

SUPREME COURT OF INDIA

The Oriental Insurance Company Limited

Vs.

Meena Variyal

(C.K. Thakker and P.K. Balasubramanyan JJ.)

02.04.2007

JUDGMENT

P.K. BALASUBRAMANYAN, J.

1. One Suresh Chandra Variyal was employed as a Regional Manager in M/s Apace Savings and Mutual Benefits (India) Ltd., the owner of a motor vehicle, respondent No.3 herein. Variyal was provided with a car by the employer. The vehicle was insured with the appellant company in terms of the [Motor Vehicles Act, 1988](#). There was no special contract.

On 14.6.1999, the vehicle met with an accident. Suresh Chandra Variyal, died. The widow and daughter of Suresh Chandra Variyal, filed a claim petition under Section 166 of the [Motor Vehicles Act, 1988](#), before the Motor Accidents Claims Tribunal, Nainital. Therein, they claimed compensation to the tune of Rs.15 lakhs. According to the claim, the deceased was driving along with his 'companion' Mahmood Hasan after completing his work for the employer.

At about 11.30 pm the car collided with a tree due to the rash and negligent driving of the driver. The car was being driven by Mahmood Hasan at the time of the accident. The deceased was an occupant of the car. The car was being used for the business and for the benefit of the employer of the deceased at the time of the accident. The deceased was earning Rs.

9,000/- per month. He had a bright career ahead. Mahmood Hasan had lodged a first information report the same day (reiterated in the counter affidavit filed in this Court) giving wrong facts to escape from any prosecution. It was not specified in the application as to what was the wrong fact or what were the wrong facts mentioned in the complaint filed by Mahmood Hasan. The claimants as dependants were entitled to compensation as claimed.

2. The claim was filed against the employer, the owner of the motor vehicle and against the insurance company.

Mahmood Hasan, who was allegedly driving the car and that too negligently, at the time of the accident, was not impleaded.

No reason was given in the claim for his not being impleaded.

The owner of the car, the company that employed the deceased, did not appear and did not file any written statement. The insurance company filed a written statement.

It pleaded that the driver and the owner of the vehicle have colluded and the alleged driver of the

car had not been impleaded. As a matter of fact, the deceased himself was driving the vehicle. Hence he was not entitled to claim any compensation since the accident occurred on account of his own negligence. The insurance company had no liability.

The compensation claimed was exorbitant and the claim was liable to be dismissed.

3. In support of the claim, the wife of Variyal was examined as P.W.1 and another person, who was allegedly travelling in the car when it met with the accident, was examined as P.W. 2. P.W. 1 asserted that the vehicle was being driven at the time of the accident by Mahmood Hasan and her husband was travelling in the car. This was sought to be supported by P.W. 2 who claimed that he was also travelling in the same car at the time of the accident. He gave evidence that Variyal was employed as a Regional Manager with the owner of the car, M/s Apace Savings and Mutual Benefits (India) Ltd. P.W. 2 also gave evidence that sometimes Variyal himself used to drive the vehicle but Mahmood Hasan usually drove the car. Mahmood Hasan had lodged a First Information Report at 4.40 p.m. on the day of the accident.

Therein, Mahmood Hasan had stated that Variyal was driving the car at the time of the accident.

4. No independent evidence was adduced to show what exactly was the salary that was being earned by Variyal from his employer. The employer was a limited liability company and in the normal course, should have been maintaining the relevant records showing the salary paid to a Regional Manager like Variyal. No attempt was made to get them produced. The widow contented herself by asserting in her oral evidence that Variyal was earning a salary of Rs. 9,000/- per month. The Motor Accident Claims Tribunal held that the evidence disclosed that Variyal was driving the vehicle since what was more acceptable was the first version regarding the accident and not the oral assertions of P.Ws. 1 and 2 in support of the claim. It also held that Variyal was not holding a valid driving licence when he drove the car. Purporting to accept the interested, unsupported version of P.W. 1 that the income of her husband was Rs. 9,000/- per month, the Tribunal calculated the dependency at Rs. 6,000/- per month and applying the multiplier of 10, arrived at the compensation payable as Rs. 7,20,000/-. The Tribunal held that the claimants were entitled to receive the amount from the owner of the vehicle, the employer, but the insurance company was not liable, since the vehicle was being driven by the deceased himself who was an employee of the owner of the car and the policy of insurance did not cover such an employee. Thus, the claim was ordered directing the owner of the car to pay the claimant a sum of Rs. 7,20,000/- with interest thereon.

5. The claimants filed an appeal before the High Court.

The insurance company, which had been exonerated by the Tribunal, alone resisted the appeal. The owner of the vehicle kept away. The claimants, the appellants before the High Court, contended that the Tribunal was in error in finding that the insurance company was not liable and in not granting them a decree against the insurance company. The insurance company pointed out that the deceased was not a third party covered by the insurance policy, was an employee of the owner of the vehicle and was not covered by the policy. Even otherwise, he was driving the car himself as found by the Tribunal and since the accident was caused by his own negligence, the insurance company was not liable.

6. The only argument attempted on behalf of the claimants, the appellants in the High Court, was that in the light of the decision of this Court in National Insurance Co.

insurance company was liable to pay the amount awarded even if there was breach of a policy condition and if there was a dispute between the insured and the insurer, it had to be fought elsewhere and they cannot be denied the benefit of the insurance. The insurance company pointed out that the ratio in Swaran Singh (supra) had no application to the case and in the face of the finding that the deceased was himself driving the vehicle belonging to his employer, the insurance company had no liability. There was no special contract and since it was only a policy in terms of the [Motor Vehicles Act](#), the insurance company cannot be asked to pay the amount awarded which was even otherwise not supported by any admissible or acceptable evidence. The High Court, stating that they had in so many cases held, in view of the ratio in Swaran Singh (supra), that it is not open to the insurance company to avoid liability under the Act, simply directed the insurance company to pay the amount as ordered by the Tribunal, leaving it to the insurance company to take recourse to recover the amount from the insured in accordance with the directions of this Court in Swaran Singh (supra).

