

Chimajirao Kanhojirao Shirke and another

Vs

Oriental Fire & General Insurance Co.Ltd.

Civil Appeal No. 1044 of 1992

(Mr. A.P. Misra and Mrs. Ruma Pal, JJ.)

26.07.2000

### JUDGMENT

1. The short question raised in this appeal is whether the words "unlimited personal injury and property damage" upto Rs. 10 lakhs for which premium of Rs. 134/- was paid as recorded in the insurance policy itself covers the death and bodily injury of the insured or not. According to the statement on behalf of the appellants, who are the claimants before us, the language used therein clearly indicates that the insured would also be covered under it, while submission on behalf of the insurance company is, this only co-relates to the damage of the property and has no correlation with the personal injury or death of the insured.

The short facts are that the appellant filed a suit for recovery of Rs. 6,03,000/- from the defendant-respondent insurance company. The appellants are the parents of the deceased Mahendra Shirke, who died in the accident on 8th January, 1980. The said deceased obtained loan from Maharashtra Finance Corporation and Bank of Baroda under "Educated Unemployment Scheme" for purchasing goods truck in the year 1977. He obtained the said loan under the condition that he will drive personally the said truck. According to the appellants' case, the deceased Mahendra insured his truck with the respondents to the tune of Rs. 10 lakhs, which is a comprehensive insurance covering risks for unlimited personal injury and property. The said truck was also insured as per the policy to the tune of Rs. 1,27,000/- for the damage to the property. It is not in dispute that on the date of accident the said truck was covered with the said insurance policy. In fact, the question which we have to decide is the interpretation of the policy itself.

On these facts, the trial court decreed the suit in favour of the appellants for the aforesaid amount alongwith interest @ 122% per annum. The Trial Court while considering Issues No. 1 and 9 after considering the submissions of both the parties concludes that the payment of Rs. 134/- as premium was for the unlimited personal injury to the life of the insured as well as to the property to the tune of Rs. 10 lakhs and finally recorded its finding to the following effect:—

"Moreover, there is no iota of evidence to prove that the contents as against premium at Rs. 134/- as unlimited personal injury and damages to be Rs. 10 lakhs has been wrongly or mistakenly shown in that policy".

This finding is recorded in view of the stand taken by the insurance company before the Trial Court, namely, the recording of the words 'unlimited personal injury' was wrongly recorded therein. In support of this, reference is made by learned counsel for the appellants to the written statement filed by the insurance company which is to the following effect:—

"The noting of 'Unlimited personal Injury is redundant, the premium is accepted either to cover property damage or personal injury. It is due to oversight/mistake, the wording 'Unlimited personal Injury' is typed against the additional premium of Rs. 134/-...."

Being aggrieved by the order of the Trial Court, the insurance company filed an appeal before the High Court and by means of the impugned order the High Court set aside the judgment of the Trial Court and allowed the appeal.

The High Court holds that insurance company is not liable to pay any compensation to the plaintiffs (appellants herein) on account of death of insured Mahendra under the terms of the said policy. This conclusion is drawn in view of the following findings:—

"Therefore, ultimately what we have to see in this case is the object of the payment of Rs. 134/- paid by the late Mahindra and accepted by the insurance company. As we read between the lines of the decisions referred to, we are of the view that the amount has been paid for covering the risk in excess of statutory liability in regard to the third party risks and not the personal injury or death of the insured".

Learned senior counsel for the insurance company Mr. Jitendra Sharma has referred to us to Sections 94, 95 and Sections I and II of the Insurance Policy to show that under the Motor Vehicles Act, 1939 it was obligatory for a person running the commercial truck to have insured by virtue of Section 94 and Section 95 refers to the requirements of the policy and the limits of liability. By virtue of that, the insurance company insures a person to the extent specified in sub-section (2) against any liability which may be incurred by the insured in respect of death or bodily injury to any person or damage to any property of third party, which includes death and bodily injury to any passengers of a public service vehicle. In other words, in a third party insurance the insured is indemnified against the loss which may occasion on account of any accident of the vehicle which he insurers, but it does not cover the insured for claiming any amount from the insurance company. In this background, he referred to the Insurance Policy itself to show that the words 'unlimited personal injury and property damages' upto 10 lakhs referred in it relates to the insured liability for which he would be indemnified but only in respect of a third party, that is to say the word 'personal' would qualify the injury or death of a third party and not to the insured. Scrutinizing the schedule of the Insurance Policy, he has referred to the premiums paid by the insured. The first entry is of Rs. 911/-, which according to him includes the third party, but it would be up to the extent of statutory liability, the next is insurers estimated value the third is additional tonnage the fourth is under our consideration. Similarly, the fifth is for strike and riot and the last is for workmen legal liability for which the premiums are paid. It is in this context with reference to the aforesaid Sections of the Act and under the policy it is submitted that the word 'unlimited personal' qualifies unlimited for death and injury of a third party and would not cover the insured person personally. The submission, prima facie, seems to be plausible but the question for our consideration is whether on the facts and the circumstances of this case such an interpretation could be given to the insurance policy. In this connection we may refer to what is the stand of the insurance company in its pleadings and submissions.

In the written statement filed by the insurance company, relevant portion of which we have already quoted above, the stand taken therein that it is due to oversight/mistake that the wording 'unlimited personal injury' is typed against the additional premium of Rs. 134/-.

This stand is contrary to the submissions made by the learned counsel for the respondent. It has not

been the case of the insurance company that notwithstanding the word used therein, namely, 'unlimited personal injury' it would in terms of the policy would be limited to the liability of a third party. On the contrary, faced with the submission that such words would make the insurer liable even to the insured personally, the said plea and submission was made in the Trial Court. Once the submission and the stand is that the writing is on account of oversight and mistake, the aforesaid submission made before us cannot be sustained.

In view of the aforesaid conclusion, we have no hesitation to hold that the High Court committed an error in setting aside the finding given by the Trial Court, specially in view of the said specific plea taken in the written statement. The High Court felt that since it is a legal matter it could be adjudicated notwithstanding a different stand in its pleading. This approach was not proper. Once a stand is fact is taken that fact could not be controverted by by any legal proposition. In the present case, the insurance company has not led any evidence to dissolve the stand taken in the written statement that it was done by mistake nor there was any application to amend such pleadings. In view of this, the High Court was not correct to decide the issue through legal inferences dehorse of and without adverting to the glaring facts on the record. Accordingly, we set aside the judgment of the High Court and confirm that of the Trial Court. The present appeal is accordingly allowed cost on the parties.

We have no hesitation, in case the appellants make an application to the Executing Court, the Court will consider it expeditiously.