

(2006) 11 CAL CK 0011
In the Calcutta High Court
Case No : F.M.A. No. 776 of 2004

National Insurance Co. Ltd.

APPELLANT

Vs

Smt. Krishna Biswas

RESPONDENT

Date of Decision : 07-11-2006

Acts Referred:

Motor Vehicles Act, 1939 — Section 92A
Motor Vehicles Act, 1988 — Section 140, 140(1), 140(2), 147, 163A
West Bengal Motor Vehicles Rules, 1989 — Rule 339, 339(3)

Citation : (2008) ACJ 480 : AIR 2007 Cal 122

Hon'ble Judges : Pratap Kr. Ray, J;Arunabha Basu, J

Bench : Division Bench

Advocate : Rajesh Singh, for the Appellant; Kingshuk Chatterjee, for the Respondent

Judgement

Pratap Kr. Ray, J.—Heard the learned Advocates appearing for the parties.

2. This appeal has been preferred by the National Insurance Company assailing the award dated 22nd August, 2003 passed by the learned Judge, 2nd Motor Accident Claims Tribunal, Siliguri in M.A.C.C. No. 169 of 2001 whereby and whereunder the application u/s 140 of the Motor Vehicles Act, 1988 as filed by the claimant was allowed directing National Insurance Company Limited to pay the compensation amount as awarded.

3. Two legal questions have been urged in this appeal by the National Insurance Company Limited, namely:

(i) Whether u/s 140 of the Motor Vehicles Act, 1988, hereinafter referred to as the said Act for brevity, a Court of law can saddle the Insurance Company with a liability to pay when under the said statute, owner, is only liable.

(ii) Whether the claimant is entitled to get compensation from the Insurance Company when there is a case of death of owner injured in the Motor accident.

4. For effective adjudication of both the aforesaid two legal questions, heard the

parties at length. So far as first point is concerned, the interpretation of Section 140 of the Motor Vehicles Act is necessary. The said Section is quoted below:

CHAPTER X LIABILITY WITHOUT FAULT IN CERTAIN CASES

140. Liability to pay compensation in certain cases on the principle of no fault.

(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this Section.

(2) The amount of compensation which shall be payable under Sub-section (1) in respect of the death of any person shall be a fixed sum of fifty thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of twenty five thousand rupees.

(3) In any claim for compensation under Sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under Sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of share of such person in the responsibility for such death or permanent disablement.

(5) Notwithstanding anything contained in Sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force.

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or u/s 163A.

5. On a bare reading of the said Section it appears that the owner is responsible to pay Rupees Fifty thousand under the said proceeding to the claimant and under the statute the Insurance Company is not bound to pay and also could not be made responsible to pay such amount. As such, no liability could be fixed upon the Insurance Company directly by any Motor Accident Claims Tribunal. While adjudicating the application u/s 140 of the Motor Vehicles Act, the liability of the owner is fixed which also could be revealed on a comparison of Section 163A of the said Act, wherein the legislature at their wisdom not only has used the word "the owner of the motor vehicle" but also added the word "or the

authorized insurer", while fixing the liability of the payment of compensation under the structured formula basis. Section 163A reads thus:

163A. Special provisions as to payment of compensation on structured formula basis. - (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle compensation, as indicated in the Second Schedule, to the legal heirs or the victim as the case may be.

Explanation.- For the purpose of this sub-section, "Permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under Sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the "Second Schedule".

6. Under the Insurance Act, there are different Insurance Policies. The Insurance Company may enter into a contract with the owner of the vehicle to indemnify the third party risk liability of the owner under the policy. The Insurance Company under "personal accident injury" policy whereby the owner gets coverage on making necessary payments could enter into such contractual agreement with the owner of vehicle. Hence, under the third party risk liability the Insurance Company in terms of the contractual agreement of insurance, is only liable to indemnify the liability of the insured owner for third party, but in the event of accidental death of the insured owner the Insurance Company is not liable unless and until there is a policy to that effect under the insurance contract.

