HIGH COURT OF GUJARAT

CENTRAL INDIA INSURANCE COMPANY LIMITED
V/S
DADIMAJUKJI BHESAMIA

Date of Decision: 27 August 1965

Citation: 1965 LawSuit(Guj) 69

Hon'ble Judges: J M Shelat

Eq. Citations: 1965 GLR 881, 1966 ILR(Guj) 231

Case Type: Civil Revision Application

Case No: 229 of 1964

Subject: Motor Vehicle

Head Note:

Motor Vehicles Act (IV of 1939) - S.94,S.95,S.96(1),S.96(2) - Third party insurance policy - Relating to particular vehicle which covers a clause that risk covered even if one drives in other car - If Under S.96(2) notice can be issued against the insurer - General clause does not give rise to the right of third party against such insurer - His rights arise only in relation to car by which accident occurred.

While C was driving a motor car belonging to K the car caused bodily injury to M. M filed suit for damages against C and K. During the pendency of the suit a notice under sec. 96(2) of the Motor Vehicles Act was issued against the petitioner-the Central India Insurance Co. Ltd. The Insurance Company had issued an insurance policy in favour of C in respect of a Hudson Car owned by him which contained the following comprehensive clause: In terms of subject to the limitations of the indemnity which is granted by this section in connection with the Motor car the company will indemnify the Insured whilst personally driving a private car (but

not a motor cycle) not belonging to him and not hired to him under a Hire Purchase agreement. The policy also stated that the insured may also drive a motor car not belonging to him and not hired to him under a Hire Purchase agreement. On the question whether in a case where tn accident takes place while a particular car is driven the insurer who has not-insured the risk in relation to the use of that particular car but of another car belonging to the person who was driving the car in question but which contains a general clause reproduced above can be held liable under sec. 96 ? Can a notice against such an insurer be issued under sec. 96(2) of the Act ? HELD that it was only that insurer who had issued a policy in respect of the vehicle concerned and which covered the liability of the person who used that particular vehicle and of any other person or persons whom he caused or allowed to use it who would be liable under sec. 96(1) and against whom a notice could be issued under sec. 96(2) of the Motor Vehicles Act. That being so a general clause such as the one in the policy issued by the petitioner company might protect the insured against a risk while driving a private car besides the one specified in the policy but that general clause would not give a right to a third party against that insurer for a right of the third party under sec. 96(1) arose only under a policy issued in relation to the particular vehicle concerned the use whereof had resulted in an accident and which had to be effected under sec. 94 in relation to the use of that vehicle by that person or that other person mentioned in that section. (Para 6). Further held that in the instant case the general clause in the policy issued by the petitioner company in favour of C would not be a policy in respect of that particular car the user of which resulted in injuries to M and hence no notice could be issued in respect of that policy under sec. 96(2) of the Act. (Para 8) Pessumal Dhanmal v. New Asiatic Insurance Co. Ltd. New Asiatic Insurance Co. Ltd. v. Pessumal referred to.

Acts Referred:

Motor Vehicles Act, 1939 Sec 95, Sec 96(1), Sec 94, Sec 96(2)

Final Decision: Application allowed

Advocates: K S Nanavati, I M Nanavati, A H Mehta, M C Shah, B B Thakore

Reference Cases:

Cases Referred in (+): **2**

Judgement Text:-

Shelat C J

[1] On July 30 1958 while respondent No. 3 Chinubhai (defendant No. 2 in the suit) was driving a motor car bearing registration No. BYA 9887 belonging to the second respondent Kanubhai (defendant No. 1 in the suit) the car caused severe bodily injuries to respondent No. 1 (the plaintiff in the suit) which are said to have permanently incapacitated him. Respondent No. 1 thereafter filed a suit being Suit No. 86 of 1959 for damages against the 2nd respondent the owner of the car and the 3 respondent who was at the time driving the car. On the City Civil Court being established in 1961 the suit stood transferred to that Court and was renumbered as Suit No. 299 of 1961. During the pendency of that suit a notice under sec. 96(2) of the Motor Vehicles Act IV of 1939 was issued against the petitioner company and the fourth respondent company. The petitioner company had issued an insurance policy in favour of respondent No. 3 Chinubhai in respect of a Hudson car bearing registration No. BYA. 7323 which contained a clause which inter alia provided as follows:- 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 claimants costs and expenses which the Insured shall become legally liable to pay in respect of etc. Clause 4 in sec. II of that policy which may be called a comprehensive clause provided that:- In terms of and subject to limitations of the indemnity which is granted by this section in connection with the motor car the Company will indemnify the Insured whilst personally driving a private Motor car (but not a Motor cycle) not belonging to him and not hired to him under a hirepurchase agreement. The certificate of insurance issued by the petitioner company along with the said policy also stated that:- The insured may also drive a motor car not belonging to him and not hired to him under a Hire Purchase Agreement. Though therefore the policy was issued in respect of the Hudson car it also covered the risk in relation to the use by the third respondent Chinubhai of any other private motor car personally driven by him though not belonging to him. The notice was issued against the petitioner company relying upon this policy and the aforesaid clause 4 contained in sec. II in it.

