

ITEM NO.10

COURT NO.1

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 30836/2012

(Arising out of impugned final judgment and order dated 23/03/2012 in FA No. 750/1993 passed by the High Court of Gujarat at Ahmedabad)

ORIENTAL INSURANCE CO.LTD.

Petitioner(s)

VERSUS

JASPALSINH M. PADHIYAR & ORS.

Respondent(s)

(with interim relief and office report)

Date : 07/10/2015 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN MISHRA

For Petitioner(s) Mr. Vishnu Mehra, Adv.
Ms. Sakshi Mittal, Adv.
Ms. Manjeet Chawla, Adv.

For Respondent(s) Mr. Atul Batra, Adv.
Ms. Praveena Gautam, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The Division Bench of the High Court has taken note of the subsequent decision of this Court in Civil Appeal Nos. 1578-1579 of 2004 titled as "*New India Assurance Co. Ltd. vs. Vimal Devi and Others*", reported in 2010 ACJ 2878.

In the aforesaid decision, this Court had after noticing the observations made in the case of "*New India Assurance Co. Ltd. vs. C.M. Jaya*",

reported in 2002 ACJ 271(SC) has observed as under :

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"3. Mr. K. L. Nandwani, learned counsel appearing for the insurance company, submitted that the liability of the appellant being limited to Rs.50,000/-, the High Court was in error in making such a direction. In respect of the submission, he relied upon a Constitution Bench decision of this Court in New India Assurance Co. Ltd. v. C.M. Jaya & Ors., (2002) 2 SCC 278.

4. Mr. M.R. Calla, learned senior counsel appearing for the respondent, in his reply submitted that the reliance placed on the Constitution Bench decision was misplaced and the appellant overlooked the finer point of distinction made in the decision in C.M. Jaya (supra) He submitted that in the case in hand, the High Court had noticed the Avoidance Clause in the policy which was in the following terms:

"AVOIDANCE OF CERTAIN TERMS
AND RIGHT OF RECOVERY :

"Nothing in this Policy or any Endorsement hereon shall affect the right of any person indemnified by this policy or any other person to recover an amount under or by virtue of the provisions of the Motor Vehicles Act, 1939, Section 96.

But the Insured shall repay to the company all sums paid by the company which the company would not have been liable to pay but for the said provisions."

5. The Avoidance Clause came up for consideration before a three-Judge Bench of this Court in Amrit Lal Sood & Anr. v. Kaushalya Devi Thapar & Ors., (1998) 3 SCC 744. In its decision in that case this Court observed:

"13. In the policy in the present case also, there is a clause under the

heading:

"AVOIDANCE OF CERTAIN TERMS AND RIGHT OF RECOVERY" - which reads thus:

"Nothing in this policy or any endorsement hereupon shall affect the right of any person indemnified by this policy or any other person to recover an amount under or by virtue of the provisions of the Motor Vehicles Act, 1939, Section 96. But the insured shall repay to the Company all sums paid by the Company which the Company would not have been liable to pay but for the said provisions."

14. The above clause does not enable the insurance company to resist or avoid the claim made by the claimant. The clause will arise for consideration only in a dispute between the insurer and the insured. The question whether under the said clause the insurer can claim repayment from the insured is left open. The circumstance that the owner of the vehicle did not file an appeal against the judgment of Single Judge of the High Court under the letters patent may also be relevant in the event of claim by the insurance company against the insured for repayment of the amount. We are not concerned with that question here.

15. In the result, we hold that the insurance company is also liable to meet the claim of the claimant and satisfy the award passed by the tribunal and modified by the High Court. The judgment of the High Court insofar as it exonerates the insurance company (respondent No.5 herein) from the liability, is set aside. The award passed by the Division Bench of the High Court can be enforced against respondent No.5 also. The appeal is allowed to the extent indicated above. The parties will bear their respective costs."

6. Mr. Calla further submitted that in C.M. Jaya & Ors. a Constitution Bench of this Court

indeed held that in a policy for limited liability it was not open to the Court to direct the insurance company to make any payment beyond the amount of the limited liability but it took note of the decision in Amrit Lal Sood with approval. He referred to paras 8 and 12 of the judgment in C.M. Jaya (supra) where the decision in Amrit Lal Sood (supra) is noticed with approval.

7. The Avoidance Clause in the policy in this case makes all the difference and the direction of the High Court to the appellant, insurance company to make payment of the full amount of compensation to the claimants and to recover its dues from the owner of the vehicle is directly in accordance with that Clause. In our view, the submission of Mr. Calla is well founded. The appellant in this case can derive no benefit from the decision in C.M. Jaya (supra).

8. We find no merit in these appeals. These are dismissed.

9. In case the insurance company has not made payment/deposited the full amount of compensation so far, it must do so within two months from today."

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In that view of the matter, we decline to entertain this Special Leave Petition. Accordingly, the Special Leave Petition is dismissed.

(Neetu Khajuria)
Sr.P.A.

(Vinod Kulvi)
Assistant Registrar