

(2012) 06 GAU CK 0007
In the Gauhati High Court
Case No : MFA No. 17 of 2003

National Insurance Co. Ltd.	Vs	APPELLANT
Mahananda Das and Another		RESPONDENT

Date of Decision : 13-06-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 146(1), 147, 147(1), 147(1)(b), 147(b)
Workmens Compensation Act, 1923 — Section 30

Citation : (2012) 4 GLT 709

Hon'ble Judges : Arup Kumar Goswami, J

Bench : Single Bench

Advocate : D. Mazumdar, for the Appellant;

Final Decision : Allowed

Judgement

A.K. Goswami, J.—This appeal is preferred u/s 30 of the Workmen's Compensation Act, 1923 against the Judgment and Award dated 6.11.2002 passed by the learned Commissioner, Workmen's Compensation, Guwahati in W.C. Case No. 58/2001, awarding compensation of Rs. 1,01,659/- to the claimant, namely, Shri. Mahananda Das, handyman of bus No. ASU-2892, owned by Shri Bidur Chandra Das, along with simple interest at the rate of 9% p.a. w.e.f. 27.3.2001 till the date of deposit with a direction to the appellant herein to deposit the said amount of compensation along with interest within 30 days from the date of receipt of the order. Although the appeal was admitted for hearing on 27.5.2003, it was only on 9.12.2010 that substantial questions of law were formulated. The substantial questions of law formulated by this Court are as follows:

1. Whether the workman concerned, who was the handyman of the vehicle involved in the accident, can be termed as third party, as the contract of insurance covers the risk of the employer in respect of two other employees namely, the driver and the conductor of the bus apart from 38 passengers and consequently whether the Insurance Company can be saddled with the payment

of compensation as awarded by the learned Commissioner.

2. Whether the interest u/s (a) of the Act can be awarded from the date of the application?

2. I have heard Mr. D. Mazumdar, learned counsel for the appellant. None appeared for the respondents including the claimant.

3. Mr. Mazumdar submits that on 14.12.2000, Bus No. ASU-2892, which is a public service vehicle, met with an accident while the same was proceeding from Barpeta Road towards Katajhar as a result of which claimant Mahananda Das sustained injuries. Driver and Conductor of the said vehicle had also filed claim petitions for compensation under Workmen's Compensation Act, 1923, for short, the Act, before the Commissioner, Workmen's Compensation, Guwahati and the same were registered as W.C. No. 57/2001 and W.C. No. 86/2001, respectively. He has submitted that the policy taken by the owner covers 38 passengers along with driver and conductor, totalling 40 in all.

4. He submits that the learned Commissioner committed manifest error of law in fastening the liability upon the Insurance Company to pay the compensation along with interest as under the provisions of Section 147 of the Motor Vehicles Act, 1988, the liability of the insurer is confined to driver, conductor and passengers and therefore, there can be no liability of the insurer in respect of the handyman who, however, is a workman and therefore, it is the owner, who in the facts and circumstances of the case, is liable to pay the compensation. He submits that handyman is also not a third party and therefore, the Insurance Company is not liable to indemnify the owner.

The learned counsel relies on the following Judgments:-

(1) Oriental Insurance Co. Ltd. Vs. Himangshu Ch. Deb and Another,

(2) Ramashray Singh Vs. New India Assurance Co. Ltd. and Others,

(3) National Insurance Co. Ltd. Vs. Prembai Patel and Others,

5. Chapter XI of the Motor Vehicles Act, 1988, for short, the M.V. Act, relates to Insurance of the Motor Vehicles against third party risks. Section 146(1) provides that no person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force a valid policy of insurance which complies with the requirements of the chapter. The requirements of such insurance policy have been provided in Section 147.

The relevant extract of Section 147 is reproduced herein below:

Section 147: Requirements of policies and limits of liability. -

(1) In order to comply with the requirements of this chapter, a Policy of Insurance must be a policy which

(a)xxx xxx xxx xxx xxx xxx xxx

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)- -

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required-

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee -

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) If it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

6. In *Ramashray Singh* (Supra), the Apex Court had observed that the phrase "any person" and "any passenger" in clause (i) and (ii) of Section 147(b) are of wide amplitude. However, the Apex Court also pointed out that the proviso to the sub-section carves out an exception in respect of one class of persons and passengers, namely, employees of the insured. In other words, if the "person" or "passenger" is an employee, then the insurer is required under the statute to cover only certain employees. The insured can enter into an agreement to cover other employees, but under the proviso to Section 147(1)(b), it is clear that for the purposes of Section 146(1), a policy shall not be required to cover liability in respect of death and injury arising out of and in the course of any employment of the person insured unless first, the liability of the insured arises under the Workmen's Compensation Act, 1923 and second, if the employee is engaged in driving the vehicle and if it is a public service vehicle, is engaged as conductor of the vehicle or in examining tickets on the vehicle. If the concerned employee is neither a driver nor a conductor nor an examiner of tickets, the insured cannot claim that the employee would come under the description of "any person" or "any passenger". If this were permissible, then there would be no need to make special provisions for employees of the insured.

