

Mst. Kamala Devi Vs. NavIn Kumar and anr.

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SooperKanoon Citation : sooperkanoon.com/755458

Court : Rajasthan

Decided On : Aug-11-1972

Reported in : (1972)IILLJ585Raj; 1972()WLN541

Judge : Jagat Narayan, C.J.

Acts : [Motor Vehicles Act, 1939](#) - Sections 95, 96(1) and 96(2)

Appeal No. : Civil Reference No. 43 of 1967

Appellant : Mst. Kamala Devi

Respondent : NavIn Kumar and anr.

Advocate for Def. : M.M. Singhvi, Adv.

Advocate for Pet/Ap. : M. Mridul, Adv.

Judgement :

ORDER

Jagat Narayan, C.J.

1. This is a reference under Section 27 of the Workmen's Compensation Act, 1923, by the Workmen's Compensation Commissioner. Udaipur.

2. The relevant facts are these. One Chunilal was driving passenger bus No. R. J. Y. 1397 belonging to Navin Kumar Verma along a public road when it collided with

a truck. As a result of this accident Chunilal died. His widow Smt. Kamladevi and other dependants filed the present claim under the Workmen's Compensation Act, 1923, before the Workmen's Compensation Commissioner. Udaipur. Notice was issued to the insurer, namely, the New Great Insurance Company of India Limited as contemplated by Section 96 (1) of the [Motor Vehicles Act, 1939](#). It filed a written statement in which none of the facts mentioned in the claim application was admitted. Navin Kumar filed a written statement admitting all the facts in the claim petition except Clause (ii) regarding relationship of the claimants with the deceased for want of knowledge and Clause (v) regarding the notice of the accident having been served on him by the petitioner.

3. Before the learned Workmen's Compensation Commissioner it was contended that the insurer had a right to take only the statutory defences as provided under Section 96 (2) of the Motor Vehicles Act. On the other hand the insurer argued that he had the right to take all possible defences as an ordinary defendant. It was urged that Sections 95 and 96 of the [Motor Vehicles Act, 1939](#), are not applicable to the proceedings under the Workmen's Compensation Act, 1923, unless the employer has become insolvent or has made composition or scheme of arrangement with his creditors or is a company wound up as provided under Section 14 of the Workmen's Compensation Act. The following questions of law have been referred to this Court by the Workmen's Compensation Commissioner :--

(1) Whether Sections 95 and 96 of the [Motor Vehicles Act, 1939](#), are applicable to the cases under the Workmen's Compensation Act, 1923;

(2) Whether the insurer has a right to take only the statutory defences as provided in Section 96 (2) of the [Motor Vehicles Act, 1939](#) as per AIR 1959 SC 1331 and whether he can take all the defences as an ordinary defendant; and

(3) whether Insurer Company can be made a party and a decree can be passed against it under the Workmen's Compensation Act 1923.

4. I have heard the learned counsel for the parties. The only two reported cases which throw some light on the Point are the following :--

R. B. Moondra & Co. v. Mst. Bhanwari, ILR (1970) 20 Rai 1150; New Asiatic Insurance Co. Ltd. v. Kulwanti Devi. AIR 1959 J & K 90. The Motor Vehicles Act contains comprehensive provisions for recovery of compensation in respect of accidents involving the death or bodily injury to persons arising out of use of motor vehicles in a public place. This will include claims under the Workmen's Compensation Act provided the accident had taken place in a public place. If the accident has not taken place in a public place then the remedy of the workmen is only under the Workmen's Compensation Act. A provision similar to that contained in Section 14 of the Workmen's Compensation Act is contained in Section 97 of the Motor Vehicles Act. A perusal of Section 95 makes it quite clear that claims by employees under the Workmen's Compensation Act are entertainable in respect of accidents from motor vehicles in a public place subject to the following limitations contained in Section 95 (2):--

(a) where the vehicle is a goods vehicle, a limit of twenty thousand rupees in all including the liabilities, if any arising under the Workmen's Compensation Act, 1923, in respect of the death of, or bodily injury to employees (other than the driver), not exceeding six in number being carried in the vehicle;

(b) where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, ... compensation can be claimed in respect of the death of or bodily injury to employees including driver not exceeding six in number, being carried in the vehicle.

5. Section 96 (1) lays down that the insurer shall 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 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 judgments. Sub-section (2) lays down that 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, namely:--

(a) that the policy was cancelled by mutual consent or by virtue of any provision contained therein before the accident giving rise to the liability, and that either the certificate of insurance was surrendered to the insurer or that the person to whom the certificate was issued has made an affidavit stating that the certificate has been lost or destroyed, or that either before or not later than fourteen days after the happening of the accident the insurer has commenced proceedings for cancellation of the certificate after compliance with, the provisions of Section 105; or

(b) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely (i) a condition excluding the use of vehicle--

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organized racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a public service vehicle or a goods vehicles or.....,'.

6. It was held in AIR 1959 SC 1331 that the insurer has the right to defend the action when notice is issued to him under Section 96 (2) only on the grounds mentioned in that sub-section unless the insurer reserved the right to defend the action in the name of the assured by the terms of the policy. On behalf of the insurer the copy of the policy of insurance has been produced before me. It contains the following clause :--

'The company may at its own option (A) arrange for representation at any Inquest or Fatal Inquiry in respect of any death which may be the subject of indemnity under this section and (B), undertake the defence of proceedings in any Court of Law in respect of any act or alleged offence causing or relating to any event which may be the subject of indemnity under this Section'.

From the above clause it is clear that the company has reserved the right to defend the action in the name of the assured.

7. I accordingly answer the questions as follows :--

(1) Sections 95 and 96 of the [Motor Vehicles Act, 1939](#) are applicable to claims under the Workmen's Compensation Act 1923, provided the accident arises out of the use of a motor vehicle in a public place and the employee concerned is covered by the limits laid down under Section 95 (2), that is in case of a vehicle carrying goods the person in respect of whose death or injury compensation was claimed was not the driver of the vehicle. Further there are not more than six employees claiming compensation. Lastly the accident should have occurred in a public place.

(2) The insurer has a right to take only the statutory defences as provided in Section 96 (2) of the [Motor Vehicles Act, 1939](#), unless by the terms of the policy the right to defend the action in the name of the assured has been reserved, as held by their Lordships of the Supreme Court in AIR 1959 SC 1331.

(3) A notice should be issued to the insurer and if he appears he should be made a party. The order under the Workmen's Compensation Act will be passed against the employer. But by virtue of Section 96 (1) the insurer will be treated as a judgment-debtor for purposes of making recovery of compensation.

8. Let the record be returned to the trial court with this order so that further proceedings in the case may be taken.