

(2017) 03 TP CK 0009
In the Tripura High Court
Case No : 16 of 2014

The New India Assurance Company Limited
Vs

APPELLANT

Smti Arati Das

RESPONDENT

Date of Decision : 09-03-2017

Acts Referred:

[Motor Vehicles Act, 1988](#), [Section 173](#), [Section 173](#), [Section 147](#), [Section 147](#), [Section 163A](#), [Section 163A](#), [Section 166](#), [Section 166](#), [Section 171](#), [Section 171](#) - Appeals - Requirements of policies and limits of liability - Special provisions as to payment of compensation on structured formula basis - Application for compensation - Award of interest where any claim is allowed

Citation : (2017) 03 TP CK 0009

Hon'ble Judges : S. Talapatra

Bench : Single Bench

Advocate : A. Gon Choudhury, P. S. Roy

Judgement

1. This is an appeal under Section 173 of the Motor Vehicles Act from the judgment and award dated 25.11.2013 delivered in T.S.(MAC) 240 of 2011 by the Motor Accident Claims Tribunal, West Tripura, Agartala.

2. By means of this appeal, the appellant, New India Assurance Company Limited has raised a solitary ground of objection that the claimant-respondents, for death of the owner and driver of the vehicle No.TR-01-J-1579 (G.C. Max) namely Ajit Das are not entitled to get any compensation by virtue of the Insurance Policy.

3. The facts relating to the accident are not in dispute. Ajit Das, the victim while driving his vehicle bearing registration No.TR-01-J-1579 from Lembucherra Bazar to his destination at Bamutia, he met an accident and received serious injuries. He was immediately shifted to the GBP hospital and he was declared dead by the attending Medical Officer. The legal heirs of Ajit Das, since deceased, filed a claim petition under Section 163A of the Motor Vehicle Act for compensation for the

death of Ajit Das, in the said accident that occurred on 27.04.2011 at a place near Lembucherra. According to the claimant-respondents, Ajit Das died at the age of 40(forty) years having his monthly income at Rs.3,000/-. As such they claimed a sum of Rs.12,75,000/- under Section 163A of the Motor Vehicle Act. It surfaces from the records that by the order dated 10.05.2013, the claim petition was amended reducing the monthly income of the deceased to Rs.3,000/- from 10,000/-, it appears that in order to sustain the application under Section 163A of the Motor Vehicle Act, 1988 the said amendment was carried out. The tribunal should have been liberal allowing the claimant-respondents to carry out such amendment. However, even in the appeal no challenge has been projected to question such amendment.

4. The appellant filed the written statement in the tribunal and denied that the said accident occurred while attempting to save a stray dog. Mr. A. Gon Choudhury, learned counsel appearing for the appellant has emphatically submitted that the accident took place for negligent driving of the deceased. The story that in order to save a stray dog the said vehicle met the accident is not believable inasmuch as one of the claimants namely Chanu Das, the claimant-respondent No.2 lodged the FIR on 27.04.2011 where the episode of accident in order to saving the stray dog did not find a place in the ejhar dated 27.04.2011 [in Exbt.1 series] and he has merely stated that the said vehicle fell in accident as it rolled down to a low-land along with the road and in the said accident, his father died.

5. Mr. Gon Choudhury, learned counsel appearing for the appellant has fairly submitted that the vehicle was under valid insurance cover, but since the accident occurred for negligent driving of the deceased he can neither get compensation under Section 163A nor have it under Section 166 of the IPC. Section 163A of the MV Act provides as under: "163A. Special provisions as to payment of compensation on structured formula basis.-(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be." Explanation.-For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923). (2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person. (3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule." [Emphasis added] The insurance policy is in the nature of package policy where a personal accident cover for the owner-driver has been accommodated. This aspect has not

been disputed by the appellant.

6. After recording the evidence the tribunal by the impugned judgment dated 25.11.2013 has awarded a sum of Rs.3,67,000/- as compensation payable with interest @ 9% per month from the date of filing of the claim petition i.e. 01.07.2011. Even a penal interest has been awarded which

according to the court is without any legal authority inasmuch as Section 171 of the Motor Vehicle Act does not confer any jurisdiction in the tribunal to give such penal interest with retrospective effect for default in payment within the stipulated time. As such the penal interest being without jurisdiction is nullity in law and as such on the first blush that this court holds that the penal interest could not have been imposed and hence, the appellant is not required to pay the said penal interest, if at all, the liability is saddled for payment on the appellant.

7. Mr. A. Gon Choudhury, learned counsel has further submitted that it is the negligence of the owner-driver and as such he cannot get the compensation. Even the claim petition under Section 163A of the Motor Vehicle Act is not maintainable in the eye of law. In support of his contention, he has relied on a few decisions of the apex court and of this court. In *Dhanraj Vs. New India Assurance Company Limited* and Another reported in (2004) 8 SCC 553, the apex court has observed that where the policy only provides indemnification of the insured against the liabilities incurred towards a third person or in respect of the damages to the third party property, there is no liability of the insurance company under a policy framed in terms of Section 147 of the Motor Vehicle Act to indemnify the risk for death of bodily injury to the owner of the vehicle.

