

(2008) 07 GAU CK 0051

In the Gauhati High Court

Case No : Regular First Appeal No. 18 (SH) of 2007

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Dalin Mawlieh and Others

RESPONDENT

Date of Decision : 18-07-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (2008) 3 GLT 194

Hon'ble Judges : T. Vaiphei, J

Bench : Single Bench

Advocate : V.K. Jindal and S. Jindal, for the Appellant; K.S. Kynjing, S.M. Suna, S. Sen and N.D. Chullai, for the Respondent

Final Decision : Allowed

Judgement

T. Vaiphei, J.—The sole question which calls for consideration in this appeal u/s 173, Motor Vehicles Act, 1988 ("the Act" for short) is whether the Appellant-insurer is liable to pay the compensation awarded to the claimant when the insured vehicle was under requisition by the Deputy Commissioner (Election), Ri-Bhoi District, Nongpoh for election duty?

2. The facts relevant for resolving the controversy may be briefly stated. The Respondent No. 2 is the registered owner of the Tourist Bus bearing registration No. ML-05/B-3704, which, along with its driver, was requisitioned by the Respondent No. 5 for election duty on 22.9.1999. It appears that when the vehicle was driven by the Respondent No. 3, who was the conductor of the bus and did not even possess a driving licence, it met with an accident on 22.9.1999 at about 9 P.M. at Nongpoh by hitting a pedestrian, namely, Willingstone Mawlieh (the deceased) which resulted in his death. The accident was reported to the Nongpoh Police Station, which registered it as Nongpoh P.S. Case No. 88 (9) 1999 u/s 279/304-A IPC against the Respondent No. 3. The deceased was 25 years old at the time of his death, and was working as the driver of one Auto-

Rickshaw belonging to one Elvin Mawlieh and drew a salary of Rs. 3,000/- per month. The claimant, who is the mother of the deceased, filed a claim petition before the Motor Accident Claims Tribunal, Ri-Bhoi district, which was registered as MAC Case No. 28 of 1999. Notices were served upon the owner and conductor of the vehicle as well as the insurer and the State of Meghalaya. All the Respondents except the Respondent No. 3 contested the claim petition. After the trial, the Tribunal passed the judgment and award dated 26.4.2007 awarding a compensation of Rs. 3,67,000/- together with interest @ 7.5% per annum for a period of three years from the date of filing the claim petition and directing the insurer to satisfy the award.

3. No cross-appeal has been preferred by the claimant or the Deputy Commissioner (Election), Ri-Bhoi District on the quantum of compensation so awarded. There is no dispute at the bar that the offending vehicle was insured with the insurer and further that when the accident resulting in the death of the deceased took place, the offending vehicle was under requisition by the State Government through the Respondent No. 5 for election duty. It is the contention of Mr. V.K. Jindal, the learned senior counsel for the insurer, that the owner of the offending vehicle could not be held liable to satisfy the award inasmuch as he himself was then not in control or custody thereof and that if the owner cannot be held liable to satisfy the award, the insurer, whose liability is co-extensive with the liability of the owner cannot, a fortiori, be held liable to satisfy the award either. He strongly relies on the latest decision of the Apex Court in National Insurance Co. Ltd. Vs. Deepa Devi and Others, , to buttress his submission. He, therefore, submits that the impugned judgment and award, in so far as it saddles the insurer with the liability to satisfy the award, is unsustainable in law, and is liable to be set aside and the Respondent No. 5 should be directed to satisfy the award. He also urges this Court to direct the Respondent No. 5 to refund a sum of Rs. 50,000/- already paid by the insurer to the Respondent No. 1 in terms of the settlement arrived at between them before the Lok Adalat and to direct the Registry to refund the statutory deposit of Rs. 25,000/- to the insurer. Confronted with the decision of the Apex Court cited by the learned senior counsel for the Appellant, Mr. N.D. Chullai, the learned State counsel, prays for granting liberty to the Respondent No. 5 to recover the awarded amount from the owner of the offending vehicle.

4. For better appreciation of the controversy involved in this appeal, it will be beneficial to refer to the facts in Deepa Devi case (supra of). That was a case in which the Respondent No. 3 was the owner of a Maruti Gypsy bearing Registration No. His 6095. The Appellant company issued a policy of insurance in favour of Respondent No. 4 for the said Maruti Gypsy for a period 10.6.1993 to 9.6.1994. The car in question was requisitioned during the Assembly elections in the year 1993 by the Sub-Divisional Magistrate, Rampur through the Deputy Commissioner, Simla. The said vehicle was in the possession as well as under the control of the said officer. On or about 17.11.1993 while the Sub-Divisional Magistrate, Rampur was travelling in the said vehicle, an accident occurred as a

result whereof a boy named Satish Kumar sustained injuries. He later on expired. Respondent No. 1 and two others, being the legal heirs and legal representatives of the deceased filed an application for compensation in terms of Section 166 of 1988 Act. The State of Himachal Pradesh as also the Sub-Divisional Magistrate, Rampur were impleaded therein. The Motor Accident Claims Tribunal in its judgment dated 28.9.1996 upheld the contention of the Insurance Company that under the terms of the insurance policy, it was not liable to reimburse the owner of the vehicle as regards his liability to pay the compensation on account of the said accident. A Division Bench of the High Court set aside the judgment of the Tribunal holding that the owner of the vehicle, the State Government and the Insurance Company are jointly and severally liable to pay the compensation and that since the vehicle was insured with the Insurance Company, it shall deposit the amount payable to the claimants. The matter was taken to appeal before the Apex Court, which allowed the appeal and held at para 10:

10. Parliament either under the 1939 Act or the 1988 Act did not take into consideration a situation of this nature. No doubt, Respondents 3 and 4 continued to be the registered owners of the vehicle despite the fact that the same was requisitioned by the District Magistrate in exercise of the powers conferred upon him under the Representation of the People Act. A vehicle is requisitioned by a statutory authority, pursuant to the provision contained in a statute. The owner of the vehicle cannot refuse to abide by the order of requisition of the vehicle by the Deputy Commissioner. While the vehicle remains under the requisition, the owner does not exercise any control thereover. The driver may still be the employee of the owner of the vehicle but he has to drive it as per the direction of the officer of the State, who is put in charge thereof. Save and except for legal ownership, for all intent and purport, the registered owner of the vehicle loses entire control thereover. He has no say as to whether the vehicle should be driven at a given point of time or not. He cannot ask the driver to not drive on a bad road. He or the driver could not possibly say that the vehicle could not be driven in the night. The purpose of requisition is to use the vehicle. For the period the vehicle remains in the control of the State and/or its officers, the owner is only entitled to payment of compensation therefore in terms of the Act but he cannot (sic) exercise any control thereupon. In a situation of this nature, this Court must proceed on the presumption that Parliament while enacting the 1988 Act did not envisage such a situation. If in a given situation, the statutory definitions contained in the 1988 Act cannot be given effect to in letter and spirit, the same should be understood from the common sense point of view.

5. The top court quoted with approval the observations of the High Court of Orissa in *National Insurance Co. Ltd. v. Durdadahya Kumar Samal* (1988) 2 TAC 25, holding that:

In a vehicle requisitioned, the driver remains under the control of the Collector and by such driving the vehicle he can be accepted to have been employed by

the Collector. Thus, the Collector would be vicariously liable for the Act of the driver in the present case.

6. The Apex Court accordingly held that the State shall not be liable to pay the amount of compensation to the claimants and not the registered owner of the vehicle and consequently the Appellant therein. A desperate attempt was made by Mr. N.D. Chullai, the learned State counsel, to distinguish the instant appeal from Deepa Devi case (supra), but he has, understandably, miserably failed to do so. When the facts obtaining in the two cases are on all fours, there is no escape from applying the legal principles enunciated in Deepa Devi case. Consequently, the Respondent No. 4 has to be saddled with the liability to satisfy the award. On the contention of Mr. N.D. Chullai, the learned State counsel, that the State-Respondents should be permitted to recover the compensation from the owner of the offending vehicle, it must be remembered that the insurer has been held by me to be not liable to satisfy the award on the ground that the vehicle in question, at the time of the accident, was not under the possession or control of the owner. Now, if the insurer is found to be not liable to satisfy the award on that ground, on a parity of reasoning, it is not conceivable to hold that the insured is liable to satisfy the award. Therefore, this contention of the learned State counsel is noted only to be summarily rejected. No other issue remains to be decided.

7. Resultantly, this appeal succeeds. The impugned judgment and award fastening the liability to pay the compensation upon the insurer cannot be sustained in law, and is hereby set aside. It is the State-Respondents who are liable to satisfy the awarded amount. The State-Respondents shall deposit the compensation of Rs. 3,67,000/- (Rupees three lakhs and sixty seven thousand) only by cheque or draft to this Court in the name of the Registrar for payment to the claimant/Respondent and the insurer within five weeks from the date of receipt of this judgment. On receipt of the cheque/draft, the Registrar shall encash the cheque/draft and pay Rs. 3,17,000/- (Rupees three lakhs and seventeen thousand) only to the claimant/Respondent and Rs. 50,000/- (Rupees fifty thousand) only to the insurer after proper identification. The Registry shall also refund Rs. 25,000/- (Rupees twenty five thousand) only, the statutory deposit, to the insurer. The impugned judgment and award shall stand modified to the extent indicated above. However, on the peculiar facts of this case, I pass no order as to cost.