
(2007) 07 OHC CK 0090
In the Orissa High Court
Case No : In MACA No. 18 of 2003

New India Assurance Company Ltd., Khurda Branch	APPELLANT
Vs	
Sujit Barisal and Others	RESPONDENT

Date of Decision : 27-07-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 147I, 149(2), 170, 95

Citation : (2007) CLT 764 Supp

Hon'ble Judges : I. Mohanty, J

Bench : Single Bench

Advocate : M. Sinha, S.K. Mohanty, P.R. Sinha and P. Sinha, for the Appellant;
S.K. Sanganerla, P.C. Patnaik, A.K. Sahu and B. Paltasingh, for the Respondent

Final Decision : Dismissed

Judgement

I. Mohanty, J.—The New India Assurance Company Limited is the appellant in the above two appeals and assails the judgments awards dated 8.8.2002 and 7.8.2002 passed in Misc. Case No. 230 of 01997 and Motor Accident Claims Tribunal Misc. Case No. 239 of 1997 respectively by 3rd Motor Accident claims Tribunal, Bhubaneswar.

2. The claims arose out of an accident which took place on 21.3.1997 at 8.30 P.M. at Jatni-Khurda By-pass Chhak on N.H. No.5. It is further stated that the deceased, his family members and other relations had gone to Puri to perform worship before Lord Jagannath and while returning in a jeep bearing registration No. ORP 8850 the driver of the jeep parked the vehicle on eastern side pitch portion of Khurda-Jatni road in order to cross N.H.No.5. At that time a Trailor Truck bearing registration No. N.L. 05/A- 2574 was coming from Berhampur side and proceeding towards Bhubaneswar at a very high speed and in the process of overtaking some parked vehicle on the National High way, the driver of the Trailor steered the vehicle to extreme right of the road and consequently dashed against the parked jeep with violent force, as a result of which the deceased Rama Chandra Barisal fell down from the jeep and was crushed under the wheels

of the Tractor and died at the spot. Apart from that the son of the deceased also sustained severe fracture and bleeding injuries on his person. The legal heirs of the deceased filed M.A.C.T. Misc. Case No. 239 of 1997 before the 3rd M.A.C.T., Bhubaneswar claiming a compensation of Rs.2,65,000/- - against the owners and insurers of both the offending vehicles and in claim Misc. Case No. 230 of 1997 the injured son of the deceased, namely, Sujit Barisal claimed a compensation of Rs.100,000/- - for permanent physical and functional disability, against the owners and insurers of both the vehicles.

3. Though Sk. Ibrahim Bux (O.P.No.1) (owner of the jeep) appeared before the Tribunal and filed a written submission, he did not prefer to contest the case and as such Opposite party No. 1 was set ex-parte. Opposite party No. 2-M/s. G.S. Atwal & Company (Eng.) Private Limited owner of the Tractor did not appear in spite of receipt of summons and as such, opposite party No. 2 was set ex-parte. Opposite parties 3 and 4, i.e. the insurers of the offending jeep and tractor respectively appeared and filed their written submission and contested the case. In essence, the Insurance companies have contested the case by denying the allegations of the claimants and also denied the income and source of income of deceased at the time of accident. Both the insurance companies also took the defence that they have no knowledge about the accident and the drivers of the offending vehicles had neither possessed any valid driving licence nor the vehicle were duly covered under the insurance policy granted by them. The Opposite party No.3 (New India Assurance Company Limited) also took a further defence that the policy granted by it, though valid on the date of accident, no passenger was covered under the said Policy.

4. The Claims Tribunal framed the following issues in MACT Misc. Case No 239 of 1997 in MACT Misc. Case No.239 of 1997:-

(1) Whether the death of Sri Ram Chandra Barisal was due to the Motor vehicle accident involving vehicle Nos. ORP 8850 Jeep and N.L.05 1 A-2572 (Tractor)?

