Supreme Court of India
Amrit Lal Sood & Anr vs Smt. Kaushalya Devi Thapar & Ors on 17 March, 1998
Author: Srinivasan
Bench: K.T.Thomas, M. Srinivasan

PETITIONER:
AMRIT LAL SOOD & ANR.

Vs.

RESPONDENT:
SMT. KAUSHALYA DEVI THAPAR & ORS.

DATE OF JUDGMENT: 17/03/1998

BENCH:
K.T.THOMAS, M. SRINIVASAN

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T SRINIVASAN, J.

On August 25, 1970 the fiat car owned by the second appellant collided with a goods carrier on Shimla-Kalka National Highway near Kandaghat Post office. The car was being driven by the first appellant, a brother of the Second appellant. The car was insured with the fifth respondent. Kishan Sarup Thapar, an advocate of Chandigarh who was travelling in the car got injured and was hospitalised for some time. He approached the Motor Accidents claims Tribunal, Solan and Srimur Districts claiming compensation of Rs. 1,25,000/-. The owners and drivers of both the vehicles as well as the insurers were impleaded as parties. The Tribunal found that the accident occurred due to negligence of the driver of the car and passed an award for Rs. 15,800/- against the appellants and the fifth respondent herein. The claimant filed an appeal in the High Court claiming more compensation while the insurer (5th respondent), filed an appeal disputing its liability to satisfy the claim. The claimant's appeal was allowed by a learned judge in part and the compensation was enhanced to Rs. 20,800/-. The learned judge held that the claimant was a gratuitous passenger travelling in the car and the insurer was therefore not liable.

2. That judgment was assailed in two Letters Patent Appeals, one by the legal representatives of the Claimant and another by the driver of the vehicle who is the first appellant herein. A Division Bench

of the High Court dismissed the appeal filed by the 1st appellant confirming the view of the single judge that the insurer is not liable as the claimant was only a passenger in the vehicle. In the other appeal, the Bench enhanced the compensation to Rs. 56,600/-. The driver and the owner of the car have preferred these appeals on special leave.

3. The question to be decided is whether the insurer, is liable to satisfy the claim for compensation made by the person travelling gratuitously in the car. the factual findings are not in dispute before us but for the contention of the appellants that the amount of compensation awarded by the Division Bench is excessive. We have no difficulty in repelling that contention as we find the materials on record to be sufficient to support the award of enhanced by sufficient to support the award of enhanced compensation.

4. The liability of the insurer in this case depends on the terms of the contract between the insured and the insurer as evident from the policy. Section 94 of the Motor Vehicles Act, 1936 compels the owner of a motor vehicle to insure the vehicle in compliance with the requirements of Chapter Viii of the Act. Section 95 of the Act provides that a policy of insurance must be one which insures the person against any liability which may be incurred by him in respect of death or bodily injury to any person or damage to any property of third party caused by or arising out of the use of the vehicle in a public place. The section does not however require a policy to cover the risk to passengers who are not carried for hire or reward. The statutory insurance does not cover injury suffered by occupants of the vehicle who are not carried for hire or reward and the insurer cannot be held liable under the Act. But that does not prevent an insurer from entering into a contract of insurance covering a risk wider than the minimum requirement of the statute whereby the risk to gratuitous passengers could also be covered. In such cases where the policy is not merely a statutory policy, the terms of the policy have to be considered to determine the liability of the insurer.

5. In the present case, the policy is admittedly a ' comprehensive Policy'. comprehensive insurance' has been defined in Black's Law Dictionary 5th edition as 'All risk insurance' which in turn is defined as follows:-

> " Type of insurance policy which ordinarily covers every loss that may happen, except by fraudulent acts of the insured. Miller v. Boston Ins. Co. 218 A. 2d 275, 278, 420 Pa. 566. Type of policy which protects against all risks and perils except those specifically enumerated."

6. The relevant clauses in the policy before us are found in 'SECTION - II LIABILITY TO THIRD PARTIES'. They are:-

> "1. The Company will indemnify the Insured in the event of accident caused by or arising out of the use of the Motor Car against all sums including claimant's costa and expenses which the Insured shall become legally liable to pay in respect of
>
> (a) death of or bodily injury to any person but except so far as is necessary to meet the requirements of Section 95 of the Motor Vehicles Act, 1939, the Company shall

not be liable where such death or injury arises out of and in the course of the employment of such person by the insured.

(b) damage to property other than property belonging to the Insured or held in trust by or in the custody or control of the insured.

2. The Company will pay all costs and expenses incurred with its written consent.

3. In terms of and subject to the limitations of the indemnity which is granted by this Section b to the insured the Company will indemnify and Driver who is driving the Motor Car on the insured order or with his permission provided that such Driver

(a) is not entitled indemnity under any other Policy

(b) shall as though he were the Insured observe fulfil and be subject to the terms exceptions conditions and limitations of this policy in so far as they can apply."

7. Under the heading General Exceptions the company's liability is excluded inter alia in respect of any accident occurred whilst the car is being used otherwise than in accordance with the limitations as to use or bring driven by any person other than a Driver. The Limitations as to use set out in the policy are not relevant in this case as it is not the case of the insurer that there is a violation thereof. The term 'Driver' is expressly defined in the policy as any of the following:

" (a) Any person,

(b) The insured may also drive a Motor car belonging to him and not hired to him under a Hire Purchase Agreement. Provided that the person driving hold is a licence to drive the Motor car or has held and is not disqualified for holding or obtaining such a licence".