7. Furthermore, it appears that under no fault liability, the Motor Vehicles Act identified by Section 140 of the Act, fixed liability of limited amount of Rupees Fifty thousand to the owner concerned whereas under the structured formula higher amount has been fixed by putting the liability upon the owner/owners or authorized insurer u/s 163A of the Act. Both the aforesaid two provisions are under "no fault liability", which means the claimant need not to prove rash and negligent driving of the offending vehicle as the cause of accident. Whereas u/s 166 of the Motor Vehicles Act, in the application for compensation, the claimant is to prove rash and negligent driving of the offending vehicle to fix the fault liability upon the owner of the vehicle insured by the Insurance Company under the contract of insurance under third party risk. Thus the answer leads to the point that u/s 140 of the Motor Vehicles Act, when the legislature at their wisdom

did not saddle the Insurance Company with any liability by using the word "authorized insurer" similar to Section 163A of the said Act, the Insurance Company neither could be made a party in this proceeding u/s 140 of the said Act nor any liability could be fixed upon their shoulder.

8. Before parting with the matter, a question to be answered whether under West Bengal Motor Vehicles Rules, 1989 where-from it appears that there is a provision under Rule 339(3) of the said Rules by which the Insurance Company has been made liable to pay compensation the Insurance Company is liable to pay compensation ? The said Rule is quoted below:

Rule 339. Judgment and award of compensation u/s 140 of the Act.

(3) The Claims Tribunal in passing an order for compensation shall direct the owner or insurer of the vehicle involved in the accident to pay the amount of compensation to the claimant within two weeks from the date of receipt of such application.

Since under the statute, namely, u/s 140 of the Motor Vehicles Act, 1988, the legislature never imposed any liability upon the Insurance Company to pay compensation of Rs. 50,000/- under no fault liability, under the said West Bengal Rule such liability cannot be fixed. It is the settled legal proposition that the Rule only could supplement but not supplant the statutory provision. Hence, the Rule making authority cannot put the liability upon the Insurance Company with reference to the liability u/s 140 of the said Act by incorporating Clause (3) of the said Rule 339. Incorporation of such liability by the West Bengal Motor Vehicles Rules, 1989, being contrary to the framework of Section 140 of the said Act, accordingly, is dehors the statute. Hence this Court on exercising the power is suo motu quashing that particular imposition of liability upon the Insurance Company as it is appearing under Sub-rule (3) of Rule 339 of the West Bengal Motor Vehicles Rules, 1989. The said point No. (i) is also not res intergra. Apex Court also held that u/s 140 of the said Act, Court cannot make the Insurance Company liable in the case National Insurance Co. Ltd. v. Jethu Ram and Ors. reported in 1998 (2) T.A.C. 805 (SC). The Apex Court dealt with Section 92A of Motor Vehicles Act, 1939, which is pari materia to Section 140 of the Motor Vehicles Act, 1988. Hence, the point No. (i) is accordingly answered.

9. So far as the point No. (ii) is concerned, the same is not at all res integra in view of the judgment of this Court passed in the case of New India Assurance Co. Ltd. Vs. Krishna Khatua and Others, where the Division Bench (Coram : Aloke Chakrabarti & Rajendra Nath Sinha, JJ.) answered the point by holding that the owner insured under a third party risk liability with reference to the contract of insurance is not entitled to have any compensation in case of his personal injury in accident and his legal heirs also in case of death of owner insured are not entitle to claim compensation from Insurance Company, unless and until there is a policy of personal accident, which is shortly called as P/A. The same view has been expressed by another Division Bench (Coram : Samarsh Banerjee & S.P.

Talukdar, JJ.) of this Court in the case of Smt. Dipali Chattopadhyay and Anr. v. New India Assurance Co. Limited and Ors. reported in 2004 (1) T.A.C. 128 (Cal).

10. Having regard to the aforesaid settled legal position, the point No. (ii) is accordingly answered in favour of the appellant Insurance Company.

11. Learned Advocate for the respondent/claimant, however, has raised a point that in the instant case Rs. 77/- was paid as premium for the driver and one pillion rider. But on perusal of the Insurance Policy it appears that in respect of description of the vehicle under the heading "sitting capacity" it was mentioned that the sitting capacity of the Motor Bike was 1 +1, which has no connection with reference to Rs. 77/- premium. The policy in fact is a policy of third party risk liability for which Rs. 77/- was paid. Accordingly that point, as raised, will not satisfy the Court that the owner insured is under coverage of personal accident policy.

