

(2012) 02 GUJ CK 0082

In the Gujarat High Court

Case No : First Appeal No. 2423 of 1998 to 2425 of 1998

New India Assurance Co. Ltd.

APPELLANT

Vs

Gitaben Mukeshbhai Pathak and Others

RESPONDENT

Date of Decision : 10-02-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 145, 146, 147, 147(1), 2
Workmens Compensation Act, 1923 — Section 149(1)

Citation : (2013) ACJ 1216

Hon'ble Judges : C.L. Soni, J; Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Ajay R. Mehta, for the Appellant; J.D. Ajmera for Defendant(s) : 1, None for Defendant(s) : 1.2.1, 1.2.2, 1.2.3, Notice Served for Defendant(s) : 2 - 3 and Mr. Rahul K. Dave, Asstt Government Pleader for Defendant(s) : 4, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice Akil Kureshi

1. These appeals arise out of the common judgment and award dated 24.3.1998 passed by Motor Accident Claims Tribunal (Auxiliary), Ahmedabad (Rural) in Motor Accident Claim Petition Nos.1030 of 1990 to 1032 of 1990. Since identical question of law has been raised by the appellant-Insurance Company in all these three appeals, we have heard such appeals together and proposed to dispose of the same by this common judgment. Briefly stated facts are as follows:

2. In a Government vehicle, belonging to the Irrigation Department, three officers were travelling on 8.2.1990 from Nadiad to Gandhinagar. The car was being driven by the driver of the Government. The Government official's car, being ambassador car, bearing Registration No. GJU 8146, dashed with tree near a landmark, called Madhu Hotel, resulting into serious bodily injuries to all three Government officials travelling in the car. Shri Mukeshbhai Natvarbhai Pathak, who was Assistant Engineer in the Irrigation Department filed Claim Petition

No.1030 of 1990, claiming compensation of Rs.15,00,000/-. Shri Abubker Abdul Rehman Kheruwala, who was, at the relevant time, Deputy Engineer in the Irrigation Department, filed Claim Petition No.1031 of 1990, claiming compensation of Rs.3,00,000/-for bodily injuries received by him. Shri Ishwarbhai Devjibhai Patel, who was Assistant Engineer in the Irrigation Department, filed Claim Petition No.1032 of 1990, claiming compensation of Rs.1,50,000/-. It was not the case of all the claimants that the vehicle was being driven rashly and negligently by the driver which resulted into accident.

3. The Claims Tribunal, after perusing the evidence on record, came to the conclusion that the accident occurred on account of negligent driving of the vehicle by the driver of Ambassador car. The claims Tribunal awarded compensation of Rs.2,56,744/-in Claim Petition No.1030 of 1990, Rs.1,37,932/-in Claim Petition No. 1031 of 1990 and Rs.1,29,552/-in Claim Petition No.1032 of 1990. The Tribunal held that the driver, owner and the Insurance Company, which had insured the vehicle, would be jointly and severally liable to satisfy the awards.

4. Before the Claims Tribunal, the Insurance Company of the vehicle, i.e. the present appellant, had contended that looking to the insurance policy of the vehicle in question, the Insurance Company has no liability to satisfy the award. The Claims Tribunal, however, held that the claimants were third parties travelling in the vehicle and that, therefore, the insurance policy, which covers risk of third party, would require the Insurance Company to satisfy the award.

5. Before us, the Insurance Company has filed three separate appeals challenging the above-noted awards of the Claims Tribunal on one legal ground. It is the contention of the Insurance Company that looking to the terms of the insurance policy and the provisions contained u/s 147(1) of the Motor Vehicles Act, 1988, Insurance Company had no liability to satisfy the awards.

6. On behalf of the appellant-Insurance Company, learned counsel Mr. Rajni Mehta contended that the insurance policy was not a comprehensive policy. It was only an Act policy covering the statutory risk. The insured had not paid any additional premium to cover any risk beyond third party liability. In that view of the matter, the Tribunal committed an error in fastening the liability on the Insurance Company to satisfy the awards.

7. The learned counsel for the Insurance Company drew our attention to various terms and conditions of the policy and, in particular, Section 2 of the General Terms, providing for liability to third party, wherein it is inter alia provided that Company would indemnify the insured in the event of accident caused by or arising out of the use of the motor vehicle. With respect to death or bodily injury to any person, including occupants carried in the motor vehicle, provided that such occupants are not carried for hire or reward and further that Company shall not be liable where such death or injury arises out of and in the course of employment of such person by the insured. On the basis of such terms, he

contended that the claimants who were travelling in the vehicle for official work and were the employees of owner of the vehicle, in their cases, for the injuries received, the insurance policy did not provide any coverage. Learned counsel also heavily relied upon the statutory provisions provided u/s 147(1) of the Motor Vehicles Act.

8. On the other hand, learned Assistant Government Pleader opposing the appeals contended that the Claims Tribunal committed no error.

9. Having heard the learned counsel for the rival parties, we find that two aspects of the matter emerge as undisputed. Firstly, that the insurance policy in question was not comprehensive policy and it covered only third party risk to the extent provided under the Statute. In fact, the policy itself provided that the Insurance Company shall not be liable to indemnify the insured in case of death or injury to any employee in course of employment. Second aspect, which emerges as undisputed, was that all the claimants were travelling in Government vehicle for official duty. The Claims Tribunal also came to certain findings. The Government has not questioned such confusions of the Tribunal. Claimant Mukeshbhai Natvarbhai Pathak, in his deposition, at Exh.21, started by saying that on 8.2.1990, for office work, he had started from Nadiad to reach Gandhinagar in the office car, being ambassador car, bearing No.GJU 8146. He was accompanied by other officers, namely Shri Abubker Abdul Reheman Kheruwala and Shri Ishwarbhai Devjibhai Patel.

10. In view of the above factual background, the question arises whether the Claims Tribunal was justified in fastening the responsibility on the Insurance Company to satisfy the awards. Under the very similar circumstances, we had an occasion to examine such a question in First Appeal No. 2214 of 1999, which came to be disposed of by our judgment dated 7.2.2012. In the said decision, we upheld the Insurance Company's contention that the Claims Tribunal erroneously fastened the liability on the Insurance company to satisfy the award. The appeal was disposed of by making the following observations: 11. Having thus heard the learned counsel for the parties and having perused the documents on record, few facts emerge from the record as undisputed. Deceased Bhogilal was an employee of the State Government. He had travelled in the Government vehicle for his official work to Valsad. After completing his work while returning from Valsad, the vehicle in which he was travelling met with an accident. The vehicle was being driven by the driver of the Government. Short question, therefore, which calls for our consideration in view of such factual background is whether the Insurance Company was liable to satisfy the claim of the heirs of the deceased.

11. From the record, it also emerges that the insurance policy was a limited liability policy and covered only the statutory risk. The insured had not paid any additional premium to cover any additional risk. Clause 1 of the terms of the policy pertained to liability to third parties and provided that subject to the limited liability as laid down in the Motor Vehicles Act, the Insurance Company

will indemnify the insured in the event of accident caused by or arising out of the use of the Motor Vehicle. The policy also contained such general clauses of exceptions. Clauses 2 and 3 which are relevant for our purpose are as under:

2. The Company shall not be liable in respect of any claim arising out of any contractual liability.

3. Except so far as is necessary to meet the requirements of the Motor Vehicles Act the Company shall not be liable in respect of death arising out of and in the course of employment of a person who is indemnified under this policy or bodily injury sustained by such person arising out of and in the course of such employment.

Combined reading of the terms of the policy would reveal that the same was made to cover only statutory liability contained under the Motor Vehicles Act and no further. In particular, it provided that the Insurance Company shall not be liable in respect of death arising out of and in the course of employment of a person in the employment of the insured.

12. Section 147 of the Motor Vehicles Act pertains to requirements of policies and limits of liability. Sub-section (1) thereof which is relevant for our purpose reads as under:

147. Requirements of policies and limits of liability.-(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which

(a) is issued by a person who is an authorized insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the 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;

Provided that a policy shall not be required

(i) 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 (8 of 1923), in respect of the death of, or bodily injury to, any such employee

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

- (c) if it is a goods carriage, being carried in the vehicle, or
- (ii) to cover any contractual liability.

Explanation.-For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

Proviso to sub-section (1) of section 147 in clear terms provides that the policy shall not be required to cover liability in respect of death arising out of and in the course of employment of the employee of a person insured by the policy. In the present case, the deceased was travelling in the vehicle insured by the policy of the Insurance Company as employee of the owner. When the accident took place, therefore, in our view, the Insurance Company was not liable to satisfy the claim awarded by the Tribunal for the death of such a person.

13. The issue is no longer res integra and is squarely covered by the decision of the Apex Court in the case of *The Oriental Insurance Company Limited Vs. Meena Variyal and Others*, . Facts in the said case were very similar to those involved in the present appeal. The vehicle was owned and insured by the Company. The deceased died when the vehicle met with an accident in which he was travelling. It is unclear whether the deceased himself was driving the vehicle or the vehicle was being driven by driver Mahmood Hasan at the time of the accident. The Apex Court considered the legal situation in both the eventualities. The Court was of the opinion that if the deceased himself was driving the vehicle at the time of the accident, the situation would be that on such count itself, heirs of the deceased may not be entitled to claim any compensation. The Apex Court also considered the alternative situation that if it was found that the deceased was a mere passenger and the vehicle was being driven by Mahmood Hasan, the driver. In that background, the Apex Court considered the policy and the provisions contained in section 147 of the Act and came to the following conclusion :

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 14.11.1994, 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 cover 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.

11. The object of the insistence on insurance under Chapter XI of the Act thus seems to be to compulsorily cover the liability relating to their person or properties of third parties and in respect of employees of the insured employer, the liability that may arise under the Workmen's Compensation Act, 1923 in respect of the driver, the conductor and the one carried in a goods vehicle

carrying goods. On this plain understanding of Section 147, we find it difficult to hold that the insurance company, in the case on hand, was liable to indemnify the owner, the employer Company, the insured, in respect of the death of one of its employees, who according to the claim, was not the driver. Be it noted that the liability is not one arising under the Workmen's Compensation Act, 1923 and it is doubtful, on the case put forward by the claimant, whether the deceased could be understood as a workman coming within the Workmen's Compensation Act, 1923. Therefore, on a plain reading of Section 147 of the Act, it appears to be clear that the insurance company is not liable to indemnify the insured in the case on hand.

14. In view of the above conclusive pronouncement of the Apex Court on the very issue which we are considering in the present appeal, we have no hesitation in reversing the award of the Claims Tribunal to the limited extent so far as it fastened liability on the appellant Insurance Company to satisfy the award. To this limited extent, the impugned award of the Tribunal is required to be and is hereby set aside.

In the result, the present appeals are also allowed. The Insurance Company deposited the entire amount awarded by the Claims Tribunal in each of the claims petitions along with proportionate costs and interest. It would, therefore, be open for the Insurance Company to recover the same from respondent No.3. Respondent No.3 shall make such payment with 9% simple interest per annum from the date of deposit of the same before the Claims Tribunal till actual realization. It would not be necessary for the Insurance Company to file separate proceedings for such purpose.