7. In *Prembai* (supra), the Apex Court had held that if an insurance policy covers the liability under the Workmen's Compensation Act, 1923 in respect of death or bodily injury to any such employee as prescribed in sub-clause (a) or (b) or (c)

or proviso (i) to Section 147(1) (b), it will be a valid policy and would comply with the requirements of Chapter XI of the Act. It also laid down that any such liability, which is mandatorily required to cover by a policy under clause (b) of Section 147(1), has to be satisfied by the Insurance Company. In other words, where any such policy has been taken by the owner of the vehicle, the liability of the Insurance Company would be confined to that arising under the Workmen's Compensation Act, 1923. The Apex Court in paragraphs 13 and 14 also stated thus:

13. The insurance policy being in the nature of a contract, it is permissible for an owner to take such a policy whereunder the entire liability in respect of the death of or bodily injury to any such employee as is described in sub-clauses (a) or (b) or (c) of proviso (i) to Section 147(1)(b) may be fastened upon the insurance company and insurance company may become liable to satisfy the entire award. However, for this purpose the owner must take a policy of that particular kind for which he may be required to pay additional premium and the policy must clearly show that the liability of the insurance company in case of death of or bodily injury to the aforesaid kind of employees is not restricted to that provided under the Workmen's Act and is either more or unlimited depending upon the quantum of premium paid and the terms of the policy.

14. The aforesaid interpretation of the relevant provisions applicable to the case in hand is in consonance with the view expressed by a Constitution Bench in *New India Assurance Co. Ltd. v. V.C.M. Jaya* where, while interpreting the provisions of Section 95(2) of the Motor Vehicles Act, 1939, the Court held as under in para 10 of the Report: (SCC. p. 285)

The liability could be statutory or contractual. A statutory liability cannot be more than what is required under statute itself. However, there is nothing in Section 95 of the Act prohibiting the parties from contracting to create unlimited or higher liability to cover wider risk. In such an event, the insurer is bound by the terms of the contract as specified in the policy in regard to unlimited or higher liability as the case may be. In the absence of such a term or clause in the policy, pursuant to the contract of insurance, a limited statutory liability cannot be expanded to make it unlimited or higher. If it is so done, it amounts to rewriting the statute or the contract of insurance which is not permissible.

The Bench also referred to earlier decisions rendered in *New India Assurance Co. Ltd. v. Shanti Bai and Amrit Lal Sood v. Kaushalya Devi Thapar* and observed that in case of an insurance policy not taking any higher liability by accepting a higher premium, the liability of the insurance company is neither unlimited nor higher than the statutory liability fixed u/s 95(2) of the Motor Vehicles Act, 1939. It was further observed that it is open to 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.

8. In Himangshu (supra), the claimant was admittedly an employee of the owner of the vehicle working as Assistant at the relevant time. In the insurance policy in question, no other employee except the driver engaged by the owner for the said vehicle was covered. The vehicle in question was a public service vehicle for carrying passengers. In such circumstances, this Court had allowed the appeal preferred by the Insurance Company by holding that in the facts and circumstances of the case, the liability to pay the compensation shall be with the employer.

9. From the perusal of the aforesaid Judgments, it is clear that the handyman of the vehicle involved in an accident cannot be termed as a third party and therefore, the first substantial question of law has to be answered in favour of the appellant Insurance Company holding that the insured Company cannot be saddled with the liability to make payment of the compensation awarded by the learned Commissioner. Accordingly, though the amount of compensation awarded is not interfered with, the liability to pay the compensation shall be with the employer, i.e. the owner of the vehicle. Because of the aforesaid position that the owner of the vehicle being employer shall be liable to pay the compensation awarded, the second substantial question of law does not really call for an adjudication.

10. By a catena of decisions, including State, through Special Cell, New Delhi Vs. Navjot Sandhu @ Afshan Guru and Others, , Surya Dev Rai Vs. Ram Chander Rai and Others, , it was held that the insurer cannot be held liable to indemnify the insured employer the interest which the insured employer would be liable to pay.

11. Accordingly, in the instant case, the insurer appellant is neither liable to pay the compensation nor the interest awarded and the entire liability shall remain with the owner of the vehicle. The appeal stands allowed with the modification of the award dated 6.11.2002 as indicated above.