fails to pay the same within one month of this order (31st March, 1977).

B. R. Sabharwal, Advocate, for the Petitioner-Company.

New India Assurance Company v. Norati Devi (M. R. Sharma, J.)

JUDGMENT

M. R. Sharma, J.—

(1) Norati Devi widow of Sarwan Singh deceased filed an application before the Motor Accident Claims Tribunal, Patiala, for compensation on the ground that car No. 27-C.D. 53 driven by Mr. Kalaus Juergen, Assistant Attache, Embassy of the Federal Republic of Germany in India, had run over her husband who was going on a cycle on 19th January, 1974. Mr. Kalaus Juergen had also been impleaded as respondent No. 1 in that petition, but on an objection raised by him that he was entitled to claim diplomatic immunity his name was struck off from the array of respondents. The learned Tribunal after going into the merits awarded compensation to the tune of Rs. 11,000 to Smt. Norati Devi directly against the New India Assurance Company, which has come up in appeal before us.

(2) Mr. Sabharwal, the learned counsel for the appellant—Company, has drawn our attention to section 96 of the Motor Vehicles Act, 1939, which lays down that after an award has been made against an insured person it would be the duty of the insurance company to meet the claim. From the wording employed in this section, the learned counsel sought to argue that until and unless the person involved in the accident had not been impleaded as a party, no award could be made against the Insurance Company. In support of this proposition, he has placed reliance upon a single Bench decision of this Court in *Rudy General Insurance Co. Ltd. v. Smt. Misri Devi* (1) and a Division Bench judgment of the Jammu and Kashmir High Court in *The New Asiatic Insurance Co Ltd. v. Kulwanti Devi and another*, (2). In none of the cases cited by the learned counsel the insurer was such a person who could claim diplomatic immunity from being sued in an ordinary Court. Even otherwise, we feel that if the Insurance Company is allowed to contest the claim in accordance with the principles of natural justice, or the procedure envisaged by the Act and the rules on the subject, it is not open to it to escape liability on the basis of such a hypertechnical plea because in the ultimate analysis it alone has to satisfy the claim. Section 96 of the said Act only clarifies that if an award is made, it would be the duty of the Insurance Company to

(1) A.I.R. 1962 Pb. 522.

(2) A.I.R. 1959 J. & K. 90.

meet the claim. It nowhere lays down that if the Insurance Company is allowed to contest the liability in the absence of the insurer it should not be held liable. It is significant to mention that in *Smt. Misri Devi's* case (supra), decided by a learned Judge of this Court it was conceded before him that owner of the vehicle was a necessary party to the proceedings. As at present advised, we cannot subscribe to the broad proposition that an Insurance Company can never be held liable so long as the insurer is not impleaded as a party to the proceedings, or having been impleaded his name is ordered to be struck off from the array of respondents on the basis that he enjoys diplomatic immunity from being sued in a Court.

(3) So far as the merits of the claim are concerned, the learned counsel for the appellant-Company has not been able to satisfy us that the amount awarded is excessive in any manner or wise. We accordingly see no force in this appeal and order the same to be dismissed *in limine*.

K. T. S.

REVISIONAL CIVIL

Before R. S. Narula, C.J.

GIANO,—Petitioner.

versus

BHIM SINGH and another,—Respondents.

Civil Revision No. 1701 of 1976

July 29, 1977.

Code of Civil Procedure (V of 1908)—Order 39, Rules 1 and 2—Specific Relief Act (XLVII of 1963)—Section 37(1)—Temporary injunction—Whether can be granted in a suit for declaration simpliciter.

Held, that it is not possible to lay down as a matter of law either that an injunction can always be granted in a suit for declaration or that no injunction can ever be granted in such a suit. On the facts of each case it will have to be decided whether the application for injunction does or does not fall within the four corners of either rule 1 or rule 2 of Order 39 of the Code of Civil Procedure 1908.