
(2012) 03 AHC CK 0297
In the Allahabad High Court
Case No : F.A.F.O. No. 1078 of 2009

Vinay Kumar Agarwal

APPELLANT

Vs

Oriental Insurance Co. Ltd.

RESPONDENT

Date of Decision : 23-03-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 145(g), 146, 147, 147(1), 149
Penal Code, 1860 (IPC) — Section 279, 304A, 338

Citation : (2013) ACJ 1956

Hon'ble Judges : Satish Chandra, J;Rajiv Sharma, J

Bench : Division Bench

Advocate : Ali, for the Appellant; Shishir Pradhan and Mr. Narvind Kumar Singh, for the Respondent

Final Decision : Allowed

Judgement

Satish Chandra, J.—This first appeal is filed u/s 173 of the Motor Vehicles Act, 1988 against the judgment and order dated 25.5.2009 passed by the Motor Accidents Claims Tribunal, Hardoi in Claim Petition No. 100 of 2007, whereby a compensation of Rs. 1,88,370 was awarded along with interest at the rate of 6 per cent per annum from the date of filing of the claim petition. In pursuance to the impugned judgment and order, the compensation was paid to the claimants-respondents by insurance company who got the "recovery right" from the owner. Being aggrieved, the owner has filed the present appeal.

2. Heard Mr. Mohd. Ali, learned counsel for the appellant; Mr. Shishir Pradhan, learned counsel for the opposite party No. 1; and Mr. Narvind Kumar Singh, learned counsel for the claimants-respondents.

3. After hearing the parties and upon perusal of the record, it appears that the factum pertaining to the accident, death and quantum of compensation are not in dispute. The only disputed point is the "recovery right" given to insurance company against the owner.

4. From the record, it appears that on 6.4.2007 at about 6.45 p.m., the deceased Satish Kumar Gupta was going from the market to his house. When he was walking on the road, a bus No. UP 30-A 6432 hit him. The deceased died on the spot. It was alleged that the bus driver did not make any sound by blowing the horn. The deceased was a married person. On the date of the accident, the bus driver was having a valid driving licence and bus was duly insured from the opposite party No. 1, i.e., Oriental Insurance Co. Ltd. Against the bus driver, a Criminal Case No. 22 of 2007 was also registered under sections 279, 338 and 304-A of Indian Penal Code in Police Station Kotwali Dehat.

5. After examining entire evidence, the Tribunal observed that the vehicle in question was a minibus but it was insured as a "goods vehicle", so the bus was plying by violating the terms and conditions of the insurance policy. By relying on a number of case-laws, the Tribunal observed that the insurance company is not liable to pay the compensation as there was a violation of the terms and conditions of the insurance policy.

6. From the record, it appears that originally, vehicle was insured in the year 2005 as "goods vehicle" and the same insurance policy was renewed every year. Undoubtedly, the vehicle in question was validly insured with the insurance company as "goods vehicle" being a lower premium of policy amount. But fact remains that the deceased was not a gratuitous passenger in the vehicle in question. He was a pedestrian. It makes no difference whether the vehicle was insured as a "passenger bus" or a "goods vehicle". The deceased was a pedestrian, who died due to the accident caused by the vehicle in question. Hence, by keeping in mind the ratio laid down in the case of National Insurance Company Ltd. Vs. Bhukya Tara and Others, , we are of the view that when the deceased was not travelling in the vehicle as a gratuitous passenger then insurance company is liable to pay the compensation as vehicle in question was duly insured.

7. Needless to mention that the provisions of compulsory insurance have been framed to advance a social object. It is in a way part of the social justice doctrine. When a certificate of insurance is issued, in law, the insurance company is bound to reimburse the owner. There cannot be any doubt whatsoever that a contract of insurance must fulfill the statutory requirements of formation of a valid contract but in case of a third party risk, the question has to be considered from a different angle.

8. Section 146 of the Motor Vehicles Act provides for statutory insurance. An insurance is mandatorily required to be obtained by the person in charge of or in possession of the vehicle. The motor vehicle cannot be allowed to be used in a public place. So, there being a statutory injunction that the vehicle cannot be plied unless a policy of insurance is obtained, we are of the opinion that the contract of insurance would be enforceable against third party.

9. We may, furthermore, notice that recently the Hon'ble Supreme Court in the

case of National Insurance Co. Ltd. Vs. Laxmi Narain Dhut, , held as under:

(17) Section 149 is part of Chapter XI which is titled "Insurance of Motor Vehicles against Third Party Risks". A significant factor which needs to be noticed is that there is no contractual relation between the insurance company and the third party. The liabilities and the obligations relating to third parties are created only by fiction of sections 147 and 149 of the Act.

Yet again, another Bench of the Hon"ble Apex Court in The Oriental Insurance Company Limited Vs. Meena Variyal and Others, , opined:

(10) Chapter XI of the Act bears a heading, "Insurance of Motor Vehicles against Third Party Risks". The definition of "third party" is an inclusive one since section 145(g) only indicates that "third party" includes the government. It is section 146 that makes it obligatory for an insurance to be taken out before a motor vehicle could be used on the road. The heading of that section itself is "Necessity for insurance against third party risk". No doubt, the marginal heading may not be conclusive. It is section 147 that sets out the requirement of policies and limits of liability. It is provided therein that in order to comply with the requirements of Chapter XI of the Act, a policy of insurance must be a policy which is issued by an authorised insurer; or which insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) against any liability which may be incurred by the owner in respect of the death of or bodily injury or damage to any property of a third party caused by or arising out of the use of the motor vehicle in a public place. With effect from 14.11.1994, injury to the owner of goods or his authorised representative carried in the vehicle was also added. The policy had to cover death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place. Then, as per the proviso, the policy shall not be required to cover liability in respect of the 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, 1923 in respect of the death of, or bodily injury to, an employee engaged in driving the vehicle, or who is a conductor, if it is a public service vehicle or an employee being carried in a goods vehicle or to cover any contractual liability. Sub-section (2) only sets down the limits of the policy. As we understand section 147(1) of the Act, an insurance policy thereunder need not cover the liability in respect of death or injury arising out of and in the course of the employment of an employee of the person insured by the policy, unless it be a liability arising under the Workmen's Compensation Act, 1923 in respect of a driver, also the conductor, in the case of a public service vehicle, and the one carried in the vehicle as owner of the goods or his representative, if it is a goods vehicle. It is provided that the policy also shall not be required to cover any contractual liability. Uninfluenced by authorities, we find no difficulty in understanding this provision as one providing that the policy must insure an

owner against any liability to a third party caused by or arising out of the use of the vehicle in a public place, and against death or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of vehicle in a public place. The proviso clarifies that the policy shall not be required to cover an employee of the insured in respect of bodily injury or death arising out of and in the course of his employment. Then, an exception is provided to the last foregoing to the effect that the policy must cover a liability arising under Workmen's Compensation Act, 1923, in respect of the death of or bodily injury to an employee who is engaged in driving the vehicle or who serves as a conductor in a public service vehicle or an employee who travels in the vehicle of the employer carrying goods if it is a goods carriage. Section 149(1), which casts an obligation on an insurer to satisfy an award, also speaks only of award in respect of such liability as is required to be covered by a policy under clause (h) [sic (b)] of sub-section (1) of section 147 (being a liability covered by the terms of the policy). This provision cannot therefore be used to enlarge the liability if it does not exist in terms of section 147 of the Act.

(11) The object of the insistence on insurance under Chapter XI of the Act thus seems to be to compulsorily cover the liability relating to their person or properties of third parties and in respect of employees of the insured employer, the liability that may arise under the Workmen's Compensation Act, 1923 in respect of the driver, the conductor and the one carried in a goods vehicle carrying goods.

10. Thus, section 146 of the Act forbids the use of a vehicle in a public place unless there is in force in relation to the use of that vehicle a policy of insurance complying with the requirements of that chapter. Any breach of this provision may attract penal action. In the case of property, the coverage extends to a third party, i.e., a person other than the insured. That is why even the Claims Tribunal constituted u/s 165 is invested with jurisdiction to adjudicate upon claims for compensation in respect of accidents involving death of or bodily injury to persons arising out of the use of motor vehicles, or damage to a third party. Here also it is restricted to damage to third party. In view of above, it is clear that when the deceased was pedestrian and was not a gratuitous passenger then the liability to pay the compensation lies with the insurance company as the vehicle was insured at the time of accident. It makes no difference that it was a "passenger" or "goods" vehicle.

In the instant case, the insurance policy pertaining to the vehicle also covers third party risk. When it is so, then we are of the view that the insurance company is solely responsible to pay compensation awarded by the Tribunal and the owner of the vehicle is not liable to pay any compensation, therefore, we modify the impugned judgment and award to this effect and the "right of recovery" is hereby deleted accordingly. In other words, the sole liability to pay the compensation lies with the insurance company who has already paid the awarded compensation to the claimants. Now it cannot be recovered from the

appellant, i.e., owner of the vehicle in question.

In the result, the appeal is allowed to this effect.