(2002) 08 CAL CK 0006

In the Calcutta High Court

Case No : F.M.A. No. 112 of 2001

New India Assurance Co. Ltd. APPELLANT

Vs

Krishna Khatua and Others RESPONDENT

Date of Decision : 22-08-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 140

Citation : (2004) 3 ACC 176 : (2003) ACJ 1974

Hon'ble Judges : Rajendra Nath Sinha, J;Aloke Chakrabarti, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Aloke Chakrabarti, J.—This appeal was filed challenging the award dated 12.5.2000 passed by the Motor Accidents Claims Tribunal on a petition u/s 140 of the Motor Vehicles Act, 1988, granting statutory compensation of Rs. 50,000 and the insurance was directed to pay the said amount according to the direction contained in the impugned judgment.

2. Facts available on records are that on 6.3.1998, a Trekker carrying the victim along with marriage party while coming back was moving at a very high speed and in a rash and negligent manner when it suddenly overturned causing the death of the victim on the spot. The insurance coverage is not under dispute but it has been stated by appellant insurance company that the risk covered by the said insurance agreement was in respect of all persons covered by the expression ?third party? and as the deceased was one of the two owners of the Trekker his dependants are not entitled to payment of compensation from the insurance company.

3. Mr. Das, learned Counsel appearing for the appellant insurance company referred to the insurance agreement showing that the policy was comprehensive policy and there was no clause showing that the owners of the vehicle were covered by the said agreement and, therefore, in case of death of one of the

owners while riding the vehicle, the insurance company is not liable to pay compensation under the said insurance agreement. In support of his contention Mr. Das has relied on the judgments in the cases of New India Assurance Co. Ltd. Vs. Susamma Varghese, ; The Oriental Fire and General Insurance Co. Ltd. Vs. Smt. Shakuntala Devi, ; United India Insurance Co. Ltd. Vs. Odeti Mallu Bai and Others, ; Hemlata Sahu and Others Vs. Ramadhar and Another, ; National Insurance Co. Ltd. Vs. Sasilatha, ; The New India Assurance Company Limited, Bangalore Vs. Rajendra Singh and others, ; United India Insurance Co. Ltd. Vs. Darshan Kaur etc., and United India Insurance Company Limited, Gulbarga Vs. Siddanna Nimbanna Jawali and Another, .

4. Relying on the aforesaid judgments, the learned Counsel for the appellant contended that the insurer?s liability is on the contract of indemnity entered into between insurer and the owner of the vehicle and the principle behind the contract of indemnity is that where the owner of a motor vehicle is compelled to pay compensation to persons who suffered injury or damage on account of an accident involving the vehicle, the insurer will indemnify the owner. Therefore, when the owner dies in the accident involving the motor vehicle, the contract of indemnity will not cover such case as the owner of the offending vehicle is not to pay compensation to any other person. Strong reliance was placed on the judgment in the case of United India Insurance Co. Ltd. Vs. Odeti Mallu Bai and Others, , as same was also a case of comprehensive policy and the death was of the insured in an accident involving the insured vehicle and it was decided therein that in case of a comprehensive policy the damage to the vehicle will remain covered but not the bodily injury or death of the insured himself.

5. Mr. Mahato, learned Counsel for the respondents-claimants contended that the judgments relied on by the appellant will not apply in the present case as the insurance agreement covers two insured persons and one of them having died in the accident involving the insured vehicle, the other insured person remains liable to pay compensation to dependants of the victim and, therefore, applying the law as decided in the case of M/s. United India Insurance Co. Ltd. Vs. B. Hemawati and Others, , the compensation is payable by the insurance company under the said agreement.

6. Considering the above contention we find admittedly the victim is owner-insured. Law in this connection has been decided by various High Courts both under the old law and the new law holding that insurance policy makes insurer liable to only indemnify the insured in case he is held liable to pay compensation. Insured is held to be not covered by policy. Judgments cited by the appellant particularly in the cases of United India Insurance Company Limited, Gulbarga Vs. Siddanna Nimbanna Jawali and Another, ; United India Insurance Co. Ltd. Vs. Darshan Kaur etc., and Hemlata Sahu and Others Vs. Ramadhar and Another, , support such view.

7. From the contract of insurance the liability for bodily injury of the owner-insured, has not been shown. As the policy is comprehensive only the additional

claim can be damage for the property.

8. The case of M/s. United India Insurance Co. Ltd. Vs. B. Hemawati and Others, , cited by respondents does not support the proposition argued by the respondents.

9. Therefore, the appeal is allowed. The impugned award is set aside and the claim petition is dismissed.

Rajendra Nath Sinha, J.

10. I agree.

22.8.2002 (later). In view of the above judgment the appellant will be entitled to withdraw any amount, if deposited in terms of the impugned award.

11. Let urgent xerox certified copy of the order, if applied for, be supplied to the learned Counsel for the appellant.