(2003) 08 CAL CK 0058

In the Calcutta High Court

Case No : F.M.A. No. 459 of 1999

United India Insurance Co. Ltd. APPELLANT

Vs

Tanushree Mukherjee and Others RESPONDENT

Date of Decision : 29-08-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 147

Citation : (2004) ACJ 795

Hon'ble Judges : Samaresh Banerjea, J;S.P. Talukdar, J

Bench : Division Bench

Advocate : Kamal Krishna Das, for the Appellant;Krishanu Banik, for the Respondent

Final Decision : Allowed

Judgement

S.P. Talukdar, J.—The present appeal being No. 459 of 1999 is directed against the judgment/order dated 26.8.1997 passed by the learned 3rd Additional District Judge-cum-Motor Accidents Claims Tribunal, Nadia Krishanagar in M.A.C. Case No. 413 of 1995.

2. Respondents, namely, Tanushree Mukherjee (minor) and Piyali Mukherjee, as claimants, filed an application u/s 140 of the Motor Vehicles Act read with Section 166 of Motor Vehicles Act, 1988 on account of death of Tarun Kumar Mukherjee.

3. Grievances of the present respondents, as claimants, may briefly be stated as follows:

On 7.9.1995 at about 9.00 hrs. a vehicle bearing No. WB 11-6484 was rushing towards Calcutta via N.H. 34 at a high speed. At about 9 a.m. when it reached near Panchpota (Babla) of Santipur, Distt. Nadia, one of the tyres got punctured and the driver of the vehicle lost control and it dashed against a roadside tree. All the three occupants including the owner of the said vehicle were severely injured and the owner, Tarun Kumar Mukherjee, died on way to the hospital. Such accident took place due to rash and negligent driving of the said vehicle.

The claimants are the legal heirs of the deceased owner of the vehicle. An amount of Rs. 50,000 in a way of statutory compensation was sought for in the application u/s 140 of the Motor Vehicles Act.

4. The said case was contested by the present appellant, United India Insurance Co. Ltd. A written objection was filed wherein all the material allegations made in the claim application were denied.

5. The learned Tribunal after taking into consideration all the relevant facts and circumstances by its judgment dated 26.8.1997 allowed the said claim application and passed an award of Rs. 50,000 with a direction upon the present appellant insurance company to satisfy the award within a month of the date of delivery of the said judgment.

6. Being aggrieved by and dissatisfied with the said judgment and award, United India Insurance Co. Ltd. had preferred the instant appeal. It had been specifically stated that the learned Tribunal ought to have exonerated the insurance company from the liability altogether since the contract between the owner of the vehicle and the insurance company did not speak of any liability except the liability to indemnify the owner of the vehicle according to coverage.

7. At the time of hearing of the appeal the only point raised before us was as to whether the insurance company could be under legal obligation to pay any amount whatsoever to the claimants who are the legal heirs of the owner of the vehicle involved in the accident.

8. Learned counsel, Mr. Kamal Krishna Das, appearing for the appellant drew our attention to judgments of various High Courts as well as of the Supreme Court which may be referred to as follows:

(1) The Oriental Fire and General Insurance Co. Ltd. Vs. Smt. Shakuntala Devi, ;

(2) United India Insurance Company Limited, Gulbarga Vs. Siddanna Nimbanna Jawali and Another, ;

(3) National Insurance Co. Ltd. Vs. Sasilatha, ;

(4) United India Insurance Co. Ltd. Vs. Darshan Kaur etc., ;

(5) The New India Assurance Company Limited, Bangalore Vs. Rajendra Singh and others, ;

(6) United India Insurance Co. Ltd. Vs. Odeti Mallu Bai and Others, ;

(7) Hemlata Sahu and Others Vs. Ramadhar and Another, ; and

(8) Oriental Insurance Co. Ltd. Vs. Sunita Rathi and Others, .

9. Relying upon the decisions in the cases as referred to above it was submitted by Mr. K.K. Das, the learned counsel for the appellant insurance company that the owner of the vehicle having died in the accident involving the said vehicle,

question of any further liability could hardly arise and with the death of the owner, there could hardly be any occasion for the insurer to indemnify according to coverage.

10. In response to the same, learned counsel Mr. Krishanu Banik, appearing for the respondents drew our attention to the decision in the case of Om Parkash and Another Vs. Rajbiri and Others, , in support of his contention that it is the vehicle which is being insured and not the owner of the vehicle.

11. It cannot be denied that the liability of the insurance company essentially depends upon the terms and conditions of the insurance policy. But, such policy between the insurer and the insured is left with hardly any force when the insured himself becomes the victim of an accident involving the said vehicle.