[2] On June 22 1964 the petitioner company took out a chamber summons praying that the notice should be quashed on the ground that it was not the insurance company liable under Chapter VIII of the Act. By an order dated March 5 1964 the City Civil Court dismissed the chamber summons and held that the said notice was properly issued against the petitioner company. The learned Judge after considering Secs. 94 95 96

and sec. 125 of the Act observed as follows:-

> "It has been argued and streneously argued by Mr. Kayastha the learned advocate appearing for the Insurance Company that the use of the article the in sec. 94 provides the key to the intention of the legislature. In the first place the article the prefixed to vehicles in sec. 94 does not necessarily refer to the vehicle X but refers to such vehicle as is put to use by the person happening to drive it. The vehicle means the vehicle under use and not a particular specified vehicle. In the second place a complete and effective answer to this contention is that when the person who is actually driving the car has taken out an insurance policy which covers the risk generally in respect of all motor vehicles or arising out of the use of any vehicle it necessarily covers the risk arising from the individual motor vehicle (car X) notwithstanding the fact that he is not the owner of the particular motor vehicle (car X). If an insurance policy which is in larger amplitude in the sense that it embraces the individual motor vehicle as well as other motor vehicles in general is taken out similar to the one in the present case can it be said that it falls short of the statutory requirement or is violative of the requirement of sec. 94 ? To my mind it cannot possibly be contended that such a person would be committing an offence or that he would be violating the provisions of sec. 94. I am therefore of the opinion that a policy taken out by a person actually driving the car meets the requirements of the Motor Vehicles Act provided it is a policy generally covering the risk arising from the accident caused while using any car of all cars and therefore even if the person who is the real owner of the motor car does not happen to have an insurance policy the friend driver would be protected as long as he has taken out such an insurance policy. The facts of the instant case completely cover such a hypothetical case."

On this interpretation of the provisions of sec. 94 the learned Judge came to the conclusion that since the petitioner company had issued an insurance policy in favour of the third respondent Chinubhai which contained the aforesaid comprehensive clause that policy was a policy contemplated by sec. 94 and by reason of such a policy notice under sec. 96(2) could be issued against the petitioner company and if any judgment were to be passed in such a suit the petitioner company would be deemed to be a

judgment-debtor bound to satisfy the aforesaid liability under sec. 96(1). It is this order which has been challenged in this petition.

[3] The question which arises for determination is whether in a case where an accident takes place while a car is being driven the insurer who has not insured the risk in relation to the use of that particular car but of another car belonging to the person who was driving the car in question but which contains a general clause reproduced above can be held liable under sec. 96. Can a notice against such an insurer be issued under sec. 96(2) of the Act ? Mr. Nanavati who appears for the petitioner company contended that the notice contemplated by sec. 96 is a notice against the insurer who has effected a policy in relation to the use of that car which resulted in injuries to respondent No. 1 and not against an insurer of any other car and that though the general clause reproduced above insured the third respondent against risk in relation to any other private car driven by him other than the said Hudson car the clause would not avail the first respondent and no notice based on such a general clause can be issued against such an insurer under sec. 96(2). On the other hand both Mr. A. H. Mehta and Mr. M. C. Shah for the fourth respondent contended that sec. 94 contemplated two types of policies (1) a policy effected by a person who uses the car or allows another person to use the car and (2) a policy of the type issued in favour of the third respondent by the petitioner company containing a general clause which general clause would include the specific car in question if an accident takes place while he is driving such a car. Therefore a notice could be issued validly against the petitioner company by reason of the second type of policy issued by the petitioner company. They also contended that since the policy issued by the petitioner company in favour of respondent No. 3 undertook the risk generally in relation to the use of any private car driven by the insured Chinubhai the third respondent herein sec. 96(2) would permit a notice to be issued against the petitioner company.

