

(2009) 10 UK CK 0019

In the Uttarakhand High Court

Case No : Appeal From Order No. 58 of 2008 and Cross Objection Application
No. 1955 of 2008

National Insurance Company Ltd.

APPELLANT

Vs

Shri Lalit Singh Negi and Another

RESPONDENT

Date of Decision : 12-10-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 145, 146, 147, 147(1), 149(1)

Citation : (2010) 1 UC 23

Hon'ble Judges : Tarun Agarwala, Acting C.J.

Bench : Single Bench

Advocate : V.K. Kohli, assisted by, T.C. Pande, for the Appellant; Z.U. Siddiqui, for the Respondent

Final Decision : Dismissed

Judgement

Tarun Agarwala, A.C.J.

1. This is an appeal u/s 173 of the Motor Vehicles Act, 1988 arising out of an award dated 11/12/2007 passed by the Motor Accident Claims Tribunal, Haldwani, District Nainital (hereinafter referred as "Tribunal").

2. The brief facts leading to the filing of the appeal is that an accident took place on the night of 27th April, 2005 at about 9:30 p.m. when the claimant, who was riding a motorcycle, was hit from behind by a jeep. It was a hit and run case, which resulted in injuries being caused to the claimant, it was alleged that as a result of this accident, the claimant broke his collarbone and injuries were also caused in his fingers, which resulted in the hospitalization for almost 12 days. It was alleged that the claimant incurred a sum of Rs. 2 lacs on hospitalization and that he had an annual income of Rs. 1,40,000/- and, therefore, claimed a compensation of Rs. 15 lacs.

3. The owner of the vehicle appeared and filed his written statement admitting the claim of the claimant and contended that the accident did take place on the

date of the incident, which resulted in the injuries being caused to the claimant, who was driving the vehicle in question. The owner of the vehicle also contended that the motorcycle was comprehensively insured and that the owner as well as the driver was insured, and that, the compensation, if any, was liable to be paid by the insurance Company.

4. The Insurance Company also filed the written statement denying the claim and contending that no amount was liable to be paid by the Insurance Company.

5. The Tribunal, after considering the evidence brought on record, held that the accident did take place on the date of the accident and that the claimant was hit from behind by an unknown jeep, which resulted in injuries being caused to the claimant and that the Tribunal further found that no negligence was caused on the part of the claimant and that the claimant had a valid driving licence at the relevant point of time. The Tribunal further found that the vehicle was comprehensively insured, which covered the personal insurance of the owner and driver of the vehicle and, consequently, the Insurance Company was liable to indemnify the claimant to the extent of liability created under the Insurance Policy. The Tribunal accordingly awarded a sum of Rs. 99,000/- as compensation to the claimant alongwith interest @ 7% per annum. The Insurance Company being aggrieved by the award of the Tribunal has filed the present appeal.

6. Heard Shri V.K. Kohli, the Learned Senior Counsel assisted by Mr. T.C. Pandey, the Learned Counsel for the Appellant and Shri Z. U. Siddiqui, the Learned Counsel for the claimant/opposite party.

7. The Learned senior counsel for the Appellant submitted that the claim application filed u/s 166 of the Motor Vehicles Act, at the instance of the claimant, was not maintainable in as much as a claim application u/s 166 of the Act was only available at the instance of a third party. The Learned senior counsel submitted that the claimant, who was driving the motorcycle, could not file the claim application u/s 166 of the Act either against the owner or against the Insurance Company since it was not a third party case. In support of his contention, the Learned Senior Counsel for the Appellant submitted that the words "any person" used u/s 147 of the Act are to be understood to relate only to a third party and, since the driver was not employed, the claim u/s 166 of the Act was not maintainable, in support of his submission, the Learned senior counsel for the Appellant placed reliance upon the decision of the Hon'ble Supreme Court in the case of the Oriental Insurance Company Ltd. v. Meena Variyal and Ors. reported in 2007 (2) T.A.C. 417 (S.C.) in which it was held:

10. Chapter XI of the Act bears a heading, "Insurance of Motor Vehicles against third party risks". The definition of "third party" is an inclusive one since Section 145(g) only indicates that "third party" includes the Government. It is Section 146 that makes it obligatory for an insurance to be taken out before a motor vehicle could be used on the road. The heading of that Section itself is "Necessity for insurance against third party risk". No doubt, the marginal heading may not

