

(2004) 08 AHC CK 0135
In the Allahabad High Court
Case No : F.A.F.O. No. 562 of 2001

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Hari Narain Thathera and Others

RESPONDENT

Date of Decision : 11-08-2004

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 165, 166

Citation : (2005) ACJ 774 : (2005) 1 AWC 784

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Advocate : K.S. Amist, for the Appellant; S.C. Tripathi, for the Respondent

Judgement

Prakash Krishna, J.—This is an appeal at the instance of Insurance Company who had insured a truck bearing registration No. DIG 3227. The appeal arises out of M.A.C.T. No. 389 of 2000 with respect to a claim petition filed under Sections 140 : 165 and 166 of Motor Vehicles Act, 1988.

2. The facts of case lie in a narrow compass. Virendra, a boy of 5 years on 5.10.1992 at about 10 a.m. received injuries from the aforesaid truck insured with the appellant due to rash and negligent driving of the vehicle. The boy expired while he was being taken to the Gorakhpur Sadar Hospital for treatment. His parents filed the claim petition claiming compensation of Rs. 90,000 on the allegation that the aforesaid truck while coming from East to West hit their minor son Virendra who ultimately expired on the same day.

3. In the claim petition the Insurance Company appellant as well as the owner of the truck were impleaded as parties. The truck owner filed written statement denying the allegations of the accident. It was further stated that the truck was insured with the National Insurance Company, the appellant, for the period 29th September, 1992 to 25th September, 1993. The written statement of Insurance Company is that of total denial. It expressed its ignorance as to whether the truck in question was insured with it at the relevant point of time. In para 32 the

Insurance Company pleaded that it appears that the boy died on account of his own negligence while crossing the road.

4. The claims Tribunal framed six issues on the basis of the pleadings of the parties and has recorded a finding that Virendra died on account of accident caused by the truck insured with the Insurance Company due to its negligent driving by the driver. The driver of the truck had a valid driving licence. The Tribunal has accepted the oral testimony of P.W. 1 Hari Narain, father of the deceased and P.W. 2 Prem Narain uncle of the deceased. It has also recorded a finding that the accident took place on the date, at the time and in the manner as stated in the claim petition and the Insurance Company is liable to indemnify the owner of the truck. A sum of Rs. 32,000 was awarded as compensation with 15% interest per annum from 13th October, 1992, to the date of actual payment.

5. The Insurance Company in the present appeal has challenged the award mainly on the ground that cheque given by the owner of the vehicle towards the premium for insurance of truck No. DIG 3227 was dishonoured and the Insurance Policy was cancelled and the Insurance Company also sent the information to the owner of the vehicle. It has been rightly pointed out by the learned counsel for the respondents that no such plea was raised by the Insurance Company before the Tribunal, The learned counsel for the Insurance Company could not substantiate the aforesaid plea with reference to the material on record. He could not point out from any document on the record that the cheque deposited with the appellant by the owner of the vehicle for the payment of premium for the insurance of truck in question was dishonoured. The learned counsel for the appellant after examining the record had to accept the position that there is no material to show that the aforesaid cheque was dishonoured and was returned by the Insurance Company to the owner of the truck. The record is absolutely silent with regard to the allegation that the Insurance Company informed the owner of the vehicle about the dishonouring of the cheque and the cancellation of the Insurance Policy.

6. In *New India Assurance Co. Ltd. Vs. Rula and Others*, the Supreme Court has held that normally, a liability under the contract of insurance would arise only on payment of premium if such was made a condition precedent to the Insurance Policy taking effect. But such a condition which is intended for the benefit of insurer can be made by the insurer. Interpreting the provisions of the Motor Vehicles Act the Supreme Court has laid down, that a third party is not concerned and it has not come into the picture at all in the matter of payment of premiums. Whether the premium has been paid or not is no concern of the third party who was concerned with the fact that there was a policy issued in respect of the vehicle involved in the accident and it is on the basis of this policy that the claim can be maintained by the third party against the insurer. If, on the date of accident there was a policy of insurance in respect of the vehicle in question, third party would have claimed against the Insurance Company and owner of the vehicle would have to be indemnified in respect to the claim of that party.

7. Thus, in view of the facts and law as discussed above I find no merit in the appeal. No other point was pressed by the appellant. The appeal is liable to be dismissed.

8. The claimant-respondents have filed a cross-objection in the above appeal for the further enhancement of the compensation awarded by the Tribunal. A bare perusal of the memo of the cross-objection shows that it is basically in reply to the grounds raised by the Insurance Company in the memo of the appeal. However in paragraphs 6, 7 and 8, a grievance has been raised that the Court below wrongly rejected the claim of the applicants with respect to the whole amount sought as compensation.

9. Heard the counsel for the parties on the cross-objection. The deceased was a boy of about 5 years of age. The Tribunal has awarded a sum of Rs. 32,000 as compensation.

10. The learned counsel for the respondent has placed reliance upon a Division Bench judgment of this Court in the case of United India Assurance Company Limited v. Nokhey Lal Singh and Anr. 2000 (2) TAC 657, This was also a case of death of a minor of 10 years. The Tribunal had awarded compensation of Rs. 1,50,000 on account of accidental death of the minor. The High Court confirmed the award of compensation and has placed reliance upon second Schedule appended to the Motor Vehicles Act. Under the said Schedule a minimum compensation of Rs. 1,50,000 has been provided even if the claimant had no income. The learned counsel for the appellant could not place any thing contrary to the above judgment. Following the aforesaid judgment, the cross-objection is allowed and the amount of compensation is enhanced to Rs. 1,02,000. However, looking to the current rate of interest I find some force in the argument of learned counsel for the appellant that the interest should have been awarded at the rate of 8 per cent per annum instead of 15 per cent w.e.f. 13.10.1992 till the date of actual payment.

11. In the result, the appeal and the cross-objection are disposed of as indicated above. A sum of Rs. 1,02,000 is awarded as compensation to the claimant-respondent Nos. 1 and 2 with simple interest at the rate of 8 per cent per annum w.e.f. 13.10.1992 to the date of actual payment.