

(2000) 05 CAL CK 0038

In the Calcutta High Court

Case No : Civil Appellate Jurisdiction F.M.A. No. 179 of 1999

United India Insurance Co. Ltd.

APPELLANT

Vs

Smt. Draupadi Devi and Others

RESPONDENT

Date of Decision : 16-05-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 146, 147, 147(1), 147(2), 47
Penal Code, 1860 (IPC) — Section 279, 304A
Workmens Compensation Act, 1923 — Section 27

Citation : (2001) ACJ 1591 : (2000) 3 CALLT 369 : (2001) 88 FLR 290 : (2000) 2 LLJ 1337

Hon'ble Judges : Satyabrata Sinha, J; Mohammad Habeeb Shams Ansari, J

Bench : Division Bench

Judgement

S.B. Sinha, J.—This appeal at the instance of the insurer raises an interesting question of law.

2. The applicants/respondents are the heirs and representatives of the Late Budheswar Jha. The said Budheswar Jha was "Khalasi" of the Lorry bearing No. WBI - 7062. The said Lorry met with an accident allegedly owing to the rash and negligent driving on the part of the Driver thereof.

3. The said claim application filed by the applicants/respondents was considered on merit and keeping in view the fact that the monthly income of the deceased was Rs. 900/- p.m. only, the learned Tribunal below allowed the said application against the appellant herein on contest against the insurance Co. and ex-parte herein against the rest holding that they are entitled to a sum of Rs. 1,19,600/- as "compensation",

4. Mr. Das, the learned counsel appearing on behalf of the petitioner has raised a short question in support of this application. According to the learned counsel, the deceased having been appointed as "Khalasi" in respect of the said Lorry the amount of compensation payable for his death must be confined to the liability of the owner thereof in terms of the Workmen's Compensation Act, 1923, in view

of the proviso appended to section 47 of the Motor Vehicles Act, 1988. In support of the said contention, reliance has been placed on New India Assurance Company Ltd. Vs. Smt. Raj Kumari and others, and Ayisha Beevi Vs. Kalidasan, .

5. Mr. Banik, learned counsel appearing on behalf of the claimant/ respondents on the other hand, submitted that in a case of this nature the Khalasi is also to be considered as a passenger of the Lorry and having regard to the change in legislative intent under the Motor Vehicles Act, 1988 as contradistinguished from the Motor Vehicles Act, 1939, his client would be entitled to receive the entire amount of compensation.

6. Strong reliance in this connection has been placed on New India Assurance Co. Ltd. Vs. Abdul Sammad Chellappa and Others, , B.V. Nagaraju Vs. M/s. Oriental Insurance Co. Ltd., Divisional Officer, Hassan, and New India Assurance Company Vs. Shri Satpal Singh and Others, .

7. Having regard to the rival contentions of the parties, the only question which arises for consideration in this appeal is interpretation of the proviso appended to section 147 of the Motor Vehicles Act, 1988 (hereinafter referred and called for the sake of brevity as the said Act). Section 146 of the said Act provides for necessity for insurance against Third Party risk, reads thus:

"Section 146. Necessity for insurance against third party risk :-

(1) 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."

8. The relevant portions of section 147 of the said Act reads thus :-

"Section 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.

(2) Subject to the proviso to sub-section (1) a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely-

(a) save as provided in clause (b), the amount of liability insures;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy which-ever is earlier."

9. Proviso appended to in sub-section (1) of section 147 is by way of exception.

However, even in the said proviso, in view of the phraseology used therein, viz. other than the liability arising under the Workmen Compensation Act, 1923, it is accepted that whereas no policy is required to be taken out under the said Act to cover liability in respect death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in course of his employment other than a liability arising under the Workmen's Compensation Act, 1923, in respect of the death of, or bodily injury to such employee, inter alia, in respect of a goods carriage, being carried in the vehicle. The impugned judgment and award shows that the deceased having engaged as a "Khalasi" of the said Lorry bearing No. WBI - 7062 was Registered as Goods Carriage Vehicle.

10. The liability of the appellant herein on the plain reading of the said provision therefore is confined to the liability which could have arisen under the provision of the Workmen Compensation Act, 1923.

11. In *New India Assurance Co. Ltd. Vs. Abdul Sammad Chellappa and Others*, , the owner of the goods himself was travelling in the vehicle. A question arose, as the policy of insurance was not filed, as to whether the risk of the owner of the goods travelling in a goods vehicle alongwith the goods when the vehicle fell down, and it was held that the insurance company is liable and as such the deceased who was travelling in the said lorry along with his goods as their owner is covered by the "Act Policy".

12. Having regard to the fact and circumstances obtaining in that case, it was observed;

"The insurance company which alone contested the claim petition before the Tribunal did not choose to file the policy to show that transporting the owner of the goods in the lorry is prohibited by the policy. Rule 277(3) of the Rules which was introduced in the year 1983 provides that no person other than a person connected with the conveyance of goods shall travel in a goods vehicle. The above sub-clause (3) craves out an exception for rule 277(5) of the Rules which specifies that no person shall be carried for hire or reward in a goods vehicle unless the vehicle is covered by a permit authorising the use of the vehicle for such purpose and in accordance with the provisions of such permit. Thus, the prohibition against a passenger being carried for hire or reward in a goods vehicle is subject to the exception of passengers connected with the conveyance of goods. It, therefore, follows that the Rules applicable to our State provide for the owner of the goods being carried in the goods vehicle for hire. As i observed already, the policy has not been filed by the insurance company to show that the policy provides for a different type of stipulation."