[4] The question raised in this petition thus depends upon the construction of Secs. 94 95 and 96 and to a certain extent sec. 125 of the Act. Sec. 94 lays down a prohibition against putting a motor vehicle to use in a public place without an insurance against third party risk and sub-sec. (1) thereof provides that no person shall use except as a passenger or cause or allow any other person to use a motor vehicle in a public place unless there is in force in relation to the use of the vehicle by that person or that other person as the case may be a policy of insurance complying with the requirements of this chapter. The explanation to that sub-section provides that a person driving a motor

vehicle merely as a paid employee while there is in force in relation to the use of the vehicle no such policy as is required by this sub-section shall not be deemed to act in contravention of the sub-section unless he knows or has reason to belive that there is no such policy in force. Sec. 95 deals with the requirements of a policy required to be effected under sec. 94 and sub-sec. (1) clause (b) provides that in order to comply with the requirements of this Chapter a policy of insurance must be a policy which insures the person or classes of persons specified in the policy to the extent specified in sub-sec. (2) against any liability which may be incurred by him or them in respect of the death of or bodily injury to any person caused by or arising out of the use of the vehicle in a public place in India etc. Sub-sec. (2) of sec. 95 lays down the extent of liability to be covered by the policy and sub-sec. (4) provides that a policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescibed form and containing the prescribed particulars of any conditions subject to which the policy is issued and of any other prescribed matters. Sub-sec. (5) provides that a person issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons. Sec. 96 deals with the obligation of insurers to satisfy judgments against persons insured in respect of third party risks. Sub-sec. (1) of that section provides that if after a certificate of insurance has been issued under sub-sec. (4) of section 95 in favour of the person by whom a policy has been effected judgment in respect of any such liability as is required to be covered by a policy under clause (b) of sub-sec. (1) of sec. 95 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy then notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy the insurer shall subject to the provisions of this section 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-sec. (2) provides that no sum shall be payable by an insurer under sub-sec. (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 grounds set out therein. It is not necessary to recite those grounds

here as they are not relevant for the purposes of this judgment. Sec. 125 lays down a penal offence against driving an uninsured vehicle and provides that whoever drives a motor vehicle or causes or allows a motor vehicle to be driven in contravention of the provisions of sec. 94 shall be punishable etc.

[5] Broadly stated these provisions necessitate insurance in relation to a motor vehicle put to use in a public place against third party risk with a view to insure third parties who might suffer as a result of the use of the vehicle to obtain damages for injuries suffered by them and to further insure that their ability to get such damages should not be dependent upon the financial condition of the driver of the vehicle whose user was responsible for the causing of injuries. Secs. 94 and 96 therefore have to be interpreted so that this object of the Legislature may be properly carried out. What sec. 94 lays down is that no person shall use or cause or allow any other person to use a motor vehicle in a public place unless there is an insurance policy in relation to the use of that vehicle by that person or that other person that is to say the person whom such person causes or allows the use of the vehicle. It will be seen that the words the vehicle in the latter part of sub-sec. (1) refer to the motor vehicle used in a public place and referred to earlier. If such a vehicle is used in a public place without a policy of insurance against third party risk the prohibition of sec. 94 applies and the person who uses or allows or causes such a motor vehicle to be used would be liable to be punished under sec. 125. The words the vehicle in sec. 94 indicate that the policy of insurance contemplated under that section must be in relation to the vehicle used in a public place and the user of which has resulted in injuries to a third party who is enabled under Chapter VIII to recover damages from the insurer. Two things therefore are necessary under sec. 94 (1) that there must be an insurance policy against third party risk with regard to a particular vehicle (2) that such a policy must cover the liability of the person using it and those whom he causes or allows to use that motor vehicle in a public place. Sec. 95(1) also offers the same indication for it provides that the policy of insurance must insure the person or classes of persons specified in the policy against any liability which may be incurred by him or them in respect of the death of or bodily injury caused by or arising out of the use of the vehicle. Again the words the vehicle occurring in this sub-section indicate that the policy which is to enable a third party to recover damages which might be awarded to him must be a policy in relation to the vehicle the user of which has resulted in the death of or bodily injuries to such a third party and no other vehicle. Sub-sec.(5) of sec. 95 also indicates the same thing for that subsection also provides that an insurer shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the