(2) Whether the drivers of the vehicles were rash and/or negligent in causing the accident?

(3) Whether the petitioners are entitled to compensation and, if so to what extent and from which O. Ps?

5. After dealing with issue nos. 1 and 2, the Claims Tribunal came to the following conclusion:

Therefore it is conclusively held that the death of the deceased was due to rash and negligent driving of both the drivers of the Jeep O.R.P. 8850 and Tractor N.L. 051 A 2574. Taking into consideration it is seen from the documents and evidence that it is a case of composite negligence and as such the degree of negligence is taken 30% on the driver of the Jeep and 70% on the driver of the Tractor as the Tractor is heavier vehicle than jeep. Accordingly both the above issues answered in favour of the petitioners.

6. The Tribunal coming to a conclusion that the present accident was due to composite negligence of drivers of both the vehicles, hold that the percentage of negligence was 30% on the part of the driver of Jeep (Insured by the New India Assurance Company Limited-appellant) and was 70% on the part of the driver of the Tractor (Insured by the National Insurance Company Limited). The New India Assurance Company Limited which has been saddled with 30% liability filed the present appeal, whereas, the National Insurance Company Limited which had to bear 70% of the liability has complied with the Tribunal's award.

7. Mr. Sinha, Learned Counsel appearing for New India Assurance Company Limited, inter alia, raised the following contentions:-

The victims were traveling as "passengers" in a private Jeep which was insured under "Act Only Policy", covering the statutory liability only.

Under "Act Only" or T.P.(Third Party) Policy, the risk of passengers was not covered and relied upon the decision of the Apex Court reported in The Oriental Insurance Company Limited Vs. Meena Variyal and Others, .

8. On the other hand Mr." P.C.Patnaik, Learned Counsel for the claimants supported the findings arrived at by the learned Tribunal and stated that the grounds raised in the present appeal are not maintainable, since these grounds are not available to an Insurance Company u/s 149(2) of the Motor Vehicles Act,1988 (in short "the Act") and, the Appellant had not made any application u/s 170 of the Act.

9. Mr. Sinha, Learned Counsel for the New India Assurance Company Limited submitted that since an "Act only" Policy was granted in favour of the owner of the Jeep involved in the present case such a policy does not cover the risk of the "passenger" travelling in the said vehicle. In this respect he placed reliance on two judgments of the Hon'ble Apex Court in the case of Dr.T.V.Jose v. Chacko P.M. alias Thankachan and Others, AIR 2001 SC 3939 and in the case of The Oriental Insurance Company Limited Vs. Meena Variyal and Others, .

10. In view of the contentions advanced it is important to first ascertain the extent of coverage of an Insurance policy, granted u/s 147 of the Act and also to ascertain whether the claims raised in the present case are covered in terms of the said Insurance policy or not. Before dealing with the case laws referred by the Learned Counsel for the appellant, it is important to take note of the relevant provisions of the M.V.Act,1988.

Chapter XI

INSURANCE OF MOTOR VEHICLES AGAINST

THIRD PARTY RISKS

145. Definitions. - In this chapter,-

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(g) "third party" includes the Government.

146. Necessity for insurance against third party risk,-)l) No person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter:

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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; or

(b) insurers the person or classes of person 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 1 (injury to any person, including owner of the goods or his authorized representative carried in the vehicle) or damage into any property of a third party caused by or arising out of the use of the vehicle in a public place;

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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.

11. It is the case of the appellant that it had insured the owner of the jeep and had issued the policy (Act only), which has also been termed as "third party policy". Irrespective of such nomenclature, the M.V. Act stipulates the mandatory requirement for a policy of insurance u/s 147. Therefore, on a plain reading of Section 147 of the Act, the following established features are apparent.

The Policy also contains the following conditions: -

(i) Person or Classes of Persons entitled to drive

Any of the following:

(a) The Insured

(b) Any person who is driving on the insured's order or with permission.