7. We must say that one would have expected the High Court to apply its mind to the question arising, in a better manner and to specifically answer the question that arose for decision in the case. For instance, we may observe that it has not reversed the finding of the Tribunal that the deceased was himself driving the vehicle. Then, what was the position? The position was that a Regional Manager of the Company, which was owner of the vehicle, was himself driving the vehicle of the Company and during the course of it, he died in an accident, whether the accident occurred due to his negligence or otherwise. It appears to us that mere going by some decision or other, without appreciating the facts in a given case, in the light of the law, if any, declared by this court, does not lead a court or Tribunal to a correct conclusion in the normal course.

8. On behalf of the insurance company, the appellant, it is contended that the policy was only one in terms of the [Motor Vehicles Act, 1988](#) and the policy did not cover the employee of the owner, the insured, who was driving the vehicle while attending to the business of the employer company. The deceased was not "a third party" in terms of the policy or in terms of the Act. The Act did not provide for statutory coverage of such a person. This would be the position even if the deceased was only travelling in the car in his capacity as a Regional Manager of the owner Company and the vehicle was being driven by Mahmood Hasan as claimed. Since the High Court has not interfered with the finding of the Tribunal that the deceased was himself driving the car at the time of the accident and that he did not have a valid licence to drive a vehicle, there was absolutely no question of the insurance company being made liable under any principle of law. It was also submitted that without impleading Mahmood Hasan who was allegedly driving the car, the claim ought not to have been entertained, especially since there was controversy as to whether the car was being driven by Mahmood Hasan or by the deceased as sought to be projected by the claimants. The claimants were obliged to prove the negligence of the driver and the principles of general law in that regard, have not been jettisoned by the [Motor Vehicles Act](#). On the other hand, the law expounded by this Court earlier had been accepted by the Legislature by enacting Section 163A of the Act. Thus, this was a case where High Court grossly erred in directing the insurance company to pay the compensation decreed by the Tribunal, which in itself was a figure unsupported by any legal evidence and in purporting to apply the ratio of Swaran Singh (supra) to compel the insurance company to pay the amount awarded and then to have recourse to the insured. The learned counsel for the claimant - respondent on the other hand submitted that the vehicle, at the relevant time, was being driven by Mahmood Hasan and the Tribunal was wrong in entering a finding that the deceased himself was driving the vehicle in the light of the evidence of P.Ws. 1 and 2. The burden was on the insurance company, on the scheme of the Act, to show that it had no liability and in that context to show that the deceased himself was driving the vehicle and not Mahmood Hasan. Learned counsel further

submitted that this Court in Swaran Singh (supra) has laid down the law and that principle applies in all cases involving an insurance company and a policy issued by the Company in terms of the Act and whenever there is an award against the insured, the insurer is obliged to satisfy the award and have recourse to the insured even if the insurance company was really not liable under the policy. He therefore submitted that the High Court was justified in directing the insurance company to pay the compensation. He urged that Chapter XI of the Act contained beneficent provisions to protect the victims and the relevant sections should not be construed restrictively.

9. Before we proceed to consider the main aspect arising for decision in this Appeal, we would like to make certain general observations. It may be true that the [Motor Vehicles Act](#), insofar as it relates to claims for compensation arising out of accidents, is a beneficent piece of legislation. It may also be true that subject to the rules made in that behalf, the Tribunal may follow a summary procedure in dealing with a claim. That does not mean that a Tribunal approached with a claim for compensation under the Act should ignore all basic principles of law in determining the claim for compensation.

Ordinarily, a contract of insurance is a contract of indemnity.

When a car belonging to an owner is insured with the insurance company and it is being driven by a driver employed by the insured, when it meets with an accident, the primary liability under law for payment of compensation is that of the driver. Once the driver is liable, the owner of the vehicle becomes vicariously liable for payment of compensation. It is this vicarious liability of the owner that is indemnified by the insurance company. A third party for whose benefit the insurance is taken, is therefore entitled to show, when he moves under Section 166 of the [Motor Vehicles Act](#), that the driver was negligent in driving the vehicle resulting in the accident; that the owner was vicariously liable and that the insurance company was bound to indemnify the owner and consequently, satisfy the award made. Therefore, under general principles, one would expect the driver to be impleaded before an adjudication is claimed under Section 166 of the Act as to whether a claimant before the Tribunal is entitled to compensation for an accident that has occurred due to alleged negligence of the driver. Why should not a Tribunal insist on the driver of the vehicle being impleaded when a claim is being filed? As we have noticed, the relevant provisions of the Act are not intended to jettison all principles of law relating to a claim for compensation which is still based on a tortious liability. The Tribunal ought to have, in the case on hand, directed the claimant to implead Mahmood Hasan who was allegedly driving the vehicle at the time of the accident. Here, there was also controversy whether it was Mahmood Hasan who was driving the vehicle or it was the deceased himself. Surely, such a question could have been decided only in the presence of Mahmood Hasan who would have been principally liable for any compensation that might be decreed in case he was driving the vehicle. Secondly, the deceased was employed in a limited company. It was necessary for the claimants to establish what was the monthly income and what was the dependency on the basis of which the compensation could be adjudged as payable. Should not any Tribunal trained in law ask the claimants to produce evidence in support of the monthly salary or income earned by the deceased from his employer Company? Is there anything in the [Motor Vehicles Act](#) which stands in the way of the Tribunal asking for the best evidence, acceptable evidