

(2011) 03 SIK CK 0001
In the Sikkim High Court
Case No : M.A.C. Appeal No. 2 of 2010

Branch Manager, New India Assurance Co. Ltd.

APPELLANT

Vs

Jasu Subba and Others

RESPONDENT

Date of Decision : 03-03-2011

Acts Referred:

Citation : (2012) ACJ 988

Hon'ble Judges : Sonam Phintso Wangdi, Acting C.J.

Bench : Single Bench

Advocate : Sudesh Joshi and Ms. Manita Pradhan, for the Appellant; Ajay Rathi, Ms. Sushma Pradhan, Sunil Baraily and Mr. Rahul Rathi, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Wangdi, Actg. C.J.

1. By filing this appeal, the appellant, who is the Branch Manager, New India Assurance Co. Ltd., Gangtok Office, Gangtok, seeks to assail the judgment of the Motor Accidents Claims Tribunal, East and North Sikkim at Gangtok, dated 28.6.2010, in M.A.C.T. Case No. 48 of 2008, whereby the claim of the respondents-claimants in respect of the death of the deceased, to the extent of Rs. 3,52,700 only, was allowed. The short point for consideration in the appeal is that the deceased being the owner of the vehicle although was driving the vehicle himself was not covered under the insurance policy in question. Stated briefly, the facts of the case relevant for its disposal are that the deceased, Bir Bahadur Subba, who was the owner-driver of a passenger vehicle, died as a result of an accident of the said vehicle on 10.10.2003 at about 2300 hours at a place called Jharey Khola while on its way to Rolep from Rongli. The vehicle had fallen about 150 ft below the road causing the death of the deceased on the spot. The accident vehicle having been insured with the appellant insurance company, the legal heirs of the deceased claimed compensation for his death, in terms of the insurance policy, resulting in the Claims Tribunal passing the impugned judgment.

2. Before this court, Mr. Sudesh Joshi, the learned counsel appearing on behalf of the appellant company, submitted that the deceased being the owner himself cannot be said to be covered under the policy of insurance, since the Motor Vehicles Act, 1988 does not provide for such cover. The insurance policy, Exh. 9, prescribes the policy to be subject to IMT endorsement Nos. 21, 23, 38, 48 and 40 which specify the nature of the risks covered thereunder. That none of those endorsements indicates that owners of the vehicles are covered under the policy. Mr. Joshi also took us through section 147 of the Motor Vehicles Act to support his contention that policies of insurance did not contemplate covering owners of the vehicle like in the present case. *Dhanraj Vs. New India Assurance Co. Ltd. and Another*, , was also referred to by him, which as per Mr. Joshi clearly lays down that proposition.

3. Mr. Ajay Rathi, the learned counsel representing the respondents-claimants, on the other hand, supported the judgment of the Claims Tribunal and submitted that although the deceased was undeniably the owner of the vehicle, he used to ply the vehicle himself as its driver. In other words, the insured Mahindra Diesel taxi vehicle was owned and professionally driven by the deceased at the time when the accident took place, thereby being fully covered by the insurance policy.

4. Before dealing with the merits of the case, it may be noted that the appeal was filed belatedly and as per the appellant, the delay was of 45 days. In the application for condonation of delay, it is the admitted position that the impugned judgment and award was pronounced by Claims Tribunal on 28.6.2010 and, therefore, the appeal ought to have been preferred within 90 days, i.e., by 27.9.2010. The only ground for seeking condonation of delay is contained in para 3 of the application which reads as under:

(3) That New India Assurance Co. Ltd., being a Government of India undertaking, the entire records had been sent by the petitioner to its Divisional Office at Siliguri for necessary instruction who in turn sent the same to its Regional Office at Kolkata hence there was a delay of 45 days in filing the instant appeal.

5. As can be seen from the pleading, the reasons set out for the delay are utterly vague and bereft of any particulars and, to observe the least, most casual. This court is conscious of the law that while considering application for condonation of delay, courts need to take a liberal attitude and avoid being pedantic. However, the nature of the explanation given is such that it is difficult to bring it within the meaning of "reasonable cause". Siliguri, where the Divisional Office of the appellant is located at a distance of about just three hours' ride by road from Gangtok and the road is a well maintained national highway, Kolkata, the location of the Regional Office, is just another ten hours distance by train. We find no mention of the dates when the records were sent to those offices and received back at Gangtok. The present proceeding is under a benevolent piece of legislation, the object of which is to provide for urgent mitigation of suffering of the dependants and the victims of motor vehicle accidents. The apparent casualness in which the delay is being sought to be condoned is difficult for this

court to countenance compelling this court to reject the application for condonation of delay.

6. When we consider the merits of the case also, we find that sole ground raised in assailing the judgment of the Claims Tribunal does not appear to be acceptable for the reasons that follow hereafter.

7. On consideration of the rival contentions of the parties, the pleadings and the records available before this court, I find that the Claims Tribunal after considering the policy of insurance has held that the insurance policy being a package policy clearly covers the deceased who is the owner of the vehicle. Before this court the finding that the policy is a Package Policy is not contested. The only point that has been urged is that the deceased being the owner is not covered under it. On being asked of him, Mr. Joshi was unable to explain as to the reason why the owner was not covered. On examination of the insurance policy, we find on its very first page the entry "This policy is subject to terms and conditions and the IMT Endorsement Nos. 21, 23, 38, 48 and 40". This clearly indicates, contrary to what Mr. Joshi had submitted, that apart from the IMT Endorsement numbers indicated by him, it is also subject to the "terms and conditions" contained in the policy. As submitted by Mr. Ajay Rathi, the learned counsel for the respondents-claimants, the deceased was the owner as well as the driver of the vehicle and, therefore, it is difficult for this court to accept the contention that he is not covered under the policy.

8. On a perusal of the India Motor Tariff (IMT) prescribed by the Tariff Advisory Committee in exercise of its powers u/s 64-UC of the Insurance Act, 1938, it is found that section 4 thereof provides for regulation for tariff for commercial vehicles. Regulation 12-B falling thereunder provides for "Guide to completion of policy schedules and certificate of insurance". Under the head "Certificate of Insurance and Policy Schedule Wording Regarding "Limitations as to Use" for use in Package Policy and Liability Only Policy Forms", we find clause D that provides for "Vehicles for Hire" which contains several paras from amongst which we are concerned only with para (viii) providing for "Certificate of Insurance and Policy Schedule Wording Regarding "Driver" for use in Package Policy and Liability Only Policy Forms". "Driver" has been defined in the Table provided thereunder which reads as follows:

Driver: Persons or classes of persons entitled to drive:

State carriage/contract carriage/private service vehicle

Any person including insured

(Emphasis supplied)

Provided that a person driving holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a licence.

Provided also that the person holding an effective learner's licence may also

drive the vehicle when not used for the transport of passengers at the time of accident and that such a person satisfies the requirements of rule 3 of the Central Motor Vehicles Rules, 1989.

9. It becomes quite clear from the above entry that in respect of stage carriage/contract carriage/private service vehicle, "driver" means any person including the "insured" with the only condition being that such person should hold an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a licence. This, therefore, is consistent with the case of the respondents-claimants that the driver-owner is fully covered. Any other view would be inconsistent with the object of Motor Vehicles Act, 1988 and, therefore, unacceptable. It is also not the case of the appellant that the insured who was the owner-driver did not hold a valid driving licence at the time of the accident. It is well settled that law does not restrict or prohibit the insured and the insurer from entering into a special contract, providing larger coverage of risk on payment of special or higher premium. We may usefully refer to the case of *New India Assurance Co. Ltd. Vs. C.M. Jaya and Others*, in this regard.

10. In case of *Senior Branch Manager, National Insurance Co. Ltd. v. Namita Dixit*, 2011 ACJ 600 (Sikkim), relying on the case of *C.M. Jaya (supra)* this court has held as follows:

(21) The decisions rendered by the Apex Court are consistent on the view that in an "Act" or "statutory policy" the insurer's liability would be limited to the extent provided in the Act, but the law does not restrict or prohibit the insured and the insurer to enter into a special contract for the purpose of providing larger coverage of risk on payment of special or higher premium. This view has been reiterated in the case of *New India Assurance Co. Ltd. Vs. C.M. Jaya and Others*, , which is a Constitution Bench decision consisting of 5 Judges of the Hon'ble Apex Court. In paras 5 and 8 of the judgment after dealing with the apparent conflict in various judgments of the Hon'ble Supreme Court, it was held as follows:

(5) Thus, a careful reading of these decisions clearly shows that the liability of the insurer is limited, as indicated in section 95 of the Act, but it is open to the insured to make payment of additional higher premium and get higher risk covered in respect of third party also. But in the absence of any such clause in the insurance policy the liability of the insurer cannot be unlimited in respect of third party and it is limited only to the statutory liability..."

Although the above decision was rendered in the context of a gratuitous passenger, the ratio laid down therein would be equally applicable in the present case also. It is found from the insurance policy that premium paid for the insurance is Rs. 5,995 and, as has been held by the Claims Tribunal and accepted by the appellant, that the policy is a Package Policy, it is difficult to accept the contention that the owner-driver is not covered under it. Nothing could be pointed out otherwise by learned counsel on behalf of the appellant.

11. The facts in the case of Dhanraj Vs. New India Assurance Co. Ltd. and Another, , cited by Mr. Joshi, are clearly distinguishable from those in the case at hand. The decision holds good in the light of the nature of the insurance cover that was under consideration there. In that case, although the owner of the accident vehicle was one of the passengers, it was held that he was not covered under the head "own damage" contained in the insurance policy. This will be quite evident from the following portion of the decision:

(10) In this case, it has not been shown that the policy covered any risk for the injury to the owner himself. We are unable to accept the contention that the premium of Rs. 4,989 paid under the heading "own damage" is for covering liability towards personal injury. Under the heading "own damage" the words "premium on vehicle and non-electrical accessories" appear. It is thus clear that this premium is towards damage to the vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim provided a personal accident insurance has been taken out. In this case there is no such insurance.

12. In the present case, the owner himself was the driver and considering the IMT referred to above and the other facts and circumstances alluded to, the inescapable conclusion is that the deceased is fully covered under the policy. In the facts and circumstances, apart from the fact that the appeal is barred by the law of limitation, I also find no merit in the appeal. In the result, the appeal is dismissed. No costs.