13. The decision, however, was rendered under the Old Act. The fact situation is also different.

14. In *B.V. Nagaraju Vs. M/s. Oriental Insurance Co. Ltd.*, Divisional Officer, Hassan, , a question arose as to whether a contention is raised that the plaintiff

followed the terms of the policy carrying passengers of the goods vehicle, the terms of the insurance should be construed strictly which was answered in affirmative. It was stated :--

"The National Commission went for the strict construction of the exclusion clause. The reasoning that the extra-passengers being carried in the goods vehicle could not have contributed, in any manner, to the occurring of the accident, was barely noticed and rejected in any plausible account; even when the claim confining the damage to the vehicle only was limited in nature. We, thus, are of the view that in accord with the Skandla's case, the aforesaid exclusion term of the insurance policy must be read down so as to serve the main purpose of the policy, that is, to indemnify the damage caused to the vehicle, which we hereby do."

15. However, the instance case, the question is otherwise. But for the execution clause contained in the proviso to section 147 of the Act the applicant/respondent would not be entitled to payment any compensation by the insurer at all as the owner of vehicle in respect of his employee need not take out the insurance policy. Proviso appended to section 147 of the Motor Vehicles Act, 1988 provides that in respect of death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act. Thus, sub-section (1) of section 147 of the said act being subject to the limitation as specified in sub-section 2 thereof, the liability of the insurance company must be held to be limited.

16. Although the change has been made by reason of the provisions of the said Act as has been held by the Supreme Court in New India Assurance Company Vs. Shri Satpal Singh and Others, , the proviso appended to the said application shall exclude gratuitous passengers in a vehicle, no matter that the vehicle is of any type or class. The apex Court itself held;

"Under section 147 of the new Act, the policy must be a policy which insures the person or classes of persons 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 injury to any person, including 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 in a public place;

(iii) against the death of or bodily injury to any passenger of a public service vehicle cause by or arising out of the use of the vehicle in a public place.

17. The proviso to the said sub-section is not relevant here as it pertains to death or bodily injury to the employee mentioned therein. Sub-section (2) provides that a policy of insurance shall cover any liability incurred in respect of

any accident, up to the following limits, namely :

"(a) Save as provided in clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand;

Provided that any policy of insurance Issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

Hence, under sub-section (2), there is no upper limitation for the insurer regarding the amount of compensation awarded in respect of death or bodily injury of a victim of the accident. It Is, therefore, apparent that the limit contained in the old Act has been removed and the policy should insure the liability incurred and cover injury to any person including owner of the goods or his authorised representative carried in the vehicle. The legislature has also taken care of even the policies which were in force on the date of commencement of the Act by specifically providing that any policy of insurance containing any limit regarding the insurer's liability shall continue to be effective for a period of four months from commencement of the Actor till the date of expiry of such policy, whichever is earlier. This means, after the said period of four months, a new insurance policy consistent with the new Act is required to be obtained."

18. In *New India Assurance Co. Ltd. v. Raj Kumari & Ors.*, reported in 1994 ACJ 1110, a Division Bench of Allahabad High Court, held :

"Insurer is liable to compensate a workmen driver to the extent provided under the Workmen's Compensation Act. It comes to Rs. 1,27,047/-. Otherwise also under the Act Just compensation would be near about the said amount. Accordingly, we modify the award and direct the insurer shall pay Rs. 1,27,074/- as compensation to claimants. Claimants are entitled to interest at the rate of 6% per annum on the aforesaid amount from the date of application till the date of payment Rate of 10% interest is now fixed by Reserve Bank of India on a long term fixed deposit. Accordingly, claimants should not be allowed higher rate of interest."

19. In *Ayisha Beevi Vs. Kalidasan*, it was held:

"It is equally evident that unless it Is otherwise shown, the limit of liability for payment of compensation in relation to the death or bodily injury of an employee being carried in a goods vehicle is limited to the amount of compensation payable under the Workmen's Compensation Act. Admittedly, no attempt was made by the insured--appellant in this case to urge or prove before the Tribunal that the insurer was obliged to pay compensation in excess of the liability imposed by section 95 of the Act. In the absence of any pleadings or proof, the Tribunal was correct in coming to the conclusion that the insurer was liable to

pay only that amount which it was obliged to pay u/s 95(1) of the Act. We are, therefore, not persuaded to hold that the Tribunal went wrong in directing the owner of the vehicle, appellant herein, to pay the balance amount of Rs. 10,500/- out of the total compensation awarded by it,"

20. Thus, the apex Court has clearly held that the liability of the insurer under sub-section (1) of section 147 would not be unlimited and subject to the exception of the cases which come within the purview of the proviso appended thereto. If a death or bodily injury takes place of the employee coming under the proviso, the same must be read as exception to the main provision.

21. As in terms of the interim order of this Court dated 30th June, 1999 some amount has been deposited by the insurance company and the respondent/claimants have been permitted withdrawal of half-yearly interest accrued thereon, it is, further directed that the respondent shall be entitled to the proportionate interest accrued on the sum as determined by us and held, to be payable to the respondents/claimants.

22. For the reasons aforementioned, we are of the opinion that the question posed in this application must be answered in favour of the appellants and against the respondents. The appeal is allowed in part. The Judgment and Award passed by the learned Tribunal is modified and it is declared that the applicants/respondents shall only be entitled to such amount which would have become payable on account of the death of the deceased in terms of the provisions of the Workmen Compensation Act, 1923.

For the reasons aforementioned the appeal is allowed in part and the matter is remitted back, with the above observations, to the learned Tribunal. We direct the Tribunal below to dispose of the matter within 4(four) weeks from the date of communication of the order.

M.H.S. Ansari, J.

23. I agree.

24. Appeal allowed