

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5681 OF 2008
[Arising out of SLP (C) No. 26255/04]

United India Insurance Company Ltd. ... Appellant

Versus

A. N. Subbulakshmi & Ors. ... Respondents

WITH

CIVIL APPEAL NO. 5684 OF 2008
[Arising out of SLP (C) No. 26258/04]

United India Insurance Company Ltd. ... Appellant

Versus

C. T. Meenakshi & Ors. ... Respondents

JUDGMENT

AFTAB ALAM,J.

1. Leave granted.
2. These appeals by the Insurance Company are on a limited issue insofar as in the order of the High Court coming under appeal the appellant is directed to make payment of the compensation amounts to the claimants

and then to recover from the owner of the vehicle involved in the accident excess amounts paid over and above its liability under the insurance policy by instituting appropriate actions against them.

3. The matter arises from an unfortunate accident in which two lives were lost. On 14 May, 1981 at about 6.30 in the morning a head-on collision between an Ambassador car bearing Registration No. MDO 7789 and a lorry bearing Registration No. MDR 3106 took place on the Trichy - Chennai highway near Thozhuthur. As a result of the collision the Ambassador Car was badly smashed and turned turtle. Its owner, Annamalai, who was on the driver's seat died on the spot. Another person, namely, Sigappi, aged about 24 years who worked as Annamalai's Secretary and who was sitting on the rear seat along with the latter's son was thrown out of the car and she too died on the spot. However, Annamalai's wife and daughter sitting on the front seat and his son sitting on the rear seat survived. In the accident the truck also suffered substantial damage.

4. In regard to the accident three claim cases came to be filed before the Motor Accidents Claims Tribunal, Cuddalore. MACTOP No.198 of 1982 was filed by the owner of the lorry, M/s. Aruppukottai Sri Jaya Vilas Pvt. Ltd. claiming compensation of Rs.58, 300/- for the damage caused to the lorry MDR 3106 in the accident, allegedly resulting from the rash and

negligent driving of the car MDO 7789. The claim of the lorry's owner was resisted by the legal representatives of the deceased Annamalai. Another claim petition, MACTOP no.625 of 1981 was filed by the heirs and legal representatives of the deceased Sigappi against the owner of the lorry and its insurer claiming damages for her death. A third claim petition, MACTOP No.627 of 1981 was filed by the wife and children of the deceased Annamalai, the owner of the car, against the owner of the lorry and its insurer claiming a sum of Rs.10,04,600/- as compensation for his death.

5. The Tribunal by order dated 22 January, 1986 found and held that the accident was caused entirely due to the rash and negligent driving of the car driver, Annamalai. There was no mistake, rashness or negligence on the part of the driver of the lorry. He accordingly rejected the claims instituted by the heirs of the deceased Annamalai and the heirs and legal representatives of the deceased Siggapi. Further, in accordance with its finding, the Tribunal allowed the claim of the owner of the lorry but instead of Rs.58, 300/- as claimed in the petition, awarded the smaller amount of Rs.14,100/- with 7% interest to be recovered from the assets left by the deceased Annamalai in the hands of his heirs, impleaded as respondents in the claim petition.

6. Against the order passed by the Tribunal three separate appeals came to be filed in the Madras High Court. These appeals were disposed of by a common judgment and order dated 12 December, 2003. The High Court reversed the finding of the Tribunal as to the cause of the accident and on a detailed examination of all the evidences on record came to hold and find as follows:

“As seen from the file, B.7, B.8 as well as B.1 and A.1, on a consideration of the oral evidence, this court holds that the accident has not been caused exclusively by the rash and negligent driving of the ambassador car, but the accident has been caused by the rash and negligent driving of both the vehicles, namely, ambassador car and the lorry driver. This court holds that the contributory negligence on the part of the lorry driver could be fixed at 50% and that of the ambassador car at 50% as seen from the place of impact, damages caused to the vehicles as well as Exs.B.7 and B.8. The points 1 and 2 are answered above.”

7. The High Court then proceeded to determine the amounts of compensation payable for the death of Siggapi and Annamalai and directed the owner and insurer of the lorry to pay half the amount of compensation fixed by it in each case to the respective claimants (since the responsibility for the accident lay equally on the two sides). In case of Siggapi the amount payable to the claimants by the owner and insurer of the lorry is Rs.25,000/- with 6% interest from the date of the claim petition and in case of

Annamalai the amount payable to the claimants by the owner and the insurer of the lorry worked out to Rs.3,25,000/- with 6% interest from the date of claim petition to the claimants. Finally, in paragraph 36 of the judgment, the High Court made the following direction:

“We make it clear in both claims that the insurer of the lorry shall pay the compensation and thereafter it is for the insurer to institute appropriate action against the owner of the lorry thereafter for amount if any paid over and above the liability covered by the insurance policy, the two appeals are to be allowed in part.”

8. It is this direction making it the liability of the insurer to pay the amounts of compensation to the two claimants that causes grievance to the appellant and these appeals are preferred on the limited question about the validity of the High Court's direction.

9. Mr. P. K. Seth, learned counsel appearing on behalf of the appellant, submitted that the accident took place on 14 May, 1981, when the Motor Vehicles Act, 1939 was in operation and the liability of the insurer was governed by Section 95(2)(a) of the Act. Learned counsel submitted that under Section 95(2)(a), the insurer's liability could not exceed the sum of Rs.50, 000/- and the direction of the High Court asking the appellant to pay the entire amounts of Rs.25, 000/- and Rs.3, 25,000/- to the claimants and then to recover it from the insurer was without any sanction of law. In

support of the submission he relied upon a Constitution Bench decision in *New Indian Assurance Co. Ltd. vs. C .M. Jaya & Ors.*, (2002) 2 SCC 78. In that case the same question came up for consideration before the Constitution Bench of this Court and it was held that under Section 95(2)(a) of the Act even in case of a comprehensively insured vehicle the liability of the insurer was limited to Rs.50, 000/- (raised to Rs.1,50,000=00 with effect from 1 October 1982). An unlimited or a higher liability than the statutory liability of the insurer would arise only in case there is a separate contract and payment of additional premium by the owner of the vehicle. In paragraph 17 of the decision it was held as follows:

“In the circumstances, we hold that the liability of the appellant-Insurance Company is limited to Rs.50, 000/-, as held by the Tribunal. In the view we have taken, it is unnecessary to go into the question relating to either maintainability of cross-objections before the High Court against the appellant alone or as to the enhancement of compensation when the owner and driver have not filed appeal against the impugned judgment.”

10. The Constitution Bench decision applies to the facts of this case with full force. We accordingly hold and find that the impugned direction of the High Court is unsustainable in law. The direction as contained in paragraph 36 of the High Court judgment is therefore set aside.

11. In terms of an interim order passed in this appeal, the appellant had deposited a sum of Rs.50, 000/- before the Trial Court it will be open to the

claimants to withdraw that amount. The balance amount in terms of the High Court judgment would be payable by the owner of the lorry, namely, M/s. Aruppukottai Sri Jaya Vilas Pvt. Ltd., unless the judgment of the High Court is modified in any appeal preferred by the lorry's owner.

12. In the result, the appeals are allowed but with no order as to costs.

.....J.

[Tarun Chatterjee]

.....J.

[Aftab Alam]

New Delhi,

September 16, 2008.