case of that person or those classes of persons. It is manifest that the policy referred to here and the liability thereunder which is thrown on the insurer is that policy which is issued in relation to the vehicle for the user of which the liability for damages arises and is a policy which is effected by the person who uses that motor vehicle and which covers not only his liability but the liability of the person whom he causes or allows to use that motor vehicle. The right of a third party to recover damages from the insurer arises thus from such a policy that is to say a policy issued in relation to a particular vehicle the use of which has resulted in the death or injuries to such a third party by that person or that other person mentioned in sec. 94. When one turns to sec. 96(1) this position is still further clarified for that sub-section provides that on a certificate of insurance issued under sec. 95(4) in favour of a person by whom a policy has been effected if a judgment in respect of any such liability as is required to be covered under sec. 95(1)(b) is obtained against any person insured by the policy then the insurer is to pay to the third party as if he were a judgment-debter. The words any such liability must mean the liability insured against under the policy and as already pointed out under sec. 95(1)(b) that policy is in relation to the use of that vehicle which results in the causing of the death of or bodily injuries to a third party. It would therefore seem that the notice contemplated by subsec. (2) of sec. 96 is a notice in relation to the policy effected by a person in respect of the vehicle the use whereof by that person or the person whom he causes or allows it to use has resulted in the death of or bodily injuries to a third party and no other policy. Therefore under sec. 94 the policy must be with regard to a particular vehicle and must cover the liability of the person using it in a public place or the person or persons whom such person causes or allows such motor vehicle to be used in a public place. Sec. 95 as aforesaid lays down the requirements of the policy required under sec. 94. By reason of sec. 95(1)(b) it must be a policy which insures the person or classes of persons (i. e. the person or any other person mentioned in sec. 94) against a liability arising out of the use of the motor vehicle in respect of which a policy under sec. 94 has to be taken out. Under sec. 96(1) an insurer of such a policy has to be treated as a judgment-debtor and his liability arises from and is in relation to that policy which is required to be effected under sec. 94 and of which the requirements are provided in sec. 95(1)(b).

[6] The question however still remains whether an insurer who has issued a policy in respect of a particular vehicle other than the vehicle concerned but which indemnifies the person in whose favour the policy is effected against liability arising from the use of any private motor car is liable under sec. 96(1) and (2). In my view sub-sec. (1) of sec. 96 makes it clear that liability to ply to a third party and to be treated as a judgment-

debtor is the liability which is insured against by a policy issued in relation to the vehicle the user of which has resulted in death or bodily injuries and therefore if a judgment is obtained against such a liability it is the insurer who has covered such liability in respect of the vehicle concerned who would be liable under sec. 96(1) of the Act. Even if therefore there is a general clause in a policy such as the one effected by the petitioner company such an insurer would not fall under sec. 96(1) and a notice under sub-sec. (2) cannot be issued against such an insurer. The words any such liability used in sec. 96(1) refer to the liability which expressly provides that the policy is the one which insures the person or classes of persons specified in the policy against a liability which may be incurred by him or them. Such a policy under sec. 96(1) has to be effected in relation to the vehicle put to use in a public place by a person who himself uses it or causes or allows others to use it. Therefore it is only that insurer who has issued a policy in respect of the vehicle concerned and which covers the liability of the person who uses that particular vehicle and of any other person or persons whom he causes or allows to use it who would be liable under sec. 96(1) and against whom a notice can be issued under sec. 96(2). That being so a general clause such as the one in the policy issued by the petitioner company might protect the insured against a risk while driving a private car besides the one specified in the policy but that general clause would not give a right to a third party against that insurer for the right of a third party under sec. 96(1) arises only under a policy issued in relation to the particular vehicle concerned the use whereof has resulted in an accident and which has to be effected under sec. 94 in relation to the use of that vehicle by that person or that other person mentioned in that section. In other words the policy which would give rise to a right of a third party under sec. 96 is one which is effected in favour of a person who uses a motor vehicle and the other person or persons whom he allows or causes to use that motor vehicle and the user of which has resulted in the causing of the death of or bodily injuries to a third party. If the person who has effected a policy allows any other person to use the motor vehicle in respect of which he has effected a policy that policy must be such as would cover the risk or the liability of such other person. It is only such a policy which meets the requirements of sec. 94 and in relation to which the insurer becomes a deemed judgment-debtor under sec. 96(1) and against whom a notice under sec. 96(2) can be issued. This result in my view is clear from a combined reading of Secs. 94 to 96 and on a consideration of the scheme of those sections.