12. In the present case there were three occupants in the vehicle, which met with the accident. One of the said occupants was the owner of the said vehicle. He was the person insured and with his death in the said accident, there could be no further liability to pay compensation by the owner and this brought the liability of the insurance company to an end as well. Claimants are the legal heirs of the owner of the vehicle involved in the accident. It is the settled principle of law that with the death of the insured, liability of the insurance company comes to an end. As such, however, strange and unfortunate it might be, the respondents-claimants are not entitled to get any compensation whatsoever.

13. Mr. Krishanu Banik, learned counsel for the respondents drew our attention to the rules, regulations, rates, advantages, terms and conditions for transaction of the motor insurance business in India in accordance with the provisions of Part II-B of the Insurance Act, 1938 as laid down by the Tariff Advisory Committee. Mr. Banik has emphatically pointed out that the provisions of this tariff are binding on all concerned and any breach of the tariff shall be a breach of the provisions of the Insurance Act, 1938. In this context, Mr. Banik referred to the decision in the case of Daljit Sawhney Vs. Jagtar Singh etc., , wherein the single Judge of the High Court of Delhi held that the "nationalised insurance companies which are instrumentalities of the State are bound by the directions of Tariff Advisory Committee which is a statutory committee. It is the duty of insurance companies to publish and widely publicise the instructions of Tariff Advisory Committee which are meant for the benefit of the prospective policy holders".

14. It appears from the provisions of the tariff that there are two types of policies:

(i) Liability only policy: This covers third party liability for bodily injury and/or death and property damage, personal accident cover for owner driver is also included.

(ii) Package policy: This covers loss or damage to the vehicle insured (O.D.) in addition to (i) above.

Significantly enough, general regulation 36 which deals with personal accident

(PA) cover under motor policy reads as follows:

"A. Compulsory personal accident cover for owner-driver

Compulsory personal accident cover shall be applicable under both liability only and package policies. The owner of insured vehicle holding an effective driving licence is termed as the owner-driver for the purpose of this section.

Cover is provided to the owner-driver whilst driving the motor vehicle including mounting into/dismounting from or travelling in the insured vehicle as a co-driver.

NB. This provision deals with personal accident cover and only the registered owner in person is entitled to the compulsory cover where he/she holds an effective driving licence. Hence compulsory PA cover cannot be granted where a vehicle is owned by a company, a partnership firm or a similar body corporate or where the owner-driver does not hold an effective driving licence. In all such cases, where compulsory PA cover cannot be granted, the additional premium for the compulsory PA cover for owner-driver should not be charged and the compulsory PA cover provision in the policy should also be deleted. Where the owner-driver owns more than one vehicle, compulsory PA cover can be granted for only one vehicle as opted by him/her."

15. Learned counsel for the appellant United India Insurance Co. Ltd. Mr. K.K. Das submitted that India Motor Tariff as amended up to 1.5.2001 which superseded India Motor Tariff in force from 1.4.1990 did not provide with any scope for such personal accident coverage.

16. It may be pointed out that the tariff, as referred to by Mr. Banik, supersedes the provisions of the India Motor Tariff in existence up to 30.6.2002. Having regard to the facts and materials of the present case, we are afraid, such regulation cannot be of any avail to the respondents in the present case. The tariff, as amended from time to time, cannot be given retrospective effect so as to include the present respondents as beneficiaries of the said regulation. Moreover, the insurance policy in question does not also reflect any such personal coverage.

17. It is no doubt a matter of great concern if the benefit of social legislation like Motor Vehicles Act cannot be extended to the owner/driver of a vehicle. The response in this regard in the form of tariff superseding the earlier one which was in existence up to 30.6.2002, thus is welcome. After all, it is better late than never.

18. Unfortunately, this does not change the complexion of the present case and in the facts and circumstances, we are perhaps left with no choice but to accept the grievances as ventilated on behalf of the appellant. This makes it difficult for us to agree with the views of the learned Tribunal though not without pain in mind and in our opinion, the respondents-claimants cannot get any compensation for the accidental death of Tarun Kumar Mukherjee who was father and husband of respondent Nos. 1 and 2 respectively.

19. The appeal is accordingly allowed.

20. The judgment and the order dated 26.8.1997 passed by the learned 3rd court of Additional District Judge-cum-M.A.C. Tribunal, Nadia Krishanagar in M.A.C. Case No. 413 of 1995 be set aside. The appellant United India Insurance Co. Ltd. is entitled to get refund of any amount, if deposited, either before this court or before the learned Tribunal.

21. There is, however, no order as to costs.

22. Xerox certified copy, if applied for, be given to the parties on payment of requisite fees on priority basis.

Samaresh Banerjea, J.

I agree.