8. In *Oriental Insurance Company Limited Vs. Jhuma Saha and Others* reported in (2007) 9 SCC 263, the apex court had occasion to hold as under: "12. In *Dhanaraj v. New India Assurance Company Limited*: (2004) 8 SCC 553, it is stated as follows: 8. Thus, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorised representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle. 10. In this case, it has not been shown that the policy covered any risk for injury to the owner himself. We are unable to accept the contention that the premium of Rs.4989 paid under the heading "Own damage" is for covering liability towards personal injury. Under the heading "Own damage", the words "premium on vehicle and non-electrical accessories" appear. It is thus clear that this premium is towards damage to the vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim provided a personal accident insurance has been taken out. In this case there is no such insurance. 13. The additional premium was not paid in respect of the entire risk of death or bodily injury of the owner of the vehicle. If that be so, Section 147(b) of the Motor Vehicle Act which in no uncertain terms covers a risk of a third party only would be attracted in the present case." [Emphasis added]

9. In *New India Assurance Company Limited vs. Sadanand Mukhi and Others* reported in 2009 ACJ 998, the apex court has approvingly quoted there the principle as laid down in *United Insurance Company Limited vs. Davinder Singh* reported in (2007) 8 SCC 698, where it had been observed as under: "It is, thus, axiomatic that whereas an insurance company may be held to be liable to indemnify the owner for the purpose of meeting the object and purport of the provisions of the Motor Vehicles Act, the same may not be necessary in a case where an insurance company may refuse to compensate the owner of the vehicle towards his own loss. A distinction must be borne in mind as regards the statutory liability of the insurer vis-a-vis the purport and object sought to be achieved by a beneficent legislation before a forum constituted under the Motor Vehicles Act and enforcement of a contract qua contract before a Consumer Forum." In *National Insurance Company Limited vs. Laxmi Narain Dhut* reported in (2007) 3 SCC 700, a distinction has been culled out between the statutory policy and a contractual policy in the same context.

10. Mr. Gon Choudhury, learned counsel has also referred a decision of this court in *Suchitra Choudhury (Dey) and Anr. vs Naresh Debbarma and Anr.* reported in (2015) 1 TLR 459, where the following passage from *Oriental Insurance Company Limited vs. Rajni Devi and Others* reported in 2008 ACJ 1441 has been extracted for drawing inference: "We have already extracted section 163A of the MVA herein before. A bare perusal of the said provision would make it explicitly clear that persons like the deceased in the present case would step into the shoes of the owner of the vehicle. In a case wherein the victim died or where he was permanently disabled due to an accident arising out of the aforesaid motor vehicle in that event the liability to make payment of the compensation is on the insurance company or the owner, as the case may be as provided under section 163A. But if it is proved that the driver is the owner of the motor vehicle, in that case the owner could not himself be a recipient of compensation as the liability to pay the same is on him. This proposition is absolutely clear on a reading of section 163A of the MVA. Accordingly, the legal representatives of the deceased who have stepped into the shoes of the owner of the motor vehicle could not have claimed compensation under section 163A of the MVA." [Emphasis added]

11. Mr. P.S. Roy, learned counsel appearing for the respondents while refuting the submission advanced by Mr. Gon Choudhury, learned counsel appearing for the appellant, has stated that the decisions of the apex court which are relied on by the appellant are in a case where the owner cum driver was held negligent. Those decision cannot be applied in the present context inasmuch as in the present case, it is in order to save a stray dog the accident occurred not for the negligence of the owner cum driver. Further, he has submitted that here it is case of the package policy, meaning, it is expensive by way of contract providing much more than the minimal indemnity as provided in a policy in terms of Section 147 of the Motor Vehicle Act. The owner cum driver was indemnified for the accident by the said package policy. As such the liability of payment for damages as suffered by the claimant-respondent cannot be denied. That apart,

Mr. Roy, learned counsel has referred two more decisions:

12. In *Bimlesh and Others vs. New India Assurance Company Limited* [judgment and order dated 03.08.2010 in Civil Appeal No.2164 of 2004], where the apex court has held as under: "The case of the claimants appears to be that additional premium was paid by the insured to cover the risk of the driver of the vehicle and to the policy issued by the insurance Company, in para 5, persons or classes of persons entitled to drive includes the insured and accordingly the Insurance Company is liable."

13. In *Branch Manager, Oriental Insurance Company Limited vs. Mandansha Sherpa and Others* reported in 2015 ACJ 379, the Sikkim High Court has observed as under: "20. It is also worthy to note that the High Court, after referring to individual circulars issued by various insurance companies, eventually stated thus: In view of the aforesaid, it is clear that the comprehensive/package policy of a two-wheeler covers a pillion rider and comprehensive/package policy of a private car covers the occupants and where the vehicle is covered under a comprehensive/package policy, there is no need for the Motor Accidents Claims Tribunal to go into the question whether the insurance company is liable to compensate for the death or injury of a pillion rider on a two-wheeler or the occupants in a private car. In fact, in view of the TAC's directives and those of the IRDA, such a plea was not permissible and ought not to have been raised as, for instance, it was done in the present case.