[7] I am fortified in this view by a decision of a Division Bench of the High Court of Bombay in Pessumal Dhanumal v. New Asiatic Insurance Co. Ltd. A. I. R. 1964 Bom. 121 with which I respectfully agree. Though it was a case converse to the one before

me the learned Judges construed the relevant sections in the same manner in which I have construed them. The facts in that case were that one Asnani owned a Chevrolet car in respect of which he had effected an insurance with the New Asiatic Insurance Company Asnani permitted Pessumal to drive that car and while Pessumal was driving that car with Daooji Meherotra and Murli Dholandas that car met with an accident as a result of which Daooji Meherotra died and Murli received certain injuries. Pessumal owned a Pontiac car which had been insured with the Indian Trade and General Insurance Co. Ltd. Two suits were filed against Pessumal for damages one by the heirs of Meherotra and the other by Murli Dholandas to recover damages. Notices under sec. 96(2) of the Act were thereafter issued to the New Asiatic Insurance Co. Ltd. The company took out a chamber summons contending that the notice under sec. 95(2) against it was bad and should be quashed and that it was not liable to satisfy any judgment which might be passed in the suits against Pessumal The proviso which might be called an avoidance clause in clause 3 of the insurance policy extended the insurance cover to any driver who was not the owner of the car and indemnified him if he was driving the motor car on the order of the insured or with his permission provided he was not entitled to indemnity under any other policy. Clause 4 was the extension clause which indemnified the insured whilst he drove personally a private car not belonging to him and not hired by him under any hire purchase agreement. A similar clause was also to be found in the policy issued in favour of Pessumal. The New Asiatic Insurance Co. Ltd. contended that since Pessumal was entitled to be indemnified by the Company which had issued an insurance policy in his favour even though the liability of Pessumal was covered by the policy effected by the New Asiatic Company it was entitled to avoid that liability. The High Court repelled these contentions and in doing so construed Secs. 94 95 and 96 and held that reading these sections together it was clear that the insurance which was required by sec. 94 was in respect of the vehicle which was being used and while driving which the accident occurred. It also held that a mere insurance of the driver of a vehicle without reference to the use of any particular vehicle against claims made against him by reason of an accident that he might commit did not make the insurer liable directly to the person who had suffered the injury. The liability of the insurer arose only if it had insured the driver in respect of the vehicle by the use of which the accident took place. That being so inasmuch as the policy issued by the other company by clause (4) insured the defendant not in respect of the vehicle which was involved in the accident but in respect of another vehicle it would not be covered by sec. 94(1) and consequently by sec. 96(1) and that company would not be affected by the notice issued under sec. 96(2). The High Court also held that the statutory liability under sec. 96 attached only to the respondent company. Therefore the respondent company

being liable under sec. 96 the non-avoidance clause applied notwithstanding the avoidance clause contained in the proviso to clause 3 of the policy. Even apart from that non-avoidance clause sec. 96(3) was a complete answer to the respondent companys challenge to the notice. Since that sub-section sought to avoid a liability covered by sec. 95(1)(b) and not such conditions as were contrary to those contained in sec. 96(2)(b). it was ineffective so far as the plaintiffs were concerned. It also held that sec. 94 referred to the persons to be insured and sec. 95 referred to the liability required to be covered. Both enabled the insurer to extend the indemnity to other driver and if the indemnity was so extended the case fell within sec. 96(1) and the company became liable and sec. 95(1)(b) was not relevant except for determining whether the indemnity under the policy fell within the ambit of that section. On an appeal against this judgment the Supreme Court agreed with the High Court (A.I.R. 1964 S.C. 1736). The SupremeCourt also held that clause 4 of section II of Pessumals policy with the other company did not make that policy to be a policy within the meaning of sec. 94 of the Act in relation to the Chevrolet car by the user of which Pessumal incurred the liability sought to be established in the two suits. That paragraph indemnified the insured i. e. Pessumal while personally driving any private motor car but it did not indemnify against liability incurred when driving any particular car and therefore Pessumals policy could not be a policy in relation to the Chevrolet car as required by sec. 94 of the Act. 8 It is clear from these two judgments that the general clause in the policy issued by the petitioner company in favour of the third respondent would not be a policy in respect of the particular car the user of which resulted in injuries to respondent No. 1 and on the grounds given in these two judgments no notice could be issued in respect of that policy under sec. 96(2) of the Act. The result therefore is that the aforesaid notice was bad in law and has to be set aside. I therefore set aside the order passed by the City Civil Court set aside the notice under sec. 96(2) issued against the petitioner and allow the Civil revision application The respondents will pay to the petitioner the costs of this petition.

Application allowed.

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