12. Having regard to all the state of affairs, this appeal accordingly succeeds. The impugned judgment under appeal is set aside and quashed.

13. The Insurance Company is granted liberty to withdraw the amount as already deposited in this High Court Registry along with the interest accrued thereto.

14. Registrar General, High Court, Calcutta is directed to refund the money to the learned Advocate on record of the appellant Insurance Company.

15. After the judgment has been delivered, learned Advocate for the respondent / claimant prayed leave from this Court to file an application u/s 163A of the Motor Vehicles Act, praying compensation and/or u/s 140 of the said Act against the owner, as the case may be. This submission is misconceived. No claim application against owner who is dead, maintainable by his legal heirs. Hence, it is rejected.

16. Despite the clear statutory provision u/s 140 of the Motor Vehicles Act, 1988 and in spite of the judgment of the Apex Court while dealing with the Section 92A of the Motor Vehicles Act, 1939 passed in the case National Insurance Company Limited v. Jethuram and Ors. reported in 1998 (2) TAG 805 (SC) as already referred to, it appears before this Court that in many cases the Insurance Company was saddled with the liability to pay the claim awarded u/s 140 of the said Act by passing such an order by the learned Motor Accident Claim Tribunal below. Hence, to make the learned Tribunals below aware about the legal position, this Court is of the view that the judgment should be communicated to all the Motor Accident Claims Tribunal below situated within the State of West Bengal and which are under the supervisory jurisdiction of the High Court at Calcutta. For that reason Registrar General, High Court, Calcutta is directed to communicate the xerox copy of this order to all the learned Tribunals below forthwith at the cost of High Court Registry.

17. Since u/s 140 of the Motor Vehicles Act, 1988, it is now a settled law that there is no statutory provision to saddle with the liability of claim of Rs. 50,000/-

upon the Insurance Company, who enters into the insurance contract with the respective vehicle owners of different types, the public in general who are using such motor vehicles, namely, of two wheelers and/ or the four wheelers, as owner driver and/ or owner passenger in such type of vehicles should be accordingly informed as a part of social liability and having regard to the decision of the Insurance Tariff Committee whereby and whereunder Insurance Companies were directed to make a comprehensive policy, particularly, in respect of two wheelers vehicle, namely, motor bike for necessary risk coverage of accidental injury or accidental death of the owner or the pillion rider, this Court feels that all the Insurance Companies should make the public aware to that effect by disclosing their comprehensive insurance policy covering the personal insurance of the owner of the vehicle and/ or pillion rider of a bike by issuing a circular letter to all the agents, so that they may advice its beneficial effect.

18. In course of hearing it came to the notice of the court that many legal heirs of different owners of the respective vehicles who breathed last in any accident not covered by personal accident policy and many legal heirs of pillion riders identically placed, are being deprived of from claiming any compensation in the case of non fatal accident and/or fatal accident like death, as the case may be, due to non-existence of comprehensive policy covering personal injury. The legislation on payments of compensation in case of motor accident is a social welfare piece Of legislation, hence, the Central and State Government both should make the public aware on such issue and should take all steps and measures for providing a condition in Motor Vehicles Act and Rules made thereof as rule making authority that for each and every type of motor vehicle there should be a coverage of personal Insurance Policy of the owner of the vehicle before granting any route permit. The Central Government also should consider to find out a solution to safeguard the interest of the family of the driver owner of any type of motor vehicle by providing appropriate relief of compensation on stipulating necessary statutory provision in the Motor Vehicles Act, 1988, to that effect similar to the provision of Section 147 whereby and whereunder unless and until there is a third party risk coverage Insurance Policy, no vehicle owner is allowed to ply the vehicle, as this Court has noticed about several accidental death of the motor bike owners while driving the vehicle and also the death of four wheeler owners while driving own vehicle. For social object it is expected that both the State and Central Government should take appropriate steps in the matter. Let a copy of the judgment, accordingly, be communicated to the Central and State Government through the concerned Secretaries.

Arunabha Basu, J.

19. I agree.