

PETITIONER:
NATIONAL INSURANCE COMPANY LTD.

Vs.

RESPONDENT:
BEHARI LAL & ORS.

DATE OF JUDGMENT: 28/08/2000

BENCH:
S.S.M.Quadri, Y.K.Sabharwa

JUDGMENT:

Syed Shah Mohammed Quadri, J.

Leave is granted.

This appeal is from the judgment and order of the High Court of Rajasthan at Jaipur dated May 29, 1997 allowing Civil Misc. Appeal No.682 of 1996 filed by respondents 1 and 2 herein. The point that arises for consideration is the scope and import of the proviso to sub-section (2) of Section 147 of the Motor Vehicles Act, 1988 (for short, the New Act). The appellant (hereinafter referred to as, the Insurance Company) issued a policy in favour of the first respondent (Behari Lal), owner of the bus bearing registration No.R.J.P. 4719. The policy of insurance, issued under the provisions of the Motor Vehicles Act, 1939 (for short, the Old Act), was valid for one year - from October 28, 1988 to October 27, 1989. The said bus, while being driven by respondent No.2, met with an accident which resulted in the death of one passenger - Shiv Bhagwan and injuries to the other passengers travelling therein. Respondent Nos.3 to 8, heirs of the said Shiv Bhagwan, filed a petition before the court of Additional District Judge, Khetri, Rajasthan - the Motor Accident Claims Tribunal (for short, the Tribunal), claiming compensation of Rs.14,14,000/- from respondent Nos.1 and 2 (being the owner and the driver of the bus) and the Insurance Company as the insurer. The Insurance Company contested the claim, inter alia, on the ground that its liability under the terms of the policy issued under the Old Act and the provisions of the New Act, was limited to only Rs.15,000/- per passenger travelling in the bus. On June 1, 1996, the Tribunal held that respondent Nos.3 to 8 were entitled to compensation of Rs.1,50,000/- from respondent Nos.1 & 2 and that the liability of the Insurance Company was limited only to Rs.15,000/-. Respondent Nos.1 & 2 filed appeal before the High Court challenging that part of the order of the Tribunal, which limited the liability of the Insurance Company. On May 29, 1997 a learned Single Judge of the High Court allowed the appeal holding that the liability of the Insurance Company is co-extensive with that of respondent Nos.1 & 2 herein and thus modified the Award of the Tribunal. It is from that order of the High Court, the Insurance Company is in appeal before us. Mr.Jitendra Sharma, learned senior counsel appearing for the Insurance Company, contended that in view of the proviso to

sub-section (2) of Section 147 of the New Act, the liability of the Insurance Company is limited only to Rs.15,000/- per passenger as the existing policy was issued under Section 95(2) of the Old Act, therefore, the High Court erred in law in modifying the Award of the Tribunal. Dr.Sushil Balwada, learned counsel appearing for the respondents, has submitted that under the New Act the liability of the Insurance Company is unlimited; the existing policy which was issued under the Old Act and was valid beyond the period of four months from coming into force of the New Act was kept alive within that period by the proviso but it did not limit the liability of the Insurance Company to the amount mentioned in the policy in accordance with the terms of Section 95(2) of the Old Act. In the light of the above contentions and the relevant provisions of the New Act, we shall examine the scope of the proviso to sub-section (2) of Section 147 of the New Act. Insofar as the provisions of the Section 147 are relevant for purposes of the present discussion, they are set out hereunder :

CHAPTER XI

147. Requirements of policies and limits of liability.

(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub- section (2)

(i) against any liability which may be incurred by him in respect of the death of or bodily [injury to any person, including owner of the goods or his authorised representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place :

Provided that a policy shall not be required-

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmens Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

Explanation - For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely :-

(a) save as provided in clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

(3) to (5) *** **

A plain reading of sub-section (1) of Section 147 of the New Act shows that to comply with the requirements of Chapter XI, it enjoins that a policy of insurance must be a policy which is issued by an authorised insurer and insures the person or classes of persons specified in the policy to the extent specified in sub-section (2), referred to in this judgment as a statutory policy. A statutory policy covers any liability which the insured person may incur in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place and also against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place. The proviso thereto enumerates the liabilities which are not required to be covered by a statutory policy. It is quite clear that sub-section (2) of Section 147 of the New Act directs that subject to proviso to sub-section (1), a statutory policy shall cover the amount of liability incurred except in respect of damage to any property of a third party for which a limit of rupees six thousand is specified. A careful reading of the proviso to sub-section (2) discloses that any policy of insurance, issued with any limited liability and in force immediately before the commencement of the New Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier. Now, a policy of insurance may be a contract policy or a statutory policy. The proviso does not deal with unlimited liability which an insurer may undertake under a contract policy. It deals with a statutory policy with limited liability. The question, which, arises here is : what is the import of the phrase, with any limited liability and in

