

(2014) 11 CHH CK 0044
In the Chhattisgarh High Court
Case No : M.A. No. 54 of 2001

United India Insurance Company Ltd.

APPELLANT

Vs

Prahalad Singh and Others

RESPONDENT

Date of Decision : 11-11-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2015) ACJ 2653 : (2015) 1 CGLJ 526

Hon'ble Judges : P. Sam Koshy, J

Bench : Single Bench

Advocate : H.B. Agrawal, Sr. Advocate and Pankaj Agrawal, Advocates for the Appellant

Judgement

P. Sam Koshy, J.—Present is an appeal preferred by the appellant/Insurance Company under Section 173 of Motor Vehicles Act challenging the award dated 20.10.2000 passed by the Additional Motor Accident Claims Tribunal, Surajpur in Motor Accident Claim Case No. 21/98. Brief facts leading to the instant appeal are that the father of respondents 5 to 7 and son of respondents 2 & 3 Shiv Shankar Minj was working as a driver of the Jeep bearing registration No. CPL 9315 which was owned by respondent No. 1 and was insured by the appellant/Insurance Company met with an accident on 16.02.1993 while the Jeep was being driven by Shiv Shankar from Bhatgaon to Jawarnagar on the instruction of respondent No. 1. As a result of the accident, the driver of the said Jeep namely Shiv Shankar Minj died. Subsequently, respondents 2 to 7 filed a claim application under section 166 of Motor Vehicles Act before the Additional Motor Accident Claims Tribunal, Surajpur which was registered as Motor Accident Claim Case No. 21/98 claiming compensation of Rs. 22,00,000 from respondent No. 1 and the appellant jointly or separately.

2. During the course of proceedings before the Tribunal, the owner of the vehicle and the Insurance Company entered appearance before the Tribunal and submitted their respective reply categorically admitting the employment of the

deceased Shiv Shanker Minj as a driver of respondent No. 1 and the accident and also admitting the fact that the vehicle involved in the accident which was being driven by the deceased was insured by the appellant/Insurance Company. Though the employment, the accident, the death of the deceased and the insurance of the vehicle by the appellant are not disputed, the Insurance Company in its written statement had categorically taken a stand that the policy which was taken by the owner of the vehicle for the said Jeep was a third party insurance where the risk of the driver of the insured vehicle was not covered and that the extra premium for covering the risk of the driver was not paid. It was challenged by the Insurance Company that at the time of the accident, the deceased was not having a valid license for driving the Jeep nor had the Jeep proper registration and as there is a violation of the policy condition, the Insurance Company shall not be liable for any sort of compensation payable to the claimants.

3. Based on the pleadings that came before the Court below, the Tribunal framed two specific issues:

Firstly, whether the accident that took place on 16.02.1993 with Jeep No. CPL 9315 which was being driven by the deceased went out of control and fell in a ditch resulting in the death of the deceased?

Secondly, Whether the respondent No. 1 and the appellant were jointly and separately responsible for making the payment to the claimants and if yes, to what extent and from whom?

4. The Tribunal, on the basis of the evidences which have come on record vide impugned award dated 20.10.2000, reached to the conclusion that admittedly on 16.02.1993, Jeep No. CPL 9315 was being driven by the deceased at the instruction of respondent No. 1 and in the course of his employment, he met with an accident resulting in his death. The F.I.R. was also produced before the Tribunal on the basis of which the accident and the death of the deceased were proved.

5. As regards issue No. 2, learned Tribunal reached to the conclusion that the relationship of respondents 2 to 7 with the deceased is not in dispute and it is also an admitted fact that the vehicle involved in the accident was insured by the appellant/Insurance Company and that the deceased was working as a driver with respondent No. 1 on a payment of Rs. 3,000 per month. However, the Tribunal while deciding issue No. 2 based on the evidences which have come on record held that the vehicle belonged to respondent No. 1 which was insured by the appellant Insurance Company and therefore respondent No. 1 became one of the parties and the Insurance Company became second party. Thus, the Tribunal drew an inference that since these are the two parties to the insurance policy, all other persons would fall on the category of third party and therefore treating the driver i.e. the deceased to be a third party, the Tribunal decided issue No. 2 holding the Insurance Company on account of the fact that the vehicle was

insured with the appellant Company to be liable to indemnify the owner of the vehicle i.e. respondent No. 1 so far as the compensation is concerned.

