NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal No. 3 of 1997

- The Orental Insurance Company Limited, 60, Sahkar Nagar, Rampur, Jabalpur, through Branch Manager, Bilaspur, M.P.

---- Appellant/Non-applicant No.4

Versus

1. Smt. Sita Soni, aged 25 years, widow of Shri Ashok Kumar Soni.
2. Shri Hemant Kumar Soni, aged 7 years, son of Shri Ashok Kumar Soni,
3. Shri Mahendra Kumar Soni, aged 3 years, son of late Ashok Kumar Soni,

   Respondent Nos.2 & 3 minors through their natural guardian – mother (respondent No.1) Smt. Sita Soni.
4. Smt. Ramrati Soni, aged 60 years, wife of Shri Mahadeo Prasad Soni.

   All residents of Mouza Rampur (Baghelan) Post Rampur (Baghgelan) Tahsil and District Satna, M.P. **---- Respondents/Claimants No. 1 to 4**
5. Madhya Pradesh Electricity Board, Bilaspur (Bilaspur Circle) through Superintending Engineer (Distribution) M.P.Electricity Board, Bilaspur Circlr), Tifra Post, Tifra, Distt. Bilaspur, M.P. **---Non-applicant No.1**
6. Superintending Engineer (Distribution), M.P. Electricity Board (Hasdeo Thermal Power Project) Bilaspur Circle, Bilaspur, Tahsil and District Bilaspur, M.P.

   --- Non-applicant No.2
7. Shri Shyamnarayan Chourasiya, aged 37 years, son of Shri Sukkhuram Choursia, Driver, M.P.E.B. (Hasdeo Thermal Power Project) through Superintendeing Engineer, (Distribution), M.P. Electricity Board, Bilaspur, Mandal Tifra, Tahsil and Distt. Bilaspur, resident No. M.P.E.B. Colony, Quarter No. F-321 Darri, Post Darri, (Korba), Tahsil Korba, Distt. Bilaspur, M.P.

For Appellant : Shri Ghanshyam Patel, Advocate.
For Respondents No.1 to 4: Shri Malay Shrivastava, Advocate

Hon'ble Shri Deepak Gupta, Chief Justice

Order On Board

24/06/2016

By this judgment/award/order, the appeal filed by the Insurance Company as well as the Cross-Objections filed by the owner and the claimants are being disposed of.

2. Briefly stated the facts of the case are that the deceased – Ashok Kumar Soni, who was employed as Junior Engineer with the M.P. State Electricity Board (for short 'the Electricity Board'), died in an accident, which took place between his motor cycle bearing registration No. M.I.L.7486 and Bus bearing registration No. M.I.L. 8040 on 26.04.1989. The Bus in question was also owned by the Electricity Board. The claim petition was filed by the widow, two minor sons and mother of the deceased against the Electricity Board and the appellant/Insurance Company.

3. The stand of the Insurance Company was that on the date of accident, i.e., 26.04.1989, the Bus was not insured with it and in fact the policy of insurance was issued only on 16.05.1989, i.e., after the date of accident.

4. The Insurance Company also took a plea to the effect that liability, if any, was limited to Rs.50,000/- in terms of Section 95 (2) (b) (ii) of the Motor Vehicles Act, 1939 (for short 'the Act of 1939'), which was applicable on the date when the accident took place.

5. The learned Tribunal assessed the income of deceased at Rs.2100/- per month, deducted 1/3rd of it towards personal expenses of the deceased, assessed the dependency at Rs.1400/- per month and after applying multiplier of 15 assessed the compensation of Rs.2,52,000/- towards loss of dependency. The learned Tribunal further awarded amount of Rs.15,000/- for consortium and estate. Thus, the learned Tribunal passed the award of Rs.2,67,000/- as total compensation and held the Insurance Company liable to pay the entire compensation amount.

6. The main grounds raised by Shri Ghanshyam Patel, learned counsel for the appellant/Insurance Company are;

i) that there was no valid policy of insurance on the date when the accident took place; and

ii) that even if there was valid policy of insurance, it was an only act policy, and therefore, the Insurance Company was liable to pay only Rs.50,000/- as per Section 95 (2) (b) (ii) of the Act of 1939.

7. The Electricity Board has also filed cross-objections, in which, it is stated that the accident occurred due to the negligence of the deceased himself or at least that the deceased was held guilty of contributory negligence, and therefore, prayed that the award be reduced. It is further contended that earlier the vehicle (Bus) in question was insured with the appellant/Insurance Company and the Electricity Board furnished the Bank Guarantee for three years for payment of the policy and in these facts and circumstances of the case the vehicle should be deemed to have been insured on the date when the accident took place. Lastly, it is submitted that the Insurance Company has rightly been burdened with the liability to pay the entire compensation.

