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**Court :** Delhi

**Decided On :** Dec-11-1985

**Reported in :** II(1985)ACC50; AIR1986Delhi52; 29(1986)DLT184;  
1986(10)DRJ186

**Judge :** S.B. Wad, J.

**Acts :** [Motor Vehicles Act, 1939](#) - Sections 95

**Appeal No. :** First Appeal No. 40 of 1978

**Appellant :** Kela Devi and ors.

**Respondent :** Ram Chand and ors.

**Advocate for Pet/Ap. :** O.P. Goyal,; Madhu Khurana and ; B.R. Sabharwal, Advs

**Judgement :**

S.B. Wad. J.

(1) On May 9, 1985 I pronounced an order in this appeal, holding M/s. New India Assurance Company Ltd., liable to pay Rs. 1,25,000;- towards compensation. In this order I had observed that the bus was comprehensively insured with Respondent No. 3, the Insurance Company. The Insurance Company took the liability on itself to contest the claim on behalf of all the respondents and it filed a written statement on behalf of all the respondents. The liability for the payment of

compensation is, therefore, of Respondent No. 3.

(2) The counsel for the Insurance Company appeared before me and stated that the Insurance Company have preferred an appeal against the said order to the Division Bench and that the Division Bench desired that he should re-agitate the point of the liability of the Insurance Company before me. The appeal was, therefore, re-listed for arguments on this short point.

(3) Mr. Sabharwal, appearing for the Insurance Company, submits that it was the liability of the owner of the vehicle to produce the Insurance policy. That not having been done, the claimants should have called upon the Insurance Company to produce the copy of the policy, which too was not done. The Tribunal also could have passed an order for the production of the policy under order 11 rule 14 & 16 Civil Procedure Code . His arguments is that without compliance with these requirements of law no presumption can be drawn against the Insurance Company beyond the liability fixed by the Act 187 Only policy. In other words, his submission is that on this presumption the Insurance Company cannot be held liable for unlimited amount He has relied upon the judgment of the Madras High Court reported at 1970 Acj Page 451.

(4) The counsel for the claimant in reply submits that there is no pleading by the Insurance Company before the Tribunal that their liability was limited to only the liability under the 'Act Only' Policy. He then submits that all policies under the act, such as Act Only Policy, Third Party Policy and Comprehensive Policy are statutory policies in the sense that no Insurance Company can charge higher premium than the one laid down by the Tarff Committee described as India Motor Tarrifs. He than submit1s that the view which is currently being taken by all Courts is that in the absence of the policy the liability of the Insurance Company can be taken to be unlimited liability.

(5) The short paragraph quoted from my Older needs some Explanationn. I have been dealing with the accident claim matters for a long time and I have taken a consistent view all along that where the policy is not produced and the Insurance Company does not prove that the liability was restricted only to the amount under the 'Act Only' Policy, the liability of the Insurance Company is unlimited. This view

was also being taken by Sultan Singh, J. who was earlier hearing the accident claim matters. One such judgment can be referred to as 7977 Acj Page 501. The Division Bench of the Punjab & Haryana High Court in 1984 ACJ 255 has also taken this view. There is, thus, a Division Bench judgment supporting the proposition stated above.

(6) In the present case the claimants in para 17 of their claim petition stated that the vehicle was insurance with respondent No. 3, the Insurance Company. A common written statement was filed on behalf of the respondents and particularly the owner of the vehicle and the Insurance Company. In reply to para 17 it was stated that the fact urged in para 17 of the claim petition was not denied. Thus, the position is that the respondents including the Insurance Company, accept that the vehicle was in fact registered with respondent No. 3. Apart from the written statement the defense in the matter was fully taken over by respondent No. 3 on behalf of all the respondents. It is interesting to note that in para 8 of the written statement, it was asserted by the respondents that no accident took place with the vehicle belonging to the respondent. Para 14 it was asserted that the vehicle mentioned was never involved in any accident. Although the question of liability is elaborately denied even to the extent of the accident taking place or the vehicle being involved in the accident, the written statement is blissful silent as regards the liability of the Insurance Company. It is not stated in the written statement that the liability of the Insurance Company was limited only to the amount on the 'Act Only' Policy. Even in this Court the Insurance Company has not taken any plea that their liability is limited to the amount against the 'Act Only' Policy, No effort was made in this Court either to produce the policy or any evidence in support of that assertion. With this state of pleadings the question as regards the unlimited liability of the Insurance company would itself stand admitted. No policy has been produced either by the owner or by the Insurance Company. If the Insurance Company wanted its liability to be limited to 'Act Only' Policy apart from the specific averment in the written statement, it was incumbent on them to produce some evidence in support of their plea which is now being raised before me. The evidence as regard the premium paid or copy of the insurance policy could have been produced by the Insurance Company. As the present argument goes, the Insurance Company is asserting that its policy was limited only to the amount of the 'Act Only' policy. If

the Insurance Company was to assert that its liability was not an unlimited liability but limited only to the 'Act Only' Policy, the duty and the burden to prove the same was on the Insurance Company. One who asserts must prove. Was it necessary for the claimant or for the Tribunal to issue notice to the Insurance Company to produce the insurance policy or the evidence in support of their claims Neither in law nor on the state of pleadings in this case it was necessary to do so. therefore, there is no substance in the submission of the counsel for the Insurance Company that the Court cannot draw presumption of liability higher than the one prescribed by the Act, namely the amount of 'Act Only' Policy, 1970 Acj 451 is the judgment of the full Bench of the Madras High Court. That Judgment is of no avail to the Insurance Company and is clearly distinguishable on facts. In paragraph 16 it is made clear that the Court was proceeding on the footing that the policy in force was an 'Act policy' because both the parties had proceeded to argue the case on that footing. In the present case no policy had been produced and the assertion of the claimant was that it was a comprehensive third party policy with unlimited liability for the Insurance Company.

(7) There is no substance in the submission of the counsel for the Insurance Company. With this clarificatory note, the order passed by me on May 9, 1985 is confirmed.