(2002) 10 MAD CK 0167

In the Madras High Court

Case No : L.P.A. No. 134 of 2000

Kaliathal and Others APPELLANT

Vs

New India Assurance Co. Ltd. and Another RESPONDENT

Date of Decision : 28-10-2002

Acts Referred:
Motor Vehicles Act, 1988 — Section 147(1)

Citation : (2004) ACJ 51

Hon'ble Judges : R. Jayasimha Babu, J;Prabha Sridevan, J

Bench : Division Bench

Advocate : M.M. Sundaresh, for the Appellant; C. Ramesh Babu, for the Respondent

Final Decision : Dismissed

Judgement

Prabha Sridevan, J.—The appellants are legal representatives of the deceased, who was the owner of the tractor, which hit him resulting in his death. The appellants made a claim for compensation for the death of the deceased. The insurance company resisted the claim on the ground that the insurance policy covers only third party risk and not the risk to the life of the insured himself. The Tribunal came to the conclusion that the owner of the vehicle should be construed as a third party, as he was walking along the road at the time of the accident and, therefore, awarded compensation. The question before the learned single Judge was as to whether the legal representatives of the insured can claim compensation from the insurer. Relying on Section 147 of the Motor Vehicles Act, 1988, the learned single Judge came to the conclusion that the insurer is not liable to indemnify the liability of the owner, for the death of a person who himself is the insured. The learned single Judge also held that as the owner cannot take advantage of his own servant''s fault and claim compensation, his legal heirs also cannot claim compensation. He, therefore, allowed the appeal filed by insurance company against the legal representatives of the deceased. Hence the present appeal.

2. Learned counsel for the appellants submits that the words ''any person'' in the relevant section would cover the insured also. Reliance was placed on Chimajirao Kanhojirao Shirke and Another Vs. Oriental Fire and General Insurance Co. Ltd., , where the Supreme Court awarded compensation to the legal heirs of the injured who died in an accident. Learned counsel for the insurance company has relied on a decision of the Apex Court in the case of National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, , wherein the Apex Court traced the legislative history with regard to motor accident claims and held that the intention of the legislature was to protect only third party rights and, therefore, the legal representatives of the insured cannot claim compensation for the death of the insured himself.

3. A Division Bench of this court in L.P.A. No. 187 of 1999, decided on 26.7.2000, has held that the main purpose of the policy is to indemnify the insured against loss or damage arising out of the use of the motor vehicle owned by the insured; that the policies issued for motor vehicles are not the same as policies of life insurance and that the policy is meant to cover the liabilities arising out of the use of the motor vehicle insofar as the liabilities of the owner are concerned and the owner cannot claim to be treated as third party by becoming a passenger of his own vehicle.

4. That decision clearly applies to this case only with the difference that the owner who met with the accident was not a passenger of his own vehicle. That does not make a difference to the right of the legal representatives of the deceased to claim compensation.

5. In United India Insurance Co. Ltd. v. Lakshmi, 1990 ACJ 390 (Mad), which was a case of accident between the tractors due to negligence of the driver of one tractor and the owner of the other, a Division Bench of this court held that as far as the death of the owner is concerned there is no liability on the part of the insurance company to pay any compensation since no third party liability is involved and the policy covers only the liability of the insurer to a third party.

6. In Chimajirao Kanhojirao Shirke and Another Vs. Oriental Fire and General Insurance Co. Ltd., , cited by the learned counsel for the appellants there was a clause in the policy referring to "unlimited personal injury and property damage" and in those circumstances, the Supreme Court held that the legal representatives of the injured were entitled to be compensated by the insurer.

7. The decision of the Apex Court in the case of National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, , and also the Division Bench judgment of this court, referred to above, clearly apply to this case. The legal representatives of the insured cannot claim compensation from the insurer. In the circumstances, there is no reason to interfere with the judgment of the learned single Judge. The appeal is dismissed.