(2001) 07 GAU CK 0021

In the Gauhati High Court

Case No : First Appeal No. 182 of 1996

United India Insurance Co. Ltd. APPELLANT

Vs

Haralal Nath Shib RESPONDENT

Date of Decision : 13-07-2001

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(1)
Motor Vehicles Act, 1988 — Section 145, 147, 147(1), 166, 173

Citation : (2002) ACJ 757

Hon'ble Judges : B.B. Deb, J

Bench : Single Bench

Advocate : A. Gan Choudhury, for the Appellant; S. Deb and B. Debnath, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal u/s 173 of the Motor Vehicles Act, 1988 is directed against the judgment/award dated 2.4.1996 passed by the learned Member, Motor Accident Claims Tribunal, West Tripura, Agartala in T.S.(MACT) No. 159 of 1992 making an award of Rs. 1,15,000 being compensation to the sole respondent.

2. The case leading to this appeal is that the respondent being the owner of his Maruti Van bearing No. TR 020208 got it insured with the appellant Insurance Company. During the validity of the insurance policy on 5.6.1992 the owner having valid driving licence while was driving the said vehicle met with an accident having dashed with a tree and as a result the owner driver sustained grievous injuries on different parts of his body. He received treatment initially at G.B. Hospital, Agartala and thereafter at SSKM Hospital, Kolkata. He filed the claim petition u/s 166 of the Act and after trial the Tribunal awarded compensation as stated above.

3. Aggrieved, the Insurance Company preferred this appeal mainly on the ground of non-maintainability of the claim petition stating, inter alia, that the insurance policy does covers only the third party risk and since as a result of use of the

vehicle owner sustained injuries, no compensation could be allowed under the provision of the Act.

The main question posed to be decided is whether the claimant is entitled to be compensated by the Insurance Company in terms of the statutory policy.

4. The learned counsel for the appellant submits that the appellant by the policy promised to indemnify the owner of the insured vehicle to make payment of any amount for which the owner incurred liability and since in the present case the owner respondent incurred no liability to anybody else the petition is/was not maintainable.

5. Chapter-XI of the M.V. Act commencing from Section 145 deals with the matter pertaining to compulsory insurance and liability of insurer thereof. Section 147 of the Act postulates that in order to comply with the legal requirement of Chapter XI an insurance policy must be a policy which is issued by an authorised insurer taking liability to indemnify the person who would incur any liability in respect of death or bodily injury to any person including the owner of the goods or authorised representative of the goods carried in his vehicle, any passengers boarded in his vehicle or any pedestrian or damage to any property of the third party caused by or arising out of the use of the vehicle so insured in a public place. The provision of Section 147 of the Act corresponds to Section 95(1) of the Motor Vehicles Act, 1939 so far the zone of liability is concerned but the only change brought in by the new Act of 1988 is that the financial liability against death, bodily injury etc. is now unlimited while under the Old Act some limitation had been there. Both under the old as well as the new act the insurer with whom the vehicle stands insured has the statutory liability to indemnify the owner of the insured vehicle so much of the amount for which the owner of the insured vehicle would incur any liability in respect of death, bodily injury to any person as has been mentioned in the section itself and also for damage caused to property of a third party. Of course, for damage of the property of third party liability is limited to Rs. 6000 But for causing death or bodily injury the liability is unlimited. Hence, in-depth study of Section 147(1) of the Act (Corresponding to the provision of 195 of the Old Act) reveals that the Insurance Company is put under statutory obligation to indemnify the owner of the insured vehicle. Only in case the owner incurrs any liability towards any person as a result of any accident caused by or arising out of the use of the vehicle so insured. Unless the owner of the insured vehicle incurs any liability, the Insurance Company cannot be put under statutory obligation to pay compensation. The incurring of liability by the owner of the insured vehicle is a sine qua non to indemnify the same by the Insurance Company with whom the vehicle stands insured. The insured policy covers third party risk and that will come into play only when it is proved that the owner of the insured vehicle has incurred same liability towards any other person. In this respect, a profitable ference may be had to a decided case by the Hon''ble Supreme Court in Minu B. Mehta and Another Vs. Balkrishna Ramchandra Nayan and Another,

6. Thus, it is settled proposition of law that in case the owner has incurred no liability in respect of death or bodily injury to any person, the Insurance Company cannot be held to indemnify anything under the Act. In the present case the owner respondent while driving the vehicle caused the accident having dashed with a tree as a result he sustained injury and he incurred no liability to anybody else nor the action of the owner of the Insured vehicle caused any death bodily injury or damage to property to anybody else but he sustained self injury and, as such, the owner incurred no liability to be indemnified by the appellant Insurance company under M.V. Act. This statutory legal aspect has been totally ignored by the learned Tribunal while passed the impugned award.

7. In that view of the matter, the appeal succeeds. The impugned award dated 2.4.1996 is set aside. It appears that at the time of preferring appeal the appellant Insurance Company deposited Rs. 25,000 before the Registry which was paid to the respondent. The respondent is directed to deposit the same with the Registry within a period of 15 days and after deposit the same should be refunded to the Insurance Company,

8. The appeal allowed as indicated above with no order as to costs.