8. Thus under Section 11 1(a) of the policy the insurer has agreed to indemnify the insured against all sums which the insured shall become legally liable to pay in respect of death of or bodily injury to any person.' The expression 'any person' would undoubtedly include an occupant of the car who is gratuitously traveling in the car. The remaining par of clause (a) relates to cases of death or injury arising out of and in the course of employment of such person by the insured. In such cases the liability of the insurer is only to the extent necessary to meet the requirements of Section 95 of the Act. In so far as gratuitous passengers are concerned there is no limitation in the policy as such. Hence under the terms of the policy, the insurer is liable to satisfy the award passed in favour of the claimant. We are unable to agree with the view expressed by the High Court in this case as the terms of the policy are unambiguous.

9. Learned counsel of the appellants has drawn our attention to the following judgments in which similar clauses in insurance policy have been considered and a similar view has been expressed:

(i) Madras Motor and General Insurance Co. Ltd. Versus Katanreddi Subbareddy and others 1975 A.C.J. 95,

(ii) The premier Insurance Co. Ltd. and others Versus Gambhirsing Galabsing and others AIR 1975 Gujarat 133,

(iii) Prabhudayal Agarwal versus Saraswati Bai and another 1975 A.C.J. 355, We approve of the reasoning in the above judgments.

10. The High Court has placed reliance on the judgment of this court in Pushpabai Purshottam Udeshi & Ors. Versus M/S. Ranjit Ginning & Pressing Co. (p) Ltd. & Anr. (1977) 2 S.C.C. 745. That judgment was based upon the relevant clause in the insurance policy in that case which restricted the legal liability of the insurer to the statutory requirement under Section 95 of Motor vehicles Act. That decision will have no bearing in the present case in as much as the terms of the policy here are wide enough to cover a gratuitous occupant of the vehicle.

11. Our attention has also been drawn to the judgment of this court in National Insurance. Co. Ltd., New Delhi Versus Jugal Kishore and others AIR 1988 S.C. 719. It is held in that case that though it is not permissible to use a vehicle unless it is covered at least under an "act only" policy, it is not obligatory for the owner of a vehicle to get it comprehensively insured, but it is open to the insurer to take a policy covering a higher risk.

12. Learned counsel for the appellants has placed reliance on the Judgment in New Asiatic Insurance Co. Ltd. Versus Pessumal Dhanamal Aswani and Ors. 1964 (7) S.C.R. 867 in support of the claim of the first appellant. In that case, the insurer permitted another person to drive his car and while the said person was driving the car, it met with an accident. The driver of the car faced an action for damages. The question was whether the insurance policy would enable the said driver to claim indemnity from the insurance company. On a consideration of the terms of the policy, the court held that the company would be liable to indemnify him. In the course of the judgment, the court said:

> " The Act contemplates the possibility of the policy of insurance undertaking liability to third parties providing such a contract between the insurer and insured, that is, the person who effected the policy, as would make the company entitled to recover the whole or part of the amount it has paid to the third party from the insured. The insurer thus acts as security for the third party with respect to its realising damages for the injuries suffered, but vis a vis the insured, the company does not undertake that liability or undertakes it to a limited extent. It is in view of such a possibility that various conditions are laid down in the policy. Such conditions, however, are effective only between the insured and the company, and have to be ignored when considering the liability of the company to third parties. this is mentioned prominently in the policy itself and is mentioned under the heading 'Avoidance of certain terms and rights of recover', as well as in the form of 'An Important Notice' in the schedule to the policy. the avoidance clause says that nothing in the policy or any endorsement

there an shall affect the right of any person indemnified by the policy or any other person indemnified by the policy or any other person to recover an amount under or by virtue of the provisions of the Act. It also provides that the insured will repay to the company all sums paid by it which the company would not have been liable to pay but for the said provisions of the Act. The 'Important Notice' mentions that any payment made by the company by reason of wider terms appearing in the by reason of wider terms appearing in the certificate in order to comply with the Act is recoverable from the insured, and refers to t he avoidance clause. Thus the contract between the insured and t he company may not provide for all take liabilities which the company has to undertake vis a vis the third parties, in view of the provisions of the Act. We are of opinion that once the company had undertaken liability to third parties incurred by the persons specified in the policy, the third parties' right to recover any amount under or by virtue of the provisions of the Act is not affected by any condition in the policy. Considering this aspect of the terms of the policy, it is reasonable to conclude that proviso

(a) of para 3 of Section it is a mere condition affecting the rights of the insured who effected the policy and the persons to whom the cover of the policy was extended by the company, and does not come in the way of third parties claim against the company on account of its claim against a person specified in para 3 as one to whom cover of the policy was extended".

13. In the policy in the present case also, there is a clause under the heading:

" AVOIDANCE OF CERTAIN TERMS AND RIGHT OF RECOVERY - Which reads thus: "Nothing in this policy or any endorsement hereon shall effect the right of any person indemnified by this policy or any other person to recover an amount under or by virtue of the provisions of the Motor Vehicles Act. 1939, Section 96, But the Insured shall repay to the Company all sums paid by the Company which the Company would not have been liable to pay but the said provisions".

14. The above clause does not enable the insurance company to resist or avoid the claim made by the claimant. the clause will arise for consideration only in a dispute between he insurer and insured. The question whether under the said clause the insurer can claim repayment from the insured is left open. The circumstance that the owner of the vehicle did not file an appeal against t he judgment of single judge of the High court under the letters Patent may also be relevant in the event of a claim by the insurance company against the insured for repayment of the amount. We are not concerned with that question here.

15. In the result, we hold that the insurance company is also liable to meet the claim of the claimant and satisfy the award passed by the Tribunal and modified by the High Court. The judgment of the High Court in so far as it exonerates the insurance company (5th respondent herein) from the liability, is set aside. The award passed by the Division Bench of the High Court can be enforced against the 5th respondent also. The appeal is allowed to t he extent indicated above. The parties will

bear their respective costs.