
(2003) 08 CAL CK 0060
In the Calcutta High Court
Case No : F.M.A. No. 11 of 1999

New India Assurance Co. Ltd.

APPELLANT

Vs

Ananda Moyee Dikpati and Others

RESPONDENT

Date of Decision : 29-08-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 147(1)

Citation : (2004) ACJ 826

Hon'ble Judges : Samarash Banerjea, J;S.P. Talukdar, J

Bench : Division Bench

Advocate : Kamal Krishna Das, for the Appellant;Krishanu Banik and Rajesh Singh, for the Respondent

Final Decision : Allowed

Judgement

S.P. Talukdar, J.—The present appeal is directed against the judgment and award passed on 23.6.1998 by learned Special Court-cum-M.A.C. Tribunal, Burdwan, in M.A.C.C. No. 24/205 of 1998.

2. The relevant facts of the petitioners' case may briefly be stated as follows:

One Satyaprasanna Dikpati, employee of Burdwan University, since deceased, while returning home on his scooter along G.T. Road on 1.5.1996 was knocked down by a bus No. WMH 59 at about 9 a.m. at Badamtala. As a result, he suffered instant death. He had an income of Rs. 6,400 per month as his salary. As a result of such accidental death, the petitioners who are his family members were put into terrible financial hardship. Such an accident took place due to rash and negligent driving of the said bus bearing No. WMH 59.

3. National Insurance Co. Ltd., as the insurer of the said bus, contested the case by filing written statement wherein all the material allegations made by petitioners had been denied. The said company further stated that the claim of the petitioners was excessive.

4. The New India Assurance Co. Ltd. as the insurer of the scooter also filed a written statement wherein it was specifically claimed that the driver of the offending bus bearing No. WMH 59 was solely responsible for the accident resulting in the death of the victim.

5. The learned Tribunal after taking into consideration the pleadings on record framed as many as five issues.

6. After consideration of the evidence on record and the other relevant facts and circumstances, the learned Tribunal by the impugned judgment and order dated 23.6.1998 allowed the claim application and directed both the said insurance companies to pay compensation in the manner as specified therein.

7. Being aggrieved by and dissatisfied with the said impugned judgment, the New India Assurance Co. Ltd. preferred the instant appeal wherein it had been categorically asserted that the insurer of the scooter No. WNJ 7748 cannot be directed to pay any amount of compensation since the owner of the said scooter did not incur any liability. It had been claimed that the insurance policy indemnifies the owner and the owner having died, question of payment of compensation by the concerned insurance company could hardly arise. It was further pointed out that in absence of any liability fastened on the insurer, appellant insurer could not be directed to make any payment to the claimants-respondents. The appellant New India Assurance Co. Ltd., therefore, sought for setting aside of the judgment and award dated 23.6.1998.

8. It was submitted by learned counsel Mr. Kamal Krishna Das for the appellant New India Assurance Co. Ltd. that learned Tribunal was not justified in directing the insurer of the concerned company to pay any compensation whatsoever. Referring to the decision in the case of *The Oriental Fire and General Insurance Co. Ltd. Vs. Smt. Shakuntala Devi*, , it was submitted that the insurance company (insurer) is not liable to compensate the heirs of the deceased insured who dies in accident involving the insured vehicle. It was the categorical submission of learned counsel for the appellant that the insurance company cannot be under any legal obligation to compensate the heirs of the insured. In the case of *United India Insurance Company Limited, Gulbarga Vs. Siddanna Nimbanna Jawali and Another*, , it was submitted that the third parties cannot include the owner; the owner-insured is not covered by the policy. [Ref: *Minu B. Mehta v. Balkrishna Ramachandra Nayan*, 1977 ACJ 118].

9. In a judgment of the Division Bench of this court in the case of *New India Assurance Co. Ltd. Vs. Krishna Khatua and Others*, , it was held that the insurance policy makes insurer to pay compensation. Insured is held to be not covered by policy.

10. Mr. Kamal Krishna Das, learned counsel appearing for the appellant insurer submitted that the liability of the insurer arises only when the liability of the insured has been upheld for the purpose of indemnifying the insured under the contract of insurance. It was his further submission that if the insured is not held

liable, insurer cannot be directed to indemnify the insured. In case of National Insurance Co. Ltd. Vs. Sasilatha, , the Division Bench of the Hon''ble High Court, Kerala, held that the liability for the insurer is to indemnify the insured and not to pay any compensation for alleged bodily injuries sustained by the owner.

11. The liability of the insurance company is to compensate the insured towards the third party risk and not to insured himself. [See United India Insurance Co. Ltd. Vs. Darshan Kaur etc.,]. It is significant to mention that in the interpretation of the relevant provisions of the Motor Vehicles Act and while appreciating the spirit of the same, it is clear that the third party means and includes all victims of a motor accident other than parties to the contract of insurance. The attention of the court was drawn by learned counsel for the appellant to the decision in the case of The New India Assurance Company Limited, Bangalore Vs. Rajendra Singh and others, .

12. Following the decision in National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, , it has been held by a Division Bench of the Hon''ble High Court of Andhra Pradesh in the case of United India Insurance Co. Ltd. Vs. Odeti Mallu Bai and Others, , that comprehensive insurance does not necessarily mean that it covers the liability arising due to bodily injuries or the death of the insured himself. The observations made by a Division Bench of the Hon''ble High Court of Madhya Pradesh in the case of Hemlata Sahu and Others Vs. Ramadhar and Another, , are also in similar lines. Referring to the same, it was submitted by the learned counsel for the appellant that the basis of insurance is that if any liability arises then the insurance company shall be liable to indemnify the third party on behalf of the insured. But, in case when the insured himself meets with an accident and dies then the risk is not covered by the insurance policy. "The liability of insurance company is to compensate the insured towards the risk of third party and to satisfy the judgment and award passed against the insured".

13. Attention of the court was also drawn to the three-Judge Bench decision of the Apex Court in the case of Oriental Insurance Co. Ltd. Vs. Sunita Rathi and Others, . The Apex Court observed that "liability of the insurer arises for the purpose of indemnifying the insured under the contract of insurance when the liability of the insured has been upheld".

14. On the other hand, referring to the decision in the case of Om Parkash and Another Vs. Rajbiri and Others, , it was submitted by learned counsel for the respondent that it is the vehicle which is being insured and not the owner of the vehicle. It was categorically asserted by the learned counsel for the respondent that liability of insurer depends on the terms of the contract between insured and insurer.

15. Applying the said principles of law, though not necessarily free from difference of views, to the facts and circumstances of the instant case it may be stated that the victim in the present case was owner of the scooter, which was knocked down by the offending vehicle being the bus No. WMH 59. The victim

having died in the said accident, question of his payment of compensation to others can hardly arise. It is worth mentioning that National Insurance Co. Ltd. as insurer of the offending bus bearing No. WMH 59 never claimed in the written statement filed by it before the learned Tribunal that the scooter concerned was in any way responsible for the accident. The present appellant, i.e., New India Assurance Co. Ltd., also filed written statement before the learned Tribunal and it specifically pleaded that any compensation or award, if at all, may be passed against the insurance company of the offending bus, i.e., WMH 59.

16. Learned Claims Tribunal, however, after taking into consideration all the facts and materials came to the conclusion that the scooterist as well as the driver of the offending bus were equally responsible for the accident and this led learned Tribunal to pass an award of compensation against the insurance companies of both the vehicles and it divided the amount of compensation in equal proportion. It appears that statutory compensation of Rs. 50,000 was earlier awarded in favour of respondents-claimants amongst the two insurance companies which satisfied the said award. The contention of the present appellant that the insured having died in the accident, there could be no question of indemnifying, was never raised before learned Tribunal. As already stated, 50 per cent of the statutory amount of compensation, i.e., an amount of Rs. 25,000 had been paid by the present appellant. But the present contention is purely based on strict construction of the terms and conditions of the insurance policy and even though not raised earlier, such plea cannot just be brushed aside. It seems to be the settled principle of law and it also follows from the insurance policy in question that question of the insurer indemnifying the insured cannot arise in view of death of the insured in the accident.

17. Mr. Banik, learned counsel for the respondents submitted that India Motor Tariff which supersedes the provisions of India Motor Tariff in existence up to 30.6.2002 deals with personal accident coverage under the motor policy. General Regulation 36 of the said tariff reads as follows:

"A. Compulsory personal accident cover for owner-driver.

Compulsory personal accident cover shall be applicable under both liability only and package policies. The owner of insured vehicle holding an effective driving licence is termed as the owner-driver for the purpose of this section.

Cover is provided to the owner-driver whilst driving the motor vehicle including mounting into/dismounting from or travelling in the insured vehicle as a co-driver.

NB. This provision deals with personal accident cover and only the registered owner in person is entitled to the compulsory cover where he/she holds an effective driving licence. Hence compulsory PA cover cannot be granted where a vehicle is owned by a company, a partnership firm or a similar body corporate or where the owner-driver does not hold an effective driving licence. In all such cases, where compulsory PA cover cannot be granted, the additional premium for the compulsory PA cover for the owner-driver should not be charged and the

compulsory PA cover provision in the policy should also be deleted. Where the owner-driver owns more than one vehicle, compulsory PA cover can be granted for only one vehicle as opted by him/her."

18. Following this, it was argued by Mr. Banik that if owner of a vehicle, while driving the said vehicle, meets with an accident resulting in his death, the personal accident coverage as referred to earlier, must come into play to the benefit of the legal heirs and the representatives of such victim/owner. There is no doubt that our heart is with Mr. Banik. But, rational approach will inevitably lead to the conclusion that such a tariff which was admittedly not in existence at the relevant time, cannot be made applicable and accordingly, however, strong our desire might be, the benefits arising therefrom cannot be extended to the unfortunate victims of such owner/driver.

19. After careful consideration of all facts and circumstances and having regard to the discussion as made above, we are perhaps left with no choice but to accept the contention raised herein on behalf of the appellant, though not without pain in mind.

20. In the circumstances, the present appeal is allowed and the judgment and award passed in M.A.C.C. No. 24/205 of 1998 dated 23.6.1998 by learned Special Court-cum-M.A.C. Tribunal, Burdwan stands modified to the extent that appellant New India Assurance Co. Ltd. need not pay any further compensation and the impugned judgment stands modified to the extent as indicated herein. The award passed by the learned Tribunal against National Insurance Co. Ltd., i.e., the insurer of the offending bus bearing No. WMH 59, is to be satisfied within a period of four weeks from the date of communication of this order, if not already done. Such amount, if not already paid by the said National Insurance Co. Ltd., subject to adjustment of any amount paid either before this court or before the learned Tribunal and excluding amount of statutory compensation, be paid before learned Tribunal by issuance of three account payee cheques of equal amount in favour of respondent Nos. 1, 2 and 3 and learned Tribunal is to pay the said cheques to the claimants on proper identification.

21. Xerox certified copy, if applied for, be given to the parties on payment of requisite fees or priority basis.

Samaresh Banerjea, J.

I agree.