6. As regards the objection of the Insurance Company in respect of the driver not having valid license and the vehicle not having legally registered with the transport authorities, the finding before the Tribunal was that in this regard sufficient proof has not been produced by the appellant before the Tribunal itself by leading cogent proof both oral and documentary, therefore, these two objections were decided against the Insurance Company on the basis of the admission of the employer and the evidence of the claimants that the deceased was working as a driver on monthly salary of Rs. 3,000 per month. Thus, the learned Tribunal reached to the conclusion that the claimants shall be entitled to get compensation of Rs. 4,14,232 jointly and separately to be paid by the respondent No. 1, the owner of the Jeep and the appellant Insurance Company with interest @ 12% per annum from the date of filing of the claim application.

7. It is this judgment which is put to challenge by the appellant Insurance Company by way of instant Misc. Appeal under Section 173 of the Motor Vehicles Act.

8. The sole contention of the senior counsel appearing for the appellant was that the finding of the Tribunal so far as holding the Insurance Company liable for payment of compensation indemnifying respondent No. 1 is concerned, the same is bad in law and is contrary to the settled legal position of law and therefore deserves to be set aside/quashed. According to the counsel for the appellant, the policy which was taken by respondent No. 1 for the vehicle involved in the accident was only a third party policy where the liability of the Insurance Company is only an act liability under which the driver of the vehicle associated with the offending vehicle would not fall within the ambit of third party and therefore the award passed by the Tribunal so far as holding the liability upon the Insurance Company is bad in law and liable to be set aside/quashed. According to the senior counsel, the driver, conductor or the employee of the offending vehicle can be covered under the policy only in the event if the owner of the vehicle pays extra premium covering the risk of the driver, conductor or the employee of the vehicle. He submits that unless the extra premium covering the risk of these persons are paid by the owner of the vehicle to the Insurance Company, the Insurance Company would not be liable to pay compensation indemnifying the insured person. The extent of the liability under the policy which in the instant case would be a liability occurred upon a third party which definitely does not mean the driver, conductor or the employee of the vehicle.

9. Learned counsel for the appellant relied upon the decisions in the matter of New India Assurance Company Ltd. Vs. Narayan Dhar Swain and Another and Saheblal Chandra and Another Vs. Bhudayal Chandra and Another, . In addition, counsel for the appellant also relied upon the decisions of the Hon''ble Supreme Court in the matter of National Insurance Company Ltd. Vs. Sinitha and Others, , and Sri Pramod Kumar Agrawal and Another Vs. Smt. Mushtari Begum and

Others, in support of his contention particularly that of the driver of the offending vehicle not being the third party then the Insurance Company cannot be held liable for payment of compensation.

10. Recently also the Hon''ble Supreme Court in the case of National Insurance Company Ltd. Vs. Balakrishnan and Another, has dealt with the issue as to whether under the policy which is an Act policy, the Insurance Company can be held liable for payment of compensation even in respect of the driver of the offending vehicle involved in the accident. In the said judgment Hon''ble the Supreme Court upon considering a series of judgments of the Supreme Court on the subject matter reached to the conclusion that an Act policy stands on a different footing from a "comprehensive/Package Policy". It further went on to clarify on the compensation that the Act policy admittedly cannot cover a third party risk of an occupant in a car involved in the accident. In the light of the recent pronouncement in the case of National Insurance Company (supra), there cannot be any hesitation in reaching to the conclusion that in the event the policy taken by respondent No. 1 in respect of the Jeep involved in the accident was an Act policy or a policy covering the risk of only a third party, the Insurance Company cannot be held liable for payment of compensation or indemnify respondent No. 1 the risk of payment of compensation payable in respect of the claim made on behalf of the deceased driver of the offending vehicle. If that be the position, the award passed by the Tribunal definitely is bad in law and liable to be set aside.