Provided that the person driving holds or had held and has not been disqualified from holding an effective driving licence with all the required endorsements thereon as per "the Motor Vehicles Act and the Rules made hereunder for the time being in force to drive,the category of Motor Vehicle insured hereunder.

(ii) Limitation as to use:

Use only for social, domestic and pleasure purposes and for the insured's own business.

The policy does not cover the use for hire or reward or for organized racing pacemaking, reliability trials, speed testing the carriage of goods (other than samples) in connection with any trade or business or use for any purpose in connection with Motor Trade.

In view of the law/facts noted hereinabove, the only question that remains to be adjudicated is as to whether the deceased and the injured are covered under the term "any person" stipulated in Section 147 (l)(b) of the M.V.Act.

On a conjoint reading of the above it is available from the records of the Tribunal that the person who was driving at the time of accident was the driver employed by the employer having valid driving license and it is undisputed fact that the driver who was driving the vehicle on the date of the accident was doing so with the permission of the owner, i.e., insured. There is further evidence on record to show that the accident took place while returning after darshan of Lord Jagannath and therefore it is clear that the vehicle was being used for "special domestic or pleasure purposes" and not for any prohibited purpose.

12. this Court in the case of The Divisional Manager, Oriental Insurance Co. Ltd., Cuttack Divisional Office Vs. Jasoda Mohanta and Others, wherein Hon'ble Justice P.Ray, came to consider Section 95 of the Motor Vehicles Act, 1939 vis-a-vis Section 147 of the Motor Vehicles Act, 1988 and on an analysis of the two provisions came to hold as follows:

12. "An analysis of the language of Sec. 147 (l)(b)(i) of the M.V.Act, 1988 leaves no doubt that the words "any person" mean not only third party, but also other persons and the word "vehicle" covers all kinds of vehicles including a goods vehicle in case of death or bodily injury the legislature, has used the words "any person" while in case of damage to property the legislature has confined it only to property of a third party, This difference in language is indicative of the wider coverage in case of death or bodily injury.

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14. It is not possible to accept the submission that the words "any"person" used in unamended Sec. 147 (l)(b)(i) were to be given a restricted meaning and kept confined to third party only. Such a restricted meanings would be doing violence to the common and dictionary meaning of the words used in the section. Moreover, it is an accepted principle of interpretation of statutes that in case of beneficial legislation construction of any provision, which is more favourable to the persons for whose benefits the law has been enacted, should be adopted. There cannot be any dispute that Motor Vehicles Act particularly the provisions relating to compensation for the victims of road accidents and the requirement of compulsory insurance coverage are meant for the benefit of the victims and the

members of their family.

The aforesaid determination of the question of law squarely applies to the points of law raised by the appellant in the present case and clearly gives out the reasons as to why the contention of the appellant to the converse cannot be accepted.

13. This Court had a further occasion to deal with the term "third party risk" in the case of *Gyan Singh Babaji v. Jitendra Nath Bisoi and Another*, 2000 (2) TAC 318 (Ori.), wherein a Division Bench of this Court headed by Hon"ble Shri Justice A.Pasayat, Acting Chief Justice (as His Lordship then was) determined the definition of the aforesaid term by placing reliance on Stroud's Judicial Dictionary, wherein the meaning of the words third party risk" has been given as follows:

Third party risks" Road Traffic Act, 1936(20 and 20 Geo. 5-40, 5.C, 43-S.35) connotes that the insurer is one party to the contract, that the policy holder is another party, and the claims made by others in respect of the negligent use of the car, may be naturally described as claims by third party.

