

(2022) 06 OHC CK 0061
In the Orissa High Court
Case No : MACA No.315 Of 2007

National Insurance Co. Ltd

APPELLANT

Vs

Kamini Behera And Others

RESPONDENT

Date of Decision : 20-06-2022

Acts Referred:

Citation : (2022) 06 OHC CK 0061

Hon'ble Judges : B. P. Routray, J

Bench : Single Bench

Advocate : S. Das, P.K. Pattanaik, S.K. Sarangi

Final Decision : Allowed

Judgement

B.P. Routray, J

1. Present appeal by the insurer is directed against the judgment dated 11th September, 2006 passed by learned 3rd M.A.C.T., Bhubaneswar in Misc. Case No.510 of 1994.

2. The facts in brief are that the deceased, namely, Sarat Ch. Behera while going in a Trekker bearing Registration No.OSU 3908 on 6.3.1994 along with some other persons, on the way near Sainik School dashed against the Truck bearing Registration No.OIC 6359 coming from the opposite direction. As a result of the accident, the deceased died and the claimants are his wife and two minor sons.

3. The learned Tribunal upon adjudication of the dispute held both the Trekker and the Truck has composite negligence for the cause of the accident and the accident occurred due to rash and negligent driving of the drivers of both the vehicles. Ultimately, the learned Tribunal directed for payment of compensation to the tune of Rs.4,67,000/- along with 6% interest per annum payable by the insurers of both the vehicles in equal proportion i.e. 50% each.

4. The present Appellant, i.e., National Insurance Co. Ltd. is the insurer of the Trekker and Respondent No.6 – New India Assurance Co. Ltd. is the insurer of

the Truck. Respondent Nos.1 to 3 are the claimants. Respondent Nos.4 & 5 are the owners of the Trekker and Truck respectively, who did not come to contest the case either before the learned Tribunal or before this Court.

5. The Appellant-insurer did not challenge the quantum of compensation. Neither did it challenge the finding of negligence on the part of the driver of the Trekker to the extent of 50% contribution nor the entitlement of the claimants to get the compensation. The only challenge advanced by the Appellant is to the effect that the Insurance Policy in respect of the offending Trekker being an "Act only liability" in respect of a private vehicle, the insurer is not liable to indemnify the amount since the deceased was a passenger of the Trekker. It is also submitted that the Trekker being a private vehicle was used for hiring on commercial purpose. Further, the Policy being "Act liability only", and the deceased being a fare paying occupant of the Trekker is not covered within the limits of the Policy and no separate premium having been paid in that regard, the insurer has no contractual obligation to indemnify the liability on behalf of the owner.

6. It is the admitted case of the claimants that the deceased was going in the Trekker as a passenger and this is the categorical finding of the learned Tribunal. No dispute has been raised on this aspect.

7. During pendency of the appeal, a copy of the Policy has been filed with a prayer to take the same on record in I.A. No.824/2019. This Court by order dated 10.11.2021 has allowed the prayer and marked the copy of the Policy No.153205/6101718/93 as Ext.A on behalf of the Appellant-insurer.

8. It is submitted on behalf of the claimants-Respondents that notwithstanding the nature of Policy since no copy of the same was adduced before the Tribunal to dispute the liability of the insurer, such a contention raised at this stage in the appeal is not entertainable. As per the claimants since the validity of the Policy was not disputed, the learned Tribunal has justifiably saddled the liability on the insurer to indemnify the compensation.

9. Before delving to the rival contentions of the Appellant and claimants-Respondents, it needs to be stated here that Respondent No.6, who is the insurer of the Truck has filed a cross objection challenging the impugned award in respect of 50% liability saddled on him. A preliminary objection is raised by the claimants-Respondents for maintainability of such cross objection by the Respondent No.6 on the ground that challenging the same impugned award, said Respondent No.6 earlier filed an independent appeal in MACA No.1104/2013 which has been dismissed on 2.7.2014. As such, the present cross objection at the instance of Respondent No.6 after dismissal of his independent appeal to challenge the award is not maintainable.