8. Firstly, I shall proceed to decide the issue whether there was a valid insurance policy existing at the time when the accident took place. The accident took place on 26.04.1989 and the premium was paid on 16.05.1989, when the policy of insurance was issued. Prima facie it appears that this policy was issued after the accident took place and I would have been normally inclined to take a view that there was no valid policy on the date of accident. However, it is the stand of the Electricity Board, which is not disputed by the Insurance Company, that the Electricity Board had given Bank guarantee for payment of premium to the Insurance Company. The Bank guarantee has been proved on record, and was valid from 1985 till 1990. There is also a letter of the State Bank of India, i.e., Bankers to the Electricity Board which shows that the M.P.E.B. had insured all its vehicles with the Oriental Insurance Company. The Bank guarantee was valid from 1985 till 1990. Therefore, it is obvious that the Bank guarantee was applicable on the date of accident and was subsisting on the date of accident. This Bank guarantee was accepted by the Insurance Company meaning thereby that the Insurance Company agreed to insure the vehicles even if premium was not paid on the basis of the Bank guarantee. As long as the Bank guarantee was in existence, the vehicles of the Electricity Board would be deemed to have been insured under this Bank guarantee unless revoked by a specific order issued by the Insurance Company stating that any particular vehicle was not insured with it. This has not been done in this case.

Therefore, I hold that the vehicle was duly insured with the Insurance Company.

9. However, there is a merit in the second point raised on behalf of the Insurance Company that the liability of the Insurance Company is limited to Rs.50,000/- only. This case is governed by the Motor Vehicles Act, 1939. Under the Act of 1939, the liability of the Insurance Company was prescribed under Section 95. Sub-Section (1) of Section 95 deals with minimum requirements of the policy of insurance. I am not concerned with the same. Sub-Section (2) of Section 95 deals with the limits of the liability of the Insurance Company under various accidents of any individual and reads as follows:

> "95 (2) (b) (I): in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all;"

10. Admittedly, the deceased was not a passenger in the vehicle and in respect of person who was not a passenger in the vehicle, the liability of the Insurance Company under the old Act of 1939 was limited to Rs.50,000/- only. No doubt, under the Motor Vehicles Act of 1988, the liability in respect of a passenger is unlimited, but, retrospective effect cannot be given to the Act of 1988 which came into force only w.e.f. 01.07.1989. The rights of the parties had to be determined with the law which held the field on the date of accident, i.e., 26.04.1989.

11. In this regard, reference may be made to the judgment of the Apex Court in the case of ***National Insurance Co. Ltd., New Delhi*** v. ***Jugal Kishore and others,*** **AIR 1988 SC 719.** In that case, the accident had taken place on 15th June, 1969, at which time, the limit of the liability under Section 95 (2) (b) (ii) was only Rs.20,000/-. Para – 5 of the judgment is relevant which reads as under:

> "**5.** On the plain language of the aforesaid clause (b) which applies to the instant case it is apparent that the liability of the appellant could not be in excess of Rs.20,000/-. Learned counsel of the respondents, however, urged that notwithstanding the provision contained in this behalf in clause (b) aforesaid it was open to the insurer to take a policy covering a higher risk

> than contemplated by the aforesaid clause (b) and consequently the said clause had to be read subject to the terms of the policy which was taken in the instant case. We find substance in this submission in view of the decision of this Court in Pushpabai Purushottam Udeshi v. Ramjit Ginning and Pressing Co., 1977 Acc CJ 343 : (AIR 1977 SC 1735), where it was held that the insurer can always take policies covering risks which are not covered by the requirements of Section 95 of the Act."

12. As far as the present case is concerned, it is not alleged by the Board that any extra premium was paid, and therefore, it was act only policy and the liability of the insurance is curtailed to Rs.50,000/-.

13. Coming to the cross-objections filed by the claimants, the income of the deceased has been taken at Rs.2100/-. The deceased was aged only 30 years old, and therefore, 50% will have to be added for future prospects and the income for the purpose of including compensation has to be taken at Rs.3300/- per month. The claimants are the widow, two minor children and mother of the deceased and thus there are 4 dependents, therefore, deduction should have been 1/4th and not 1/3rd. As per the decision rendered by the Supreme Court in the case of ***Sarla Verma (Smt.) and others*** **v.** ***Delhi Transport Corporation and another,*** **(2009) 6 SCC 121,** 1/4th should deducted for personal expenses of the deceased, and therefore, the proper figure would be Rs.2,475/- per month or Rs.29,700/- per annum, which is rounded off to Rs.30,000/- per annum. Multiplier, as per **Sarla Verma'**s case (supra), would be 16 and the compensation, therefore, works out to Rs.4,80,000/-. In addition to this amount, the claimants are entitled to Rs.10,000/- for funeral expenses and Rs.20,000/- for loss of consortium, i.e., thus a total compensation worked out to Rs.5,10,000/-. On this amount, interest @ 9% per annum is also awarded from the date of filing of claim petition till realisation of the amount. The liability of the Insurance Company is limited to Rs.50,000/- with proportionate interest and the Electricity Board is held liable to pay remaining amount of Rs.4,60,000/- along with proportionate interest.

14. On behalf of the appellant/Insurance Company, it is stated that Insurance Company has deposited Rs.2,53,666/- with the Tribunal. If that be correct, then the Insurance Company shall be entitled to recover the excess amount deposited by it along with interest from the Electricity Board by filing proceedings under Section 174 of the Motor Vehicles Act, 1988. The amount of compensation is apportioned as follows:

a)	Smt. Sita Soni (widow)	=	Rs.2,10,000/-
b)	Hemant Kumar Soni (son)	=	Rs.1,00,000/-
c)	Mahendra Kumar Soni	=	Rs.1,00,000/-
d)	Ramrati Soni (mother)	=	Rs.1,00,000/-

15. The appeal is disposed of in the above stated terms.

Sd/-
(**Deepak Gupta)**
Chief Justice

Rao/Anjani