13. In view of the aforesaid factual position, there is no scintilla of doubt that a "comprehensive/package policy" would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an "Act Policy" stands on a different footing from a "comprehensive/package policy". As the circulars have made the position very clear and IRDA, which is presently the statutory authority has commanded the insurance companies stating that a "comprehensive/package policy" covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the "Act policy" which admittedly cannot cover a third party risk of an occupant in a car. But, if the policy is a "comprehensive/package policy", the liability would be covered. These aspects were not noticed in the case of *Bhagyalakshmi*, (2009) 7 SCC 148 and, therefore, the matter was referred to a larger Bench as the IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by Delhi High Court and we have also reproduced the same. From the above, it is clear that the Hon"ble Apex Court has held that the package policy is a comprehensive policy and it would cover the liability of the insurer for payment of compensation to the occupant in a car." [Emphasis added] Though this apex court decision is in the context of the occupier in a private vehicle, but the principle can be borrowed according to Mr. Roy, learned counsel appearing for the respondent to decide the present controversy. Mr. Roy, learned counsel appearing for the respondents has thus stoutly contended that

there is no infirmity in the impugned judgment and award.

14. At this juncture, Mr. Gon Choudhury, learned counsel appearing for the appellant has submitted that the liability of the insurer is limited to Rs.2,00,000/- and hence no further liability can be imposed. Mr. Gon Choudhury, learned counsel did not hasten to add this plea in the alternative to his principal ground.

15. Giving an anxious consideration on the submission made by the learned counsel for the parties, this court finds that the following pertinent questions have emerged for decision of this court: (i) Whether the dependents of the owner-cum-driver of the vehicle who died in the accident involving his vehicle would be entitled to maintain a petition under Section 163A of Motor Vehicles Act? (ii) Whether, even if the owner-cum-driver is covered by a package policy, whether his legal heirs would be entitled to maintain a claim under Section 163A of the Motor Vehicles Act?

16. There cannot be any amount of doubt that ownercum- driver is covered by the policy in the case in hand. Thus insurance company by virtue of such indemnity is liable to make good damage after ascertaining the same. For the decision in Suchitra Choudhury (Dey) (supra), a great amount of confusion has emerged even though according to this court there cannot be any space for confusion. The law is very clear in this regard. When the accident takes place for negligence of the owner who was driving the vehicle at the relevant point of time he cannot maintain a petition under Section 163A of the Motor Vehicle Act. Negligence or no negligence would but in a case when there is no negligence but a sudden act on the road, despite due alert, caused the accident whether in such cases the application under Section 163A would be maintainable or not.

17. In Bimlesh (supra), the accident occurred in order to save a dog and the owner-cum-driver died. Admittedly, that was not a case involving a third party. Under the act policy, the insurer is liable to indemnify the owner of the third party loss. In that case, initially the claims tribunal held that the claim petition was not maintainable and the said order was also maintained by the Punjab and Haryana High Court. But the apex court has clearly observed that the objection raised by the insurance company about maintainability of the claim petition is intricately connected with its liability which in the facts and circumstances of the case is dependent on determination of the effect of the additional premium paid by the insured to cover the risk of the driver and other terms of the policy including terms of the policy contained in the para 5. Hence the judgment holding that the claim petition was not maintainable was interfered with and the claim petition was remitted for reconsideration the tribunal.

18. From a reading of Bimlesh (supra), this court finds that that was an order of remand, and no law was clearly laid whether a petition under Section 163A of the Motor Vehicle Act would be maintainable or not, but the apex court indicated to its maintainability. This court is of the opinion that the question is no doubt very intricate when no negligence has been proved by the appellant or any other

person in the proceeding. Section 163A of the Motor Vehicles Act is for no-fault of liability. For the victim of the accident it is basically to realise the claim from the owner or from the insurer if they indemnified the damages of the owner. Whether within the scope of Section 163A of the Motor Vehicles Act, the death of the owner-cum-driver of the vehicle which met the accident can be included or not? According to this court, this cannot be included else it would do a violence to provisions under Section 163A, inasmuch as the tribunal cannot be the proper forum. An initial claim has to be raised before the insurance company as it happens in the matter of personal insurance claim and if in the event the insurance company does not properly ascertain the damage and pay the just and reasonable compensation or in terms of the policy, it would be open to the aggrieved to approach the forum constituted under Consumer Protection Act, 1986. Since in this case, the tribunal has ascertained the damage and there is no challenge to the quantum by the appellant [the insurer], the insurer is directed to pay the said amount by excluding the penal rate of interest as imposed within a period of 3(three) months from today. Needless to say, such payment shall be made on deducting the amount, if any, already paid. On such deposit claimant-respondents shall be entitled to receive the amount in the proportion as decided by the tribunal. The order for payment as made herein, in exercise of inherent power for equitable justice, would not create a precedent in anyway. In terms of the above, this appeal stands disposed of. Send down the LCRs forthwith.