14. After having taken note of the aforesaid judgments it is now necessary to consider two citations relied upon by the Learned Counsel for the appellant, i.e., the case of *Dr. T.V.Jose (supra)*. In the case of *Dr. T.V.Jose (supra)*, an Insurance policy had been issued by the Insurance Company, which was valid from 25th November 1986 to 24th November 1987. Dr. Jose had sold the car on 7th May, 1986 to one Smt. M.K.Bhavani who had thereafter sold the car on 12th May, 1986 to Sh.Aboobacker and thereafter Aboobacker had sold the said car to one George Mathew on 15th August, 1986, thereafter George Mathew had sold the same to one Roy Thomas on 18th August, 1986. On the date of accident, i.e. on 9th April, 1997 the vehicle belonged to Roy Thomas. Although the transfer of ownership of the car was never intimated to the R.T.O. the vehicle remained in the name of the original owner, i.e., Dr. T.V.Jose, the appellant. Considering the provisions of Liability to third parties, His Lordship in para- 19 of the judgment came to hold that since the terms and conditions governing this policy are not on record and what was shown to Court was terms and conditions of a comprehensive policy relating to private cars. In the absence of the terms and conditions governing this policy, it was not possible for the Hon"ble Court to accept the submission of Mr. Iyer, Learned Counsel for the appellant, that the policy in question covered the liability of occupants of the car.

In the present case, the Insurance policy has been accepted and marked as Exhibit-A before the M.A.C.T., i.e., in the present case there is no dispute regarding existence of policy of the offending vehicle. The only point that arises in the present case is as to whether the term "any person" contained u/s 147(I) (b) covers the claimants or not. Therefore, the fact of the present case is distinguishable from the case referred hereinabove and the term "any person" having been judicially determined in the judgments referred to above, I am of

the view that the claimants who were the occupants of the vehicle in question, are "covered under the term any person".

15. The next case relied upon by the appellant is :the case of The Oriental Insurance Company Limited Vs. Meena Variyal and Others, The victim in that case while working as Regional Manager of M/s. Apace Savings and Mutual Benefits (India) Limited, was provided with a car by his employer. The said vehicle had been insured as "Act Only Policy" and there was no special contract. The Hon"ble Apex Court in para-20 of the said judgment came to hold that the deceased being an employee of the company was not covered by the Workmen"s Compensation Act, and the owner of the car, had not covered the vehicle by any special agreement and in the absence of any special contract in that behalf, an employee would not be covered under as "Act Only Policy".

In the present case the claimants are not similarly placed and in fact, the claimants are not the employees or the owner of the vehicle in question and therefore proviso to Sub-section (1) of Section 147 of the Act would have no relevance for determining the present lis.

16. In this respect, it becomes incumbent also to take into consideration the judgment of the Hon"ble Supreme Court in the case of New India Assurance Co. Ltd. Vs. Asha Rani and Others, . In the said judgment, the Hon"ble Supreme Court overruled its earlier decision in the case of New India Assurance Company Vs. Shri Satpal Singh and Others, and came to hold that prior to the 1994 amendment to the 1998 M.V. Act, the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger traveling "in the goods vehicle, the insurers would not be liable therefore. In the case at hand the vehicle involved is not a goods vehicle and, therefore, 1994 amendment to Section 147 would be of no relevance for determining the dispute in the present case. On the other hand, in paragraph-28 of the very self-same judgment rendered by Hon"ble Mr. Justice S.B.Sinha, while passing a concurring judgment came to hold as follows:

An owner of a passenger carrying vehicle must pay premium for covering the risks of the passengers. If a liability other than the limited liability provided for under the Act is to be enhanced under an Insurance Policy, Addl. Premium is required to be paid. x x x x x x"

17. The aforesaid distinction between the liability u/s 147 of the M.V.Act, 1988 towards the passengers travelling in a "goods vehicle" and the passengers travelling in a "passenger carrying vehicle is extremely important and needs to be taken note of. In the present case, we are concerned with a jeep which is undoubtedly a passenger carrying vehicle and hence Section 147 mandates a statutory coverage of all such passengers.

As noted hereinabove, I am of the view that the objection raised by the Insurance Company are not acceptable in law and, therefore, the appeals stand dismissed, but in the circumstances without any cost.

Appeals dismissed.