
(2014) 03 SIK CK 0001

In the Sikkim High Court

Case No : S.B. M.A.C. Appeal No. 12 of 2013

Branch Manager, Oriental Insurance Co. Ltd.

APPELLANT

Vs

Madansha Sherpa and Others

RESPONDENT

Date of Decision : 03-03-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 163-A

Citation : (2015) 2 ACC 243 : (2015) ACJ 379

Hon'ble Judges : Narendra Kumar Jain, C.J

Bench : Single Bench

Advocate : Shrawan Kr. Prasad, Advocates for the Appellant; N. Rai, J.K. Kharka, Bindu Gurung and Tamanna Chettri, Advocates for the Respondent

Judgement

Narendra Kumar Jain, C.J.—Heard learned counsel for the parties. The Branch Manager, Oriental Insurance Co. Ltd., Gangtok, East Sikkim, has preferred this appeal against judgment dated 30.3.2013 passed by Motor Accidents Claims Tribunal, East and North Sikkim at Gangtok (for short, "the Tribunal") in M.A.C.T. Case No. 19 of 2012, whereby learned Tribunal awarded a compensation of Rs. 4,55,500 in favour of claimants-respondents in respect of death of Dawa Gyalpo Sherpa, who died in motor accident on 28.1.2012.

2. Briefly stated, the facts of the case are that the claimants-respondents filed an application under section 163-A of the Motor Vehicles Act, 1988 before the Tribunal against non-applicant-appellant for compensation in respect of death of Dawa Gyalpo Sherpa, who died in motor accident on 28.1.2012. The respondent No. 1 is widow and respondent Nos. 2 and 3 are children of the deceased. The claimants claimed a compensation of Rs. 4,76,000 under different heads as mentioned in the claim application.

3. The non-applicant-appellant filed its written objection/reply, wherein claim was disputed.

4. Learned Tribunal, on the basis of pleadings of the parties, framed the following

issues:

"(1) Whether deceased died in a motor accident involving the vehicle bearing registration No. SK 03-4625 (Bolero Pickup) at Dipu Dara, Singtam-Dikchu Road, East Sikkim on 28.1.2012?

(2) Whether there has been violation of condition No. 1 of the insurance policy?

(3) Whether the deceased had a valid driving licence and whether the documents of the vehicle were valid and effective at the time of the accident?

(4) Whether the claimants are entitled to the compensation as claimed?"

5. In support of the claim petition, the claimant No. 1 adduced evidence on affidavit for herself and on behalf of claimant Nos. 2 and 3. She was cross-examined by the opposite party. No evidence was led on behalf of opposite party.

6. Learned Tribunal, after considering submissions of the learned counsel for the parties, decided all the issues in favour of the claimants and consequently awarded a sum of Rs. 4,55,500 towards compensation in favour of claimants with interest at the rate of 10 per cent per annum from the date of filing of the claim petition.

7. Being aggrieved by the above said judgment the insurance company has preferred this appeal before this court.

8. There is a delay of 131 days in filing the appeal. Therefore, appellant has filed CM. Application No. 182 of 2013 for condonation of delay in filing the appeal. The appellant in its application has averred that judgment was passed on 30.3.2013, a copy of which was made available by the Tribunal on 22.4.2013, the same was handed over to the Divisional Office at Siliguri, West Bengal on 22.5.2013 only as the learned counsel for the appellant was out of station due to his ill-health. On 28.5.2013, the entire file was sent to Kolkata Regional Office, thereafter, it was sent for opinion of learned counsel and on receipt of opinion, a decision was taken to file an appeal. A letter was sent on 15.7.2013 to learned advocate to file the appeal. On 11.8.2013, the said advocate refused to file appeal due to his personal reasons. Thereafter, a letter was written to another advocate, who also refused to file the appeal. Then vide letter dated 29.10.2013 the present counsel was appointed, who drafted the appeal and filed it on 29.11.2013. It is, therefore, prayed in the application that there was sufficient cause for not filing the appeal in time, therefore, delay in filing the appeal may be condoned.

