
(2005) 09 GAU CK 0087
In the Gauhati High Court

National Insurance Company Ltd.

APPELLANT

Vs

Sabitri Rani Devi and Others

RESPONDENT

Date of Decision : 06-09-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 166

Citation : (2007) 2 ACC 169

Hon'ble Judges : I.S. Ansari, J

Bench : Single Bench

Judgement

I.S. Ansari, J.—The respondent Nos. 1 to 4 herein are legal representatives of deceased Mahendra Kumar Natli. On 28th May, 2000, when the said deceased was driving, on the National Highway No. 37, at Chabua, his scooter, bearing registration No. AS-23B/1469, the said scooter collided against a bus bearing registration No. AS04-A-8652. As a result of the said collision, the said scooterist died. The respondent Nos. 1 to 4, as legal representatives of the said deceased, instituted a claim proceeding u/s 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the M.V. Act") seeking compensation of a sum of Rs. 15 lacs. This claim application gave rise to M.A.C. Case No. 55/2001 in the Court of learned Motor Accident Claims Tribunal, Tinsukia.

2. In the proceeding before the learned Tribunal, the petitioner herein, as insurer of the said scooter, took the plea that since the said deceased was the owner of the said scooter, he himself drove the scooter and became a victim of the accident, he, not being a third party, was not covered by the relevant insurance policy inasmuch as the said policy was an "Act only" policy, which was issued u/s 147 of the M.V. Act. While the writ petitioner contested the proceeding the insurer of the said bus, namely, respondent No. 5 herein, settled the claim of the claimants aforementioned at a sum of Rs. 2,75,000 at a Lok Adalat. Subsequent thereto, the claim proceeding against the present petitioner continued and the same resulted into a judgment and award, dated 25th July, 2001, whereby the learned Tribunal directed the petitioner herein to pay Rs. 2,75,000 as

compensation. It is, this award, which stands impugned in the present writ petition.

3. I have heard Mr. D. Majumdar, learned Counsel for the petitioner, and Mr. S. Chauhan, learned Counsel appearing on behalf of the respondent Nos. 1 to 4. Though the respondent No. 5 filed their affidavit-in-opposition, none has appeared, on behalf of the respondent No. 5. at the time of hearing.

4. While considering the present writ petition, what is of utmost importance to note is that u/s 147 of the M.V. Act, provisions for compulsory insurance have been made and, without insuring a vehicle, in terms of Section 147, the same cannot be placed by its owner for use in a public place. Independent of compulsory insurance, which Section 147 provides for, the insurer, in consideration of premium, may undertake such liabilities in respect whereof, no provision for compulsory insurance has been conceived u/s 147. A compulsory insurance policy, which is obtained in terms of Section 147, is known as a statutory policy or Act only policy.

5. There is, however, no limitation on the part of insurer to assume any other liability. A compulsory or statutory insurance policy is, in fact, nothing, but an agreement, whereunder the insurer assumes the responsibility to indemnify the insured for the liability, which the insurer may incur in respect of death of, or bodily injury to, any person other than the insured. Viewed from this angle, it is clear that when the said deceased was himself the owner of the scooter aforementioned and he met with the accident, while he himself was driving the said scooter, the policy, in question, cannot be said to have covered the said scooterist and the petitioner, as insurer, cannot be held to have assumed the risk for the death of, or bodily injury to the owner of the said vehicle, i.e., the said scooterist and the benefit of the relevant insurance policy cannot be extended to the said deceased by treating him as a third party. This position stands settled by the Apex Court in *Dhanraj Vs. New India Assurance Co. Ltd. and Another*, wherein the Court held as follows:

8. Thus, an insurance policy covers the liability incurred by the insured in respect of death or bodily injury to any person (including an owner of the goods or his authorised representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Section 147 does not require an Insurance Company to assume risk for death or bodily injury to the owner of the vehicle.

9. In the Case of *Oriental Insurance Co. Ltd. v. Sunita Rathi*, reported in (1988) 1 SCC 365, it has been held that the liability of an Insurance Company is only for the purpose of indemnifying the insured against liabilities incurred towards a third person or in respect of damages to property. Thus, where the insured, i.e., an owner of the vehicle has no liability to a third party the Insurance Company has no liability also.

10. In this case it has not been shown that the policy covered any risk for injury

to the owner himself.... An owner of a vehicle can only claim provided a personal accident insurance has been taken out. In this case there is no such insurance.

6. What, thus, crystallizes from the above discussion is that an insurance policy, in terms of Section 147, covers the liability incurred by the insured in respect of death of, bodily injury to any person (including an owner of the goods or his authorised representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle or passengers of a public service vehicle. Section 147 does not require an Insurance Company to assume risk for death of, or bodily injury to, the owner of the vehicle. An owner of a vehicle can claim compensation, provided a personal accident insurance has been taken out. In the present case, however, the insurance policy does not cover any such risk. Unless the owner of an insured vehicle incurs any liability, Insurance Company cannot be said to be under statutory obligation to pay compensation. In short, incurring of the liability by the owner of the insured vehicle is sine qua non to bind the insured (sic. insurer) to indemnify the insured. Where the insured, i.e., an owner of the vehicle has no liability to a third party, the Insurance Company has no liability also.

7. What logically follows from the above discussion is that though there was no limitation, on the part of the said deceased, and the present writ petitioner, to enter into any agreement of insurance covering the risk in respect of the owner himself, no such insurance policy was, admittedly, obtained by the said deceased and in this view of the matter, the relevant policy, being a policy u/s 147, could not have been made the basis for passing of any award against the present petitioner directing them to pay compensation to the legal representatives of the said deceased.

8. In the result and for the foregoing reasons, this writ petition succeeds. The impugned award, dated 25th July, 2001, is hereby set aside and quashed. The decision in this writ petition shall not, however, prejudice the rights, if any, of the respondent Nos. 1 to 4 herein to receive compensation from any such person/ persons, who may be liable to pay to the respondent Nos. 1 to 4 compensation for the death of the said deceased.