
(2011) 02 GAU CK 0008
In the Gauhati High Court
Case No : Misc. First Appeal No. 01 of 2010

National Insurance Company Ltd.	Vs	APPELLANT
Abdul Rashid (Md.) @ Sabdin and Another		RESPONDENT

Date of Decision : 04-02-2011

Acts Referred:

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

Citation : (2012) ACJ 1667 : (2011) 2 GLT 77 : (2011) 4 LLJ 91

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Advocate : Dani Sharma, for the Appellant; Dijen, for the Respondent

Final Decision : Dismissed

Judgement

T. Nandakumar Singh, J.—Heard Mr. Dani Sharma, learned Counsel for the Appellant, Insurance Company and Mr. Dijen, learned Counsel appearing for the claimant Respondents.

2. For the judgment and order proposed to be passed in the present appeal, detailed facts leading to the filing of the WC Case No. 11/06 is not required to be mentioned.

3. It is the admitted fact of both the parties that the offending vehicle (Goods carriage) having registration No. MN01-5151 is owned by the Respondent No. 2 and the present Appellant is the insurer of the said offending vehicle. The Respondent No. 1 claimant's son, Md. Nahapik, was employed as Handyman of the offending vehicle by the Respondent No. 2 who is admittedly owner of the vehicle.

4. The offending vehicle met with an accident on 8.6.04 and at the time of the accident Respondent No. 1's son, Md. Nahapik, was employed as Handymen of the offending vehicle by the Respondent No. 2. As a result of the said motor accident, Respondent No. 1's son, Md. Nahapik, died.

5. For that motor accident, the Respondent No. 1 filed Claim Case No. 11/06 against the owner of the offending vehicle, i.e. Respondent No. 2 in the present appeal and the Insurer of the offending vehicle (present Appellant) claiming compensation for the death of his son, Md. Nahapik before the learned Commissioner Workmen's Compensation.

6. The appellant, insurance company also contested the said Claim case No. 11/06. The learned Commissioner for Workmen's Compensation, after full length trial of the claim case No. 11/06, passed the impugned judgment and award dated 21.8.07 awarding a sum of Rs. 2,81,521 as compensation for the death of the Respondent No. 1's son, Md. Nahapik and the Appellant Insurance Company has to indemnify the said amount of award. Hence the present appeal.

7. In the present appeal, the only ground for assailing the judgment and award dated 21.8.07 passed by the Commissioner, Workmen's Compensation is that the Respondent No. 1's son, Md. Nahapik, even though he was employed as Handyman of the offending vehicle by its owner, i.e. the Respondent No. 2 in the present appeal, the Respondent No. 2 i.e. the owner of the offending vehicle, did not pay extra premium to cover the risk of the Handyman of the offending vehicle and as such the Appellant/Insurance Company is not liable to indemnify said amount of compensation awarded by the learned Commissioner, Workmen's Compensation for the death of workmen (Handyman).

8. Mr. Dani Sharma, learned Counsel for the Appellant strenuously contends that the Appellant/insurance company will be liable to indemnify the said amount of compensation if the owner of the offending vehicle paid the extra premium for covering the risk of the workmen of the offending vehicle. In order to strengthen his submission Mr. Dani had taken this Court to the policy schedule and the certificate of insurance available at Annexure-A/4 to the present appeal and contended that no extra premium had been paid to cover the risk of the workmen by the owner of the offending vehicle (the Respondent No. 2).

9. To the contra, Mr. Dijen, learned Counsel for the Respondent No. 1 submits that statutory liability and or/liability of the insurer of the vehicle are mentioned in Section 147 of the MV Act, 1988 and the case of the Handyman, i.e. Respondent No. 1's son, Md. Nahapik, who died during the course of his employment as Handyman of the offending vehicle in the said motor accident, is covered by the statutory liability of the Insurance Company mentioned in the first proviso Clause (i) sub Clause (c) to Sub-section (1) of Section 147 of the MV Act, 1988.

