
(2008) 05 AHC CK 0025
In the Allahabad High Court

United India Insurance Co. Ltd.

APPELLANT

Vs

Smt. Kushma Devi and Others

RESPONDENT

Date of Decision : 08-05-2008

Acts Referred:

Citation : (2008) 4 AWC 3438

Hon'ble Judges : S.S. Chauhan, J;Rajes Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rajes Kumar and S.S. Chauhan, JJ.—The present first appeal from order is directed against the judgment and award dated 29.9.2004, passed by the Motor Accident Claims Tribunal, Raibareli in M.A.C.P. No. 167 of 2001, Smt. Kushma Devi and Ors. v. Chandra Bhan and Ors.

2. The facts in brief are that on 12.11.2000 at about 4 a.m. when the tractor was carrying passengers for the purposes of holy dip in river Ganga met with an accident near Hanuman Mandir at Maharajganj, Raibareilly Road, in which the deceased Ram Bhajan was also going for holy dip in river Ganga. The deceased succumbed to his injuries on the spot. Thereafter claim petition was filed by the claimants alleging therein that they are entitled for compensation as contemplated under the Motor Vehicles Act (hereinafter referred to as the "Act").

3. Written statements were filed by the owner as well as by the driver in the claim petition and they stated that no accident has taken place from their tractor and neither their tractor was taken into police custody. The driver was having valid driving licence and the tractor was insured with the United India Insurance Company. It was further alleged that it was the insurance company, which was liable for payment of compensation. The insurance company filed written statement denying its liability and stated that the tractor in question was not insured for any other purpose except for agricultural purposes and, therefore, the insurance company was not liable for payment of compensation.

4. In support of the claim petition evidence was led by the wife of the deceased, Smt. Kushma Devi, daughter Km. Uma Devi and the nephew Sanjay Yadav and they proved the factum of accident. The driver and the owner adduced evidence of valid driving licence as well as the insurance note cover. However, the insurance company did not adduce any evidence either oral or written except written statement and also did not bring on record the insurance policy to prove that the terms and conditions of the policy were violated. Upon consideration on entire material and evidence on record, the Tribunal gave an award against the insurance company. Feeling aggrieved with the aforesaid award, the insurance company has come up in appeal before this Court.

5. Learned Counsel for the appellant has vehemently argued before this Court that the tractor was insured for agricultural purposes only and, therefore, liability cannot be fastened upon the insurance company. In support of her contention, she has placed reliance upon the decision of the Apex Court in the case of Oriental Insurance Co. Ltd. v. Brij Mohan and Ors. 2007 ACJ 1909 : 2007 (3) AWC 2471 (SC).

6. Learned Counsel for the claimants-respondents urged before this Court that neither any evidence was led by the insurance company nor any policy was placed on record to prove its case nor any person was adduced as a witness nor any documentary evidence was filed to prove that the terms and conditions of the policy were violated. The policy, as required under law, was never proved nor filed by the appellant and, therefore, the insurance company cannot deny its liability to pay the compensation.

7. We have heard the learned Counsel for the parties and gone through the record.

8. The contention of the learned Counsel for the appellant is that the tractor was insured for agricultural purposes only and, therefore, if the terms and conditions of the policy were violated, the liability cannot be fastened upon the appellant.

9. In Brij Mohan (supra) the case is also to the same effect, but the question which falls for consideration is as to whether the appellant has been able to prove its case before the Tribunal. The appellant has only filed written statement and in para 18 of the written statement it has been stated that the tractor was insured for agricultural purposes only. Apart from it, neither any evidence has been adduced nor the terms and conditions of the policy have been placed on record to prove that the tractor was insured for agricultural purposes only. No other evidence was filed by the appellant nor any employee of the insurance company was produced to prove its case.

10. The appellant has failed to prove its case before the Tribunal and a specific finding has been recorded in this regard by the Tribunal while deciding issue No. 4. The appellant's argument, therefore, cannot be accepted in the light of the above legal position. The appellant was in possession of the policy, therefore, the burden lay upon the appellant to prove its case that the terms and conditions of

the policy were violated. The appellant has to prove its case specifically, which it has failed. The dictum of Brij Mohan (*supra*) will apply only where the parties have been able to prove their case in accordance with law.

11. The decision of the Apex Court in the case of Nagashetty Vs. United India Insurance Co. Ltd. and Others, lays down that the policy has to be proved and further that the tractor can only be insured for carrying the goods and there is no provision for insuring the trailer. In para 11 of the aforesaid judgment it has been held as under:

In this case, we find that the insurance company, when issuing the insurance policy, had also so understood. The insurance policy has been issued for a tractor. In his insurance policy an additional premium of Rs. 12 has been taken for a trailer. Therefore, the insurance policy covers not just the tractor but also a trailer attached to the tractor. The insurance policy provides as follows for the "persons or classes of persons entitled to drive":

Persons or classes of persons entitled to drive.--Any person including insured provided that the person driving holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a licence:

Provided also that the persons holding an effective learner's licence may also drive the vehicle when not used for the transport of goods at the time of the accident and that such a person satisfies the requirements of Rule 3 of the Central Motor Vehicles Rules, 1989, limitations as to use.

12. While dealing with the similar question in the case of National Insurance Co. Ltd., New Delhi v. Jugal Kishore and Ors. 1988 SCC 222, the Apex Court in para 10 of the judgment held as under:

10. Before parting with the case, we consider it necessary to refer to the attitude often adopted by the insurance companies, as was adopted even in this case, of not filing a copy of the policy before the Tribunal and even before the High Court in appeal. In this connection what is of significance is that the claimants for compensation under the Act are invariably not possessed of either the policy or a copy thereof. This Court has consistently emphasised that it is the duty of the party which is in possession of a document which would be helpful in doing justice in the cause to produce the said document and such party should not be permitted to take shelter behind the abstract doctrine of burden of proof. This duty is greater in the case of instrumentalities of the State such as the appellant who are under an obligation to act fairly. In many cases even the owner of the vehicle for reasons known to him does not choose to produce the policy or a copy thereof. We accordingly wish to emphasise that in all cases where the insurance company concerned wishes to take a defence in a claim petition that its liability is not in excess of statutory liability it should file a copy of the insurance policy alongwith its defence. Even in the instant case had it been done so at the appropriate stage necessity of approaching this Court in civil appeal would in all probability have been avoided. Filing a copy of the policy, therefore, not only cuts

short avoidable litigation but also helps the Court in doing justice between the parties. The obligation on the part of the State or its instrumentalities to act fairly can never be over-emphasised.

13. The similar question also arose in the case of Tejinder Singh Gujral Vs. Inderjit Singh and Another, wherein the Apex Court held as under:

The learned Tribunal, however, committed "an error in opining that the insurance policy was not required to be proved. The learned single Judge of the High Court in our opinion, rightly held that the insurance policy having not brought on records, a presumption would arise that the liability of the insurer was unlimited. The learned single Judge adopted a rather liberal approach. He took into consideration the entire evidence on record including the extent of disability allegedly suffered by the appellant.

14. No evidence was placed on record by the appellant from which it can be inferred that the tractor was insured for which purpose. The finding recorded by the Tribunal does not require any interference.

15. The appeal is devoid of merits. It is accordingly dismissed.