10. Having examined such contention of the claimants-Respondents with regard to maintainability of the cross objection, it is seen that the present cross objection has been filed on 9.7.2014 i.e. after dismissal of the independent appeal preferred by Respondent No.6. It is also noticed from the cross objection

that about such dismissal of the independent appeal preferred by him has never been averred in the body of the cross objection. In other words, by suppressing the order of the dismissal of the independent appeal, the cross objection is raised by Respondent No.6. The fact of preferring independent appeal by Respondent No.6 and its dismissal on 2.7.2014 is not disputed by Respondent No.6. In such view of the matter, I am of the opinion that the present cross objection raised by Respondent No.6 is not maintainable and as such the same is dismissed herewith.

11. Now switching back to the rival contentions of the Appellant and claimants-Respondents, the seminal issue remains to be decided is that whether the Policy in question under Ext.A do sufficiently cover the liability for indemnification on behalf of the owner of the Trekker.

12. As it reveals from Ext.A, the same stipulates it a Policy for Act liability only. The Supreme Court in the case of Oriental Insurance Co. Ltd. vs. Sudhakaran K.V. & Ors., AIR 2008 SC 2729 while considering the question that whether an 'Act only' policy would cover the risk of the pillion rider of a scooter, proceeded to hold that such a contract of insurance covered the risk of a third party and not that of the owner or pillion rider of a two wheeler. The Supreme Court held as follows:

"The law which emerges from the said decisions, is : (i) the liability of the insurance company in a case of this nature is not extended to a pillion rider of the motor vehicle unless the requisite amount of premium is paid for covering his/her risk; (ii) the legal obligation arising under Section 147 of the Act cannot be extended to an injury or death of the owner of vehicle or the pillion rider; (iii) the pillion rider in a two wheeler was not to be treated as a third party when the accident has taken place owing to rash and negligent riding of the scooter and not on the part of the driver of another vehicle."

13. The Supreme Court in the case of New India Assurance Company Ltd. vs. Sadanand Mukhi and others, 2009 (2) SCC 417 held as under:

"Contract of insurance of motor vehicle is governed by the provisions of the Insurance Act. The terms of the policy as also the quantum of premium payable for insuring the vehicle in question depends not only upon the carrying capacity of the vehicle but also on the purpose for which the same was being used and the extent of the risk covered thereby. By taking an 'act policy', the owner of a vehicle fulfils his statutory obligation as contained in Section 147 of the Act. The liability of the insurer is either statutory or contractual. If it is contractual its liability extends to the risk covered by the policy of insurance. If additional risks are sought to be covered, additional premium has to be paid. If the contention of the learned Counsel is to be accepted, then to a large extent, the provisions of the Insurance Act becomes otiose. By reason of such an interpretation the insurer would be liable to cover risk of not only a third party but also others who would not otherwise come within the purview thereof. It is one thing to say that the life is uncertain and the same is required to be covered, but it is another

thing to say that we must read a statute so as to grant relief to a person not contemplated by the Act. It is not for the Court, unless a statute is found to be unconstitutional, to consider the rationality thereof. Even otherwise the provisions of the Act read with the provisions of the Insurance Act appear to be wholly rational.”

14. The Supreme Court also in the case of National Insurance Company Limited vs. Balakrishnan and another, (2013) 1 SCC 731 taking note of various other decisions of the Supreme Court have held thus:

“26. 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 Bhagyalakshmi v. United Insurance Co. Ltd., (2009) 7 SCC 148 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 IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same.”

15. In the instant case, no dispute is raised from the side of the claimants-Respondents that the Policy in question is not for act only liability. Thus when the fact that the deceased was travelling in the Trekker as a passenger is not disputed and the Trekker in question was not authorized to be used for commercial purpose and the Insurance Policy in question (Ext.A) is for “Act liability only”, the result is obvious that the liability of the insurer to indemnify the owner is beyond the coverage of the Policy in question. Therefore, the insurer cannot be saddled with any liability to indemnify the compensation amount on behalf of the owner. As such, the liability of the insurer for payment of compensation is exonerated in respect of the death of the deceased.

16. Resultantly, the appeal is allowed and the cross objection preferred by the Respondent No.6 is dismissed. The Appellant is discharged from its liability.

17. The statutory deposit made before this Court with accrued interest thereon shall be refunded to the Appellant-Insurance Company.

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