force? To understand the meaning of this phrase, it becomes necessary to refer to Section 95 of the Old Act which deals with requirements of policies and limits of liability. Under sub-section (2) of Section 95 a policy of insurance (a statutory policy) was required to cover any liability incurred in respect of any one accident, in the case of a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment : (1) in respect of persons other than passengers carried for hire or reward, a limit of one lakh and fifty thousand rupees in all; and (2) in respect of passengers a limit of fifteen thousand rupees for each individual passenger. Therefore, the phrase means a statutory policy under the Old Act with the limit prescribed therein which was valid immediately before the commencement of the New Act. The words are not employed to limit the liability of an insurance company to the amount specified in the policy by virtue of the provisions of Section 95(2) of the Old Act either for a period of four months or for a lesser period during which the policy is valid. It is argued by Mr.Sharma that by the proviso the liability of the Insurance Company is limited to the amount mentioned in the existing statutory policy issued under the Old Act. We are afraid, we cannot accede to this contention and he can derive no benefit by relying on the following observation of this Court in *New India Assurance Company Vs. Satpal Singh & Ors.* [2000 (1) SCC 237] : The legislature has also taken care of even the policies which were in force on the date of commencement of the Act by specifically providing that any policy of insurance containing any limit regarding the insurers liability shall continue to be effective for a period of four months from commencement of the Act or till the date of expiry of such policy, whichever is earlier. This means, after the said period of four months, a new insurance policy consistent with the new Act is required to be obtained.

There the question before this Court was with regard to liability of the Insurance Company in case of death of a gratuitous passenger in the truck which met with an accident resulting in his death. We cannot read the observation, quoted above, as laying down the law that the amount specified in the policy in force on the date of the commencement of the New Act will be payable for a period of four months after such commencement or till the date of expiry of such policy, whichever is earlier. In our view, the proviso cannot be so interpreted as to subject the insurance companies to different maximum liabilities under statutory policies in respect of accidents occurring during the same period. We do not think that this could be the intention of the Parliament. Having fixed a date for enforcement of the New Act incorporating the requirement of a statutory policy under Section 147(1) thereof, the effect of the provision could not have been whittled down during the period which may vary from one day to four months depending upon when the existing policy expires within the said period of four months. It merely indicates the span of validity of existing policy. Here, it is pertinent to notice the provisions of Section 217(2) of the New Act which deal with the effect of repeal of the Old Act (under which a statutory policy was taken) on coming into force of the New Act. Sub-section (1) of Section 217 repeals, inter alia, the Old Act. Clause (c) of sub-section (2), which is relevant, provides that notwithstanding the repeal under sub-section (1) of the Old Act any document, referring to

any of the repealed enactments or the provisions thereof, shall be construed as referring to the New Act or the corresponding provisions thereof. In this context, it will be useful to refer to the decision of this Court in *Padma Srinivasan Vs. Premier Insurance Company Ltd.* [1982 (1) SCC 613 = 1982 ACJ 191 (SC)]. In that case after the policy was taken under Section 95(2)(a) of the Old Act, it was amended in 1969 so as to increase the liability of the insurer from Rs.15,000/- to Rs.50,000/-. The accident which gave rise to the appeal occurred after the amended provision came into force. Chandrachud, C.J. speaking for a three-Judge Bench observed : Since the liability of the insurer to pay a claim under a motor accident policy arises on the occurrence of the accident and not until then, one must necessarily have regard to the state of the law obtaining at the time of the accident for determining the extent of the insurers liability under a statutory policy. In this behalf, the governing factor for determining the application of the appropriate law is not the date on which the policy of insurance came into force but the date on which the cause of action accrued for enforcing liability arising under the terms of the policy. That we consider to be a reasonable manner in which to understand and interpret the contract of insurance entered into by the insured and the insurer in this case.

We are not persuaded to accept the contention of Mr. Sharma that the proviso in question is incorporated to nullify the effect of that judgment. The proviso to sub-section (2) of Section 147 cannot be read as a proviso to Section 217(2)(c) of the New Act and it does not, in case of the existing policy being in force on the date of the occurrence of the accident, limit the liability of the Insurance Company to the amount mentioned in Section 95(2) of the Old Act. From the above discussion, it follows that the proviso to sub-section (2) of Section 147 does not limit the liability of Insurance Companies to payment of compensation to the extent specified in the policy of insurance in terms of Section 95(2) of the Old Act which is in force before the commencement of the New Act for a period of four months after commencement of the New Act or till the date of expiry of such a policy, whichever is earlier. In this view of the matter, we endorse the view taken by the Division Bench of the High Court of Gujarat in *Kacharabhai L. Limbachia Vs. Ratansinh J.Rathod-Patel & Ors.* [1998 (1) A.C.J. 326] and by the Division Bench of the Punjab & Haryana High Court in *National Insurance Company Ltd. Vs. Puja Roller Flour Mills (Pvt.) Ltd. & Ors.* [1997 (2) Vol.116 P.L.R. 199]. It is, however, submitted that a Division Bench of the Kerala High Court took a contrary view in *New India Assurance Co. Ltd. Vs. Paramu* [1990 (2) K.L.T. 645]. Inasmuch as in that case the policy under which the Insurance Company was held liable, was issued on May 11, 1983 and was noted to have expired on March 10, 1984 long prior to coming into force of the New Act and the question with which we are concerned here, neither arose nor was it dealt with in that case, so it has no bearing on the issue. In the instant case, the policy was issued on October 28, 1988 and it was valid up to October 27, 1989. The New Act came into force on July 1, 1989 and the accident occurred on September 4, 1989, after the New Act came into force but before the expiry of the policy in force. On these facts the liability of the Insurance Company will be governed by sub-section (2)(a) of Section 147 of the New Act, namely, the amount of liability incurred but not under

Section 95(2) of the Old Act. The High Court is, therefore, right in allowing the appeal of the respondents claiming the whole amount of compensation awarded by the Tribunal from the Insurance Company. We find no merits in this appeal. It is, accordingly, dismissed with costs.

JUDIS