

(2003) 02 MAD CK 0126
In the Madras High Court
Case No : L.P.A. No. 184 of 2000

National Insurance Co. Ltd.

APPELLANT

Vs

Ayyadurai and S. Subramani

RESPONDENT

Date of Decision : 21-02-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 147(1)

Citation : (2003) 2 LW 601

Hon'ble Judges : R. Jayasimha Babu, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : K. Kannan, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

R. Jayasimha Babu, J.—The insurer is the appellant. The Policy it had issued was in respect of a motor vehicle which had mounted on it a drilling rig. The Policy contained Endorsement No. 37, which reads as follows:-

"37. Mobile Cranes/Drilling Rigs.

It is hereby declared and agreed notwithstanding anything to the contrary contained in this policy that in respect of the Motor Vehicle the Company shall be under no liability.

(a) u/s I of this Policy in respect of loss or damage resulting from overturning arising out of the operation as a tool of such vehicle or of plant forming part of such vehicle or attached thereto except or loss or damage arising directly from fire, explosion, self ignition or lightning or burglary, housebreaking or theft.

(b) u/s II except so far as is necessary to meet the requirements of the Motor Vehicles Act, 1988, in respect of liability incurred by the Insured arising out of the operation as a tool of such vehicle or of plant forming part of such vehicle or attached thereto."

2. Section II referred to therein is the Section dealing with liability to third

parties, Section I being loss or damage to the vehicle. The liability to third parties was thus covered under the policy only in so far as it was necessary to meet the requirements of the Motor Vehicles Act, 1988. Any liability incurred by the insured arising out of the "operation as tool of such vehicle or of plant forming part of that vehicle or attached thereto" was excluded from the coverage.

3. The insured had under this policy insured the lorry which he had valued at Rs. 1,50,000/-. He had also insured the drilling rig mounted on it, which he had valued at Rs. 4,50,000/-. The premium paid was Rs. 6,150/- for "own damage". For "liability" the amount paid was Rs. 335/-, which included Rs. 75/- for five workmen.

4. The liabilities covered by the Policy were liabilities required to be covered by the Act. Section 147 sets out the requirements of Policies and the limits of the liability. The proviso to Section 147(1)(b) sets out some of the liabilities that the insured may incur, but which would still not be mandatorily required to be covered by the policy for purposes of compliance with Section 147. The exclusion extends to the death or bodily injury to the employees of the owner, except the person driving the vehicle, in case of a public service vehicle its conductor or the ticket examiner, and in case of a goods carriage, the employees being carried in the vehicle.

5. The claim made against the appellant/insurer was on account of injuries suffered by the claimant, who had been working as a coolie in the bore well lorry which was covered by the Policy. In paragraph 3 of his claim petition, the claimant had stated thus:-

"On 2.12.1992 at about 5.00 P.M. When the said bore-well lorry was in operation at Suryapet Town behind RTC Bus stand in Andhra Pradesh State, all of a sudden air pipe got separated and thrown out. The said pipe caused grievous injuries on his left eye and left side nose. Immediately he was taken to Government Hospital at Suryapet, Hyderabad for treatment. In spite of best treatment his left eye sight has been completely affected. His left side nose portion was also sustained fracture injuries. The disability sustained by him is 100 per cent. .. The applicant was drawing wages at Rs. 1500/- per month and was 20 years of age at the time of the accident."

Compensation was claimed in the sum of Rs. 1,00,000/-.

6. The claim was contested by the insurer, who relied on the endorsement in the policy to which reference has already been made. The Tribunal having held that the insurer was nevertheless liable, an appeal was preferred to the learned single Judge, who affirmed the order of the Tribunal, which had awarded a sum of Rs. 21,505/-, after holding that the insurer had not examined and explained the special features of the exclusion clause and that in the absence of such examination and explanation the insurer could not rely upon the same.

7. When a Policy obtained by an insurer which limits the coverage to that which

the provisions of the Motor Vehicles Act require to be covered, one has to look to that Act to ascertain the extent of liability of the insurer. If some thing is not mandatorily required to be covered then the policy cannot be read as covering such a liability. Of course, it is always open to the insured to obtain additional coverage by paying the additional premium therefore and obtaining an appropriate policy.

8. The exclusion clause in the Policy, which specifically provides that in case of drilling rigs the liability incurred by the insurer arising out of its operation as a tool or by the use of the plant forming part of the vehicle or attached to the vehicle cannot be ignored.

9. The contents of the claim petition clearly show that the vehicle was not in use as a vehicle at the time the claimant sustained injury. What the claimant has said is that the bore well lorry was in operation. The operation referred to therein is the use of the rig which was being used as a rig for the purpose of drilling a bore well. It was in that process that the air pipe got separated and thrown out, causing grievous injuries to the eye and nose of the claimant. The injury so caused cannot be regarded as an injury caused by the use of the vehicle as the vehicle at that point of time was used only as a platform on which the compressor and part of the rig rested and it was the use of the rig as a rig which led to the accident and the consequent injury.

10. A drilling rig mounted on a vehicle does not become a road transport vehicle as has been held by this Court in the case of Commissioner of Income Tax Vs. Popular Borewell Service and others, . The Court after referring to the provisions of the Motor Vehicles Act of 1939 observed thus:-

"The rig and compressor mounted on a lorry cannot be treated as a road transport vehicle, because the rig and compressor mounted on a lorry are used only for the purpose of transporting equipment fixed on the lorry for sinking of bore-wells and not for carrying either passengers or loading or unloading of goods. Hence, the rig and compressor mounted on a lorry and used for drilling bore wells cannot be considered as "road transport vehicle".

11. The exclusion clause was, therefore, attracted and the liability to compensate the injured workman who had suffered the injury by reason of the use of the drilling rig as a rig was that of the insured.

12. After disposal of the matter by the Tribunal, the insurer deposited the amount awarded as compensation. We do not consider it just to prevent the claimant from withdrawing that sum or to compel him to deposit the money in the event of his having drawn the same by now. The second respondent, though served with notice in the proceedings before the Tribunal as also in the appeal filed against that award, has remained ex parte. The matter arises out of an accident which had occurred in the year 1992 about ten years ago. It will, however, be open to the insurer to recover this amount from the insured. The appeal is disposed of accordingly.