10. Mr. Dijen, further contends that for the said statutory liability mentioned in the first proviso Clause (i) sub Clause (c) to Sub-section (1) of Section 147 of the MV Act, 1988, the owner is not required to pay extra premium to cover the risk of the workmen. Mr. Dijen, learned Counsel appearing for the Respondent No. 1, in order to substantiate his submission, refers to the decision of this Court (D/B) in National Insurance Co. Ltd. v. Lilu Rani Majumdar and Ors. 2005 (1) T.A.C. 56

(Gau) wherein this Court held that the owner of the insured vehicle would not require to pay extra premium to the Insurer, i.e. the Insurance Company to cover the risk of the employee carried in the goods vehicle and the Insurance Company is statutorily liable to cover the risk of the employee, i.e. workmen of the owner of the motor vehicle. For easy reference, para 1 and 2 of the said judgment in National Insurance Co. Ltd. case (supra) read as follows:

On 8th November, 1997, in an accident one Harilal Mazumdar, husband of the claimant (Respondent herein) died on the spot. He was the employee of the owner of the truck at the relevant time. The wife preferred a claim petition before the Commissioner of Workmen's Compensation, Nagoan against the owner of the vehicle and the Insurance Company was also made a party to the proceedings. The Commissioner of Workmen's Compensation had held that the accident occurred during the course of and arisen out of the employment. The deceased was the employee of the owner of the vehicle and at the relevant time, the Appellant Insurance Company has insured the truck, which had met with an accident as a result of which the claimant's husband had died. After consideration of the wages and the age of the deceased the Commissioner of Workmen's Compensation has awarded Rs. 1,92,140/- with interest @ 12% per annum amounting to Rs. 2,38,067.66 as compensation for the death of the husband of the claimant. Aggrieved by the award, the present appeal is filed by the Insurance Company.

2. It is contended by the learned Counsel for the Insurance Company that u/s 147 of the Motor Vehicle Act, 1988, liability of the Insurance Company to pay the compensation for the death of the employee in the goods carriage vehicle would arise only if extra premium is paid by the owner of the vehicle to the Insurance Company. The submission of the learned Counsel for the Insurance Company is devoid of any substance. First proviso to Section 147(1)(b) of the Act clearly covers the case of an employee who was carried in the goods vehicle and the Insurance Company is statutorily liable to cover the risk of an employee carried in the goods vehicle. Admittedly, at the relevant point of time the deceased was engaged by the truck owner, which is goods carrier and when he met with an accident, he was carried in the vehicle. That being the case, the liability of the Insurance Company to indemnify the owner arises out of the insurance policy u/s 147 of the Motor Vehicles Act, 1988. The point raised by the learned Counsel for the Insurance Company is squarely covered by a decision rendered by the Apex Court in the case of Ramashray Singh v. New Indian Assurance Company Limited and Ors. reported in AIR 2003 S.C.W. 3601.

3. The appeal is dismissed. However, there shall be no order as to costs.

11. After hearing submission of the learned Counsel appearing for the parties keeping in view of the decision of this Court (D/B) in National Insurance Co. Ltd case (supra) and also the decision of the Apex Court in Ramashray Singh v. New India Assurance Company Limited and Ors. reported in AIR 2003 S.C.W. 3601, this Court is of the considered view that the present case is squarely covered by

the earlier decision of this Court in National Insurance Co. Ltd case (supra). This Court further reiterates that the statutory liability of the Insurance Company mentioned in first proviso Clause (i) sub Clause (c) to Sub-section (1) of Section 147 of the MV Act, 1988 shall cover the risk of the employee (workmen) employed by the owner of the offending vehicle, in the course of his employment for the offending vehicle.

12. Accordingly, in the given case, the Appellant is statutorily liable to indemnify the said amount of compensation mentioned in the impugned judgment and award.

13. For the reasons discussed above, this appeal is devoid of merit. Dismissed.

14. Learned Registrar of this Bench is directed to release the amount of compensation already deposited with the Registry by the Appellant/insurance company in connection with the present appeal to the Respondent No. 1, Md. Abdul Rasid @ Sabdin, after proper verification of his identities through Mr. Dijen, learned Counsel for the Respondent No. 1.