11. In the instant case, a perusal of the record would show that the Insurance Company has led evidence of one Sanjay Kumar, an officer of the appellant company to prove its case in support of the policy which was issued by the Insurance Company so as to substantiate its contentions whether the Insurance Company would be liable to indemnify the risk of the driver involved in the accident though he was not a third party. The said witness Sanjay Kumar has also accepted Ex. D-3 which is the certificate issued by the Insurance Company in respect of the offending Jeep and that from the endorsement made in the policy it reflects that respondent No. 1 had only paid the premium for an Act policy and had not paid any extra amount covering the risk of driver, conductor or employee of the owner of the Jeep. In view of the fact that the policy taken by the owner of the Jeep is only an Act policy and therefore the liability would be only to the extent of injury to any person or damage to any property to a third party which is not the facts of the instant case where the claimants are the dependants of the driver of the offending vehicle engaged by respondent No. 1 who was the owner of the said vehicle. The owner of the said vehicle having not paid extra premium covering the risk of the driver against the said accident, in that circumstance the appellant Insurance Company cannot be made liable for payment of compensation.

12. For the foregoing reasons particularly in the light of the series of decisions rendered by the Hon''ble Supreme Court relied upon by the counsel for the

appellant and also in the light of the recent decision of the Hon"ble Supreme Court in the case of National Insurance Company Limited (supra), this Court does not have any hesitation in reaching to the conclusion that the driver of the offending vehicle would not fall within the ambit of a third party and therefore the award passed by the Tribunal to the extent of making the Insurance Company liable for payment of compensation is bad in law.

13. However, taking into consideration the peculiar facts in the instant case that of the accident having occurred on 16.02.1993 i.e. more than 21 years ago and the Tribunal having passed an award in favour of the claimants on 20.10.2000 and this Court vide its order dated 27.03.2001 i.e. more than 13 years back had directed the Insurance Company for depositing the entire amount before the trial Court and the entire amount having been deposited, now it would be too harsh if the claimants are denied the fruits of the award passed by the Tribunal particularly keeping in view the date of accident which is more than two decades old. In a recent judgment of the Supreme Court in the matter of Manager, National Insurance Company Ltd. Vs. Saju P. Paul and Another, in paragraph 26, Hon"ble the Supreme Court has held as under:

"26. The pendency of consideration of the above questions by a larger Bench does not mean that the course that was followed in Baljit Kaur and Challa Upendra Rao should not be followed, more so in a peculiar fact situation of this case. In the present case, the accident occurred in 1993. At that time, the claimant was 28 years old. He is now about 48 years. The claimant was a driver on heavy vehicle and udc to the accident he has been rendered permanently disabled. He has not been able to get compensation so far due to the stay order passed by this Court. He cannot be compelled to struggle further for recovery of the amount. The Insurance Company has already deposited the entire awarded amount pursuant to the order of this Court passed on 1-8-2011 and the said amount has been invested in a fixed deposit account. Having regard to these peculiar facts of the case in hand, we are satisfied that the claimant (Respondent 1) may be allowed to withdraw the amount deposited by the Insurance Company before this Court along with accrued interest. The Insurance Company (the appellant) thereafter may recover the amount so paid from the owner (Respondent 2 herein). The recovery of the amount by the Insurance Company from the owner shall be made, by following the procedure as laid down by this Court in Challa Upendra Rao."

14. Taking into consideration the same analogy and the principle laid down by Hon"ble the Supreme Court in the case of Manager, National Insurance Company Limited Vs. Saju P. Paul and another, this Court is of the opinion that the amount which has been deposited by the Insurance Company shall be disbursed to the claimants and the Insurance Company is granted the liberty to recover the said amount so paid from the owner of the offending vehicle i.e. respondent No. 1 in accordance with law. Accordingly, the instant appeal stands disposed of as above with no order as to costs.