be conclusive. It is Section 147 that sets out the requirement of policies and limits of liability. It is provided therein that in order to comply with the requirements of Chapter XI of the Act, a policy of insurance must be a policy which is issued by an authorised insurer; or which insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2) against any liability which may be incurred by the owner in respect of the death of or bodily injury or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. With effect from 4.11.1994, injury to the owner of goods or his authorised representative carried in the vehicle was also added. The policy had to cover 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. Then, as per the proviso, the policy shall not be required 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 in respect of the death of, or bodily injury to, an employee engaged in driving the vehicle, or who is a conductor, if it is a public service vehicle or an employee being carried in a goods vehicle or to cover any contractual liability. Sub-section (2) only sets down the limits of the policy. As we understand Section 147(1) of the Act, an insurance policy thereunder need not cover the liability in respect of death or injury arising out of and in the course of the employment of an employee of the person insured by the policy, unless it be a liability arising under the Workmen's Compensation Act, 1923 in respect of a driver, also the conductor, in the case of a public service vehicle, and the one carried in the vehicle as owner of the goods or his representative, if it is a goods vehicle. It is provided that the policy also shall not be required to cover any contractual liability. Uninfluenced by authorities, we find no difficulty in understanding this provision as one providing that the policy must insure an owner against any liability to a third party caused by or arising out of the use of the vehicle in a public place, and against death or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of vehicle in a public place. The proviso clarifies that the policy shall not be required to cover an employee of the insured in respect of bodily injury or death arising out of and in the course of his employment. Then, an exception is provided to the last forgoing to the effect that the policy must over a liability arising under the Workmen's Compensation Act, 1923 in respect of the death or bodily injury to an employee who is engaged in driving the vehicle or who serves as a conductor in a public service vehicle or an employee who travels in the vehicle of the employer carrying goods if it is a goods carriage. Section 149(1), which casts an obligation on an insurer to satisfy an award, also speaks only of award in respect of such liability as is required to be covered by a policy under Clause (h) of Sub-section (1) of Section 147, (being a liability covered by the terms of the policy). This provision cannot therefore be used to enlarge the liability if it does not exist in terms of Section 147 of the Act.

8. Learned senior counsel for the Appellant further placed reliance upon the decision of this Court in the matter of the Oriental Insurance Company Ltd. v. Kumari Asbmita Pant and Ors. 2009 (1) U.D. 171 as well as another decision of the Supreme Court in-the matter of Oriental Insurance Co. Ltd. Vs. Rajni Devi and Others, . The aforesaid decisions basically relate to the claim of a third party.

9. In my opinion, the submissions raised by the Learned senior counsel for the Appellant is patently misconceived. A petition u/s 165 of the Act provides for the creation of a Tribunal for the purpose of adjudicating upon a claim for compensation in respect of an accident involving the death of, or bodily injury to, persons arising out of the use of motor vehicles or damages to any property of a third party so arising, or both. Section 166 of the Act provides that an application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 165 may be made by a person, who has sustained the injury and by such other persons, who have been specified therein. In the light of the aforesaid, the claimant had sustained injuries arising out of the use of motor vehicle and, consequently, the claimant was competent to file the claim application u/s 166 of the Act. The contention of the Learned senior counsel for the Appellant that the claim application was not maintainable at the instance of the claimant is erroneous.

10. With regard to the contention of the Appellant in relation to the provisions of Section 147 vis-a-vis the claim filed u/s 166, the reliance on paragraph 10 of the judgment of the Supreme Court Meena Variyal (Supra) is totally mis-placed. The words "any person" used in Section 147 of the Act has been interpreted by the Hon"ble Supreme Court to include a third party claim but it does not mean that the jurisdiction of the claim of owners or its authorized representatives has been ousted. In fact, w.e.f. 14th November, 1994, Section 147 of the Act was amended to include the owner of the goods or his authorized representative carried in the vehicle. Therefore, Section 166 of the Act vis-a-vis Chapter 11 of the Motor Vehicles Act is not confined to third party claims and, in a given case, where personal accident insurance is taken out by the owner and his authorized representative, any injury arising to the owner or its authorized representative, would be covered and an application for compensation could be filed u/s 166 of the Act.

11. The judgments i.e. Meena Variyal (Supra) cited by the Learned Counsel for the Appellant is not confined to a third party claim. Paragraph 10 of the said judgment clearly indicates that an injury to the owner of the goods or his authorized representative carried In the vehicle was covered u/s 147. In Dhanraj Vs. New India Assurance Co. Ltd. and Another, , the Supreme Court held that Section 147 includes the owner and its authorized representative as well as third party and that the owner can claim compensation provided a personal accident insurance had been taken out.

12. In the light of the aforesaid, the decisions cited by the Learned Counsel for the Appellant, namely Rajni Devi (Supra) and the Kumari Ashmita Pant (Supra)

are not applicable to the present facts and circumstances of the case since in those cases no special contract/insurance was taken out.

13. In the present case, a comprehensive policy was taken out by the owner of the vehicle. A perusal of the terms and conditions of the Insurance Policy indicates that a personal accident insurance was taken out by the owner against himself and driver. The policy further indicated that personal accident insurance to owner and driver was covered to the extent of liability of Rs. 1 lac. In view of the clear terms and conditions mentioned in the insurance policy covering the risk of injury to the owner and driver of the vehicle, the claim of the claimant, who was the driver, to the extent of Rs. 99,000/- was validly made by the Tribunal. The court does not find any error in the impugned award. The appeal of the Appellant fails and is dismissed.

14. A cross objection has been filed by the claimant praying for Rs. 15 lacs. In my opinion, the claimant was only entitled to the maximum of Rs. 1 lakh as covered under the policy. The Tribunal, after considering the material evidence, found that the claimant had incurred an expense of Rs. 96,000/- and that he had incurred a loss of earning of Rs. 3,000/- for the period which he had spent in hospitalization and consequently concluded that the Appellant was entitled for compensation amounting to Rs. 99,000/- plus interest @ 7% per annum. This finding given by the Tribunal is based on findings of fact which is not perverse. The claim of the claimant for Rs. 15 lacs was in any case beyond the coverage of the insurance company and could not be granted. Consequently, the cross objection of the claimant also fails and is dismissed.

15. In the circumstances of the case, there shall be no order as to cost.