(2008) 07 AHC CK 0034

In the Allahabad High Court

National Insurance Co. Ltd. APPELLANT

Vs

Shimla and Others RESPONDENT

Date of Decision : 11-07-2008

Acts Referred:
Motor Vehicles Act, 1988 — Section 163A, 166

Citation : (2010) ACJ 74

Hon'ble Judges : Amitava Lala, J;A.P. Sahi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Amitava Lala, J.—This is an appeal of insurance company challenging the judgment and order dated 11.4.2008 passed by the concerned Motor Accidents Claims Tribunal, Jhansi.

2. The main contention of the insurance company is that when the vehicle was running on a highway, Trade Tax Authorities stopped the same and after parking at a particular point, the driver was beaten extensively, which caused his death. It appears to be State sponsored murder. Therefore, such an incident cannot be construed as an accident under Motor Vehicles Act, 1988, arising out of use of motor vehicle. Apart from the aforesaid point, learned Counsel appearing for insurance company raised the point of quantum of compensation on the basis of the income of Rs. 2,000 per month as per the oral evidence. But it is recorded under the judgment and order that no evidence was led by the insurance company. Therefore, having no denial or rebuttal, we cannot accept the argument of the insurance company ex facie. So far as the question of multiplier is concerned, it has been faintly raised by the insurance company, but no argument is advanced also to that extent. Therefore, the basic question is whether the above incident is an accident out of the use of motor vehicle or an incident simpliciter which can be termed as murder?

3. We have heard the learned Counsel at length to decide the said question of

law at the stage of admission.

4. We find that the definition of term ''accident'' is not defined in the Motor Vehicles Act, 1988, but we can construe the meaning of the word accident as contained in Section 140 onwards, either in the case of no fault liability or the liabilities, which is required to be determined by the court u/s 163-A or 166 of the Act and other sections, if any, connected therein.

5. Ordinarily, the meaning of the word ''accident'' understood is as follows (defined in Dictionary by Murray, Vol. I-A):

Accident. 1. Anything that happens.

1 + a. An occurrence, incident, event. Obs. B. Anything that happens without foresight or expectation; an unusual event, which proceeds from some unknown cause, or is an unusual effect of a known cause, a casualty, a contingency.

6. Similarly, the meaning of accident is as follows defined in the Law Lexicon Dictionary, 1997 Edn.:

Accident: The word ''accident'' is constantly used in ordinary English and, therefore, in law, in two senses, one much wider than the other. Strictly an occurrence can only be said to be accidental when it is due neither to design nor to negligence. For, if an act be intentional it is clearly no accident; if it be the result of culpable negligence, then by due care it could have been avoided and the negligent person cannot be allowed to excuse himself by declaring it an accident. In this narrower sense of the word, an accident must be ''nobody''s fault''. 12 App Cas 526.

The word ''accident'' generally denotes an event that takes place without one''s foresight or expectation an event which proceeds from an unknown cause, or is an unusual effect of a known cause and, therefore, not expected chance-casualty, contingency (Webster Dictionary) an event happening without the concurrence of the will of the person by whose agency it was caused. It differs from mistake in that the latter always supposes the operation of the will of the agent in producing the event although that will is caused by an erroneous impression on the mind.

7. Further the meaning of accident as defined in Black''s Law Dictionary, 6th Edn., Centennial Edn. (1891-1991), is as follows:

Accident: The word ''accident'' is derived from the Latin verb ''accidere'' signifying ''fall upon befall, happen, chance''. In an etymological sense anything that happens may be said to be an accident and in this sense, the word has been defined as befalling a change; a happening; an accident; an occurrence or event. In its most commonly accepted meaning, or in its ordinary or popular sense, the word may be defined as meaning: a fortuitous circumstance, event, or happening; an event happening without any human agency, or if happening wholly or partly through human agency, an event which under the circumstances is unusual and unexpected by the person to whom it happens; an unusual, fortuitous, unexpected, unforeseen or unlooked for event, happening or occurrence; an unusual or unexpected result attending the operation or performance of a usual or necessary act or event; chance or contingency, fortune; mishap; some sudden and unexpected event taking place without expectation, upon the instant, rather than something which continues, progress or develops; something happening by chance; something unforeseen, unexpected, unusual, extraordinary or phenomenal, taking place not according to the usual course of things or events, out of the range of ordinary calculations; that which exists or occurs abnormally, or an uncommon occurrence. The word may be employed as denoting a calamity, casualty, catastrophe, disaster, an undesirable or unfortunate happening; any unexpected personal injury resulting from unlooked for mishap or occurrence; any unpleasant or unfortunate occurrence, that causes injury, loss suffering or death; some untoward occurrence aside from the usual course of events. An event that takes place without one''s foresight or expectation; an undersigned, sudden, and unexpected event, Kochring Company v. American Auto Insurance Company CA Wis 353 Fd 993. See also act of God; casualty, inevitable accident, unavoidable accident.

Its synonyms are chance, contingency, mishap, mischance, misfortune, disaster, calamity, catastrophe.

8. Initially, we were under an impression that this term cannot be used as accident at all, but an incident which leads to a murder. But from the aforesaid definitions and the judgment cited as reported in Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another, we are of the firm view that this type of accident may be distinct, but not different in the course of use of a motor vehicle. The Apex Court in the aforesaid judgment has categorically specified the distinction between the accidental murder and intentional murder. The accidental murder is a non-felonious act, which can be separated from the murder caused by felonious act. If it is other than felonious act, in such case, we can define the term as an accidental murder. Therefore, it can also be termed as incident in the course of use of the motor vehicle. The relevant para of the reported case of Rita Devi (supra), it has been held by the Apex Court as follows:

(10) ...In our opinion, if the dominant intention of the act of felony is to kill any particular person then such killing is not an accidental murder but is a murder simpliciter, while if the cause of murder or act of murder was originally not intended and the same was caused in furtherance of any other felonious act then such murder is an accidental murder.

9. Therefore, the cardinal principle to determine in the case is whether there was felony or not. According to us the accident, which has been caused by vehemently beating the driver till death was not premeditated on the part of the concerned persons. Therefore, it cannot be termed as an accident not in the use of motor vehicle to exclude insurance company from its liability. Basic necessity of an insurance coverage is to cover any contingency mishap, etc. Therefore, we

are of the opinion that the incident, which has been caused in use of the motor vehicle can be termed as accident under the Motor Vehicles Act. Hence the claimants are entitled for the reliefs and the Tribunal has rightly held so.

10. In such circumstances, we do not find any cogent reason to interfere with the judgment and order and appeal is dismissed even at the stage of admission, however, without imposing any costs.

11. Incidentally, the appellant insurance company prayed that the statutory deposit of Rs. 25,000 made before this Court for preferring this appeal be remitted back to the concerned Motor Accidents Claims Tribunal as expeditiously as possible in order to adjust the same with the amount of compensation to be paid to the claimants, however, such prayer is allowed.