9. Respondents have filed their detailed written objections to the application and have submitted that the delay in filing the application has not been explained properly, therefore, the application is liable to be dismissed.

10. I have considered submissions of learned counsel for the parties on the application for condonation of delay in filing the appeal. Admittedly, the copy of judgment of the Tribunal was delivered to the appellant on 22.4.2013, the appeal should have been filed on or before 21.7.2013 but the appeal was filed before

this court on 29.11.2013. After receipt of the copy of judgment of the Tribunal on 22.4.2013, the same was not delivered to appellant insurance company till 22.5.2013 and no satisfactory reason has been given for it, where the learned counsel had gone out of station due to his ill-health and what was the reason for his ill-health has not been mentioned nor the affidavit of the concerned advocate has been filed in support of the application. Even after receipt of copy of the judgment in the office of the appellant, decision was not taken promptly to file an appeal and even after taking a decision, counsel was not appointed and thereafter when second counsel refused to file the appeal, the judgment and other papers were not handed over immediately to another counsel for filing the appeal. It is the settled law that the delay of each day has to be explained. So far as the present case is concerned, it is clear from the averments made in the application that the delay of 131 days in filing the appeal has not been explained properly. The appellant has failed to establish sufficient cause. Therefore, the application for condonation of delay in filing the appeal is liable to be dismissed.

11. That apart, the matter has also been examined on merit and I find no force in the submission of learned counsel for the appellant on merit also. Therefore, I am of the view that no useful purpose will be served in condoning delay in filing appeal.

12. So far as the merit of the appeal is concerned, the only submission made on behalf of the appellant insurance company is that the deceased in the present case was owner-cum-driver, therefore, the liability of the insurance company is limited to Rs. 2,00,000 as mentioned in the insurance policy. No other submission has been advanced on behalf of the appellant. The findings of the learned Tribunal in respect of other issues have not been challenged.

13. Learned counsel for the appellant has referred to the insurance policy, which is available on record and tried to convince that an additional amount of Rs. 100 was deposited towards premium to cover liability of the owner-cum-driver to the extent of Rs. 2,00,000. Therefore, the insurance company is liable to pay compensation only up to Rs. 2,00,000. Therefore, the award of the Claims Tribunal over and above Rs. 2,00,000 is liable to be set aside by this court. However, learned counsel for appellant insurance company does not dispute that vehicle involved in present accident was insured with appellant insurance company by "package policy". He is also unable to say that "package policy" is not "comprehensive policy".

14. Mr. N. Rai, learned Senior Advocate, assisted by Mr. J.K. Kharka, learned advocate, submitted that from the insurance policy it is clear that it was a "package policy" which is known as "comprehensive policy" and all persons including deceased were covered in it. He submitted that so far as the additional amount of premium of Rs. 100 is concerned, the same was to receive the additional amount of Rs. 2,00,000, over and above the compensation to be paid under section 163-A of the Motor Vehicles Act. He submitted that the Apex Court in National Insurance Company Ltd. Vs. Balakrishnan and Another, , has held

that package policy is a comprehensive policy. He submitted that there was no need to pay even additional amount of Rs. 100 when insured took comprehensive policy for the vehicle after payment of higher or special premium. The payment of additional amount cannot restrict the liability of insurer under "comprehensive policy".

15. Mr. Rai further submitted that this Hon"ble court in Branch Manager, New India Assurance Co. Ltd. Vs. Jasu Subba and Others, , has considered the scope and meaning of "package policy" and has held that law does not restrict or prohibit insured and insurer from entering into special contract for purpose of providing larger coverage of risk on payment of special or higher premium. This court also took a view that insurance policy being "package policy", deceased owner of the vehicle would be fully covered under the policy. He, therefore, submitted that the present case is fully covered by the decision of this court in the case of Branch Manager, New India Assurance Co. Ltd. v. Jasu Subba (supra) and appeal be, accordingly, dismissed being devoid of any merit.

16. I have considered the submissions of the learned counsel for the parties on merits of the case. The deceased Dawa Gyalpo Sherpa, who was having valid driving licence, was driving the vehicle on 28.1.2012 from Singtam to Sang-Martam, the vehicle met with an accident at Dipu Dara, Singtam-Dikchu Road, East Sikkim and the deceased succumbed to his injuries. All the issues framed in the present case have been decided in favour of the claimants by the Tribunal. The learned counsel for the appellant does not challenge the findings of the learned Tribunal on other issues and confines his argument only to a point that liability of insurance company is only Rs. 2,00,000. Therefore, award of the learned Tribunal be modified. The submission of the learned counsel is on the basis of insurance policy, which shows that an additional amount of Rs. 100 is alleged to have been paid to cover the liability of owner-cum-driver. However, during the course of argument, learned counsel for the appellant fairly admitted that the insurance policy in the present case was a package policy. Even otherwise I find from the insurance policy, available on record, that it is a package policy. According to the circular issued by the Insurance Regulatory and Development Authority to all general insurance companies, it was clarified that package policy is a comprehensive policy. The circular dated 16.11.2009 was quoted by Delhi High Court in Yashpal Luthra and Another Vs. United India Insur. Co. Ltd. and Another, . The said circular was also considered by the Hon"ble Apex Court and it was quoted in para 17 of its judgment delivered in National Insurance Company Ltd. Vs. Balakrishnan and Another, . The Apex Court has taken a view that as per circular of the Insurance Regulatory and Development Authority, it is clear that package policy is comprehensive insurance policy. Learned counsel for the appellant is not in a position to make any other submission to the effect that package policy is not a comprehensive policy. He is also not in a position to refer any other judgment contrary to judgment of Hon"ble Apex Court in National Insurance Co. Ltd. v. Balakrishnan (supra). Paras 19, 20 and 21 of the judgment of the Hon"ble Apex Court are reproduced as

under:

"(19) It is extremely important to note here that till 31.12.2006 the Tariff Advisory Committee and, thereafter, from 1.1.2007, IRDA functioned as the statutory regulatory authorities and they are entitled to fix the tariff as well as the terms and conditions of the policies by all insurance companies. The High Court had issued notice to the Tariff Advisory Committee and IRDA to explain the factual position as regards the liability of the insurance companies in respect of an occupant in a private car under the "comprehensive/package policy". Before the High Court, the competent authority of IRDA had stated that on 2.6.1986, the Tariff Advisory Committee had issued instructions to all the insurance companies to cover the pillion rider of a scooter/motor cycle under the "comprehensive policy" and the said position continues to be in vogue till date. It had also admitted that the "comprehensive policy" is presently called a "package policy". It is the admitted position, as the decision would show, that the earlier circulars dated 18.3.1978 and 2.6.1986 continue to be valid and effective and all insurance companies are bound to pay the compensation in respect of the liability towards an occupant in a car under the "comprehensive/package policy" irrespective of the terms and conditions contained in the policy. Competent authority of IRDA was also examined before the High Court who stated that the circulars dated 18.3.1978 and 2.6.1986 of the Tariff Advisory Committee were incorporated in the India Motor Tariff effective from 1.7.2002 and they continue to be operative and binding on the insurance companies. Because of the aforesaid factual position, the circulars dated 16.11.2009 and 3.12.2009, that have been reproduced hereinabove, were issued.

(20) It is also worthy to note that the High Court, after referring to individual circulars issued by various insurance companies, eventually stated thus:

"In view of the aforesaid, it is clear that the comprehensive/package policy of a two-wheeler covers a pillion rider and comprehensive/package policy of a private car covers the occupants and where the vehicle is covered under a comprehensive/package policy, there is no need for the Motor Accidents Claims Tribunal to go into the question whether the insurance company is liable to compensate for the death or injury of a pillion rider on a two-wheeler or the occupants in a private car. In fact, in view of the TAC's directives and those of the IRDA, such a plea was not permissible and ought not to have been raised as, for instance, it was done in the present case."

(21) In view of the aforesaid factual position, there is no scintilla of doubt that a "comprehensive/package policy" would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an "Act policy" stands on a different footing from a "comprehensive/package policy". As the circulars have made the position very clear and IRDA, which is presently the statutory authority has commanded the insurance companies stating that a "comprehensive/package policy" covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were

rendered in respect of the "Act policy" which admittedly cannot cover a third party risk of an occupant in a car. But, if the policy is a "comprehensive/package policy", the liability would be covered. These aspects were not noticed in the case of Bhagyalakshmi and Others Vs. United Insurance Co. Ltd. and Another etc., and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as the IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by Delhi High Court and we have also reproduced the same."

(Emphasis supplied)

From the above, it is clear that the Hon"ble Apex Court has held that the package policy is a comprehensive policy and it would cover the liability of the insurer for payment of compensation to the occupant in a car.

17. So far as the present case is concerned, there is no dispute that insurance policy issued in the present case is a "package policy" which is also called "comprehensive policy". The insured in the present case paid a premium of Rs. 13,458 which also shows that it is a comprehensive policy.

18. This court in Branch Manager, New India Assurance Co. Ltd. Vs. Jasu Subba and Others, , has considered the same point in detail and held that the deceased who was owner and driver of the vehicle was covered under the package policy, i.e., comprehensive policy. Paras 8 and 10 of the judgment of this court are reproduced as under:

"(8) 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 has 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.

xxx xxx xxx

(10) 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 respondents-claimants that the driver-owner is fully covered. Any other view would be inconsistent with the object of the 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. v. CM. Jaya, decided by a Constitution Bench of the Apex Court, reported in New India Assurance Co. Ltd. Vs. C.M. Jaya and Others, , in this regard."

(Emphasis supplied)

19. This court, in the case of Branch Manager, New India Assurance Co. Ltd. Vs. Jasu Subba and Others, , has also relied upon its earlier judgment on the same point, delivered in the case of Senior Branch, Manager, National Insurance Co. Ltd. Vs. Smt. Namita Dixit and Others, , the relevant portion of which has also been quoted in para 11 of the judgment. This court, after considering all the facts and circumstances of the case, various judgments of the Hon''ble Apex Court and the terms and conditions of the insurance policy, particularly the "package policy", took a view that the deceased owner-cum-driver is fully covered under the policy. After considering the facts and circumstances of the present case, I find that the present case is fully covered by earlier judgment of this court in the case of Branch Manager, New India Assurance Co. Ltd. (supra) and also the judgment of the Hon''ble Apex Court delivered in the case of National Insurance Company Ltd. Vs. Balakrishnan and Another, .

20. That apart, it is also relevant to mention that a meagre amount of Rs. 4,55,500 has been awarded as compensation in the present case for death of the deceased, who died in an accident arising out of a motor vehicle, which was insured with the appellant insurance company. It is relevant to mention that computation of compensation by Tribunal has not been challenged by learned counsel for appellant.

21. In view of the above discussions, I am of the view that appellant has failed to establish sufficient cause for condonation of delay in filing the appeal. On examination, I do not find any merit in the appeal also. Consequently, the application for condonation of delay in filing the appeal is dismissed. The appeal is also dismissed being barred by limitation as well as on merit.

22. There was already a judgment of this court as well as the Hon''ble Supreme Court on the point involved in the present appeal as referred above. The appellant filed the present appeal only to delay the matter and not to pay the compensation to the legal representative of the deceased in time. Therefore, it is

directed that the appellant insurance company will pay costs of Rs. 11,000 to respondents of this appeal also. Learned counsel for claimants submitted that despite award of compensation passed way back in the month of March 2013, the appellant insurance company has not paid the amount of compensation, therefore, the appellant be directed to make the payment of compensation to the claimants. Under the facts and circumstances of the case, I find that the deceased died in January 2012 and the award was also passed in March 2013, therefore, the ends of justice will meet in case the appellant be directed to deposit/make the payment of compensation as per the award of the Tribunal within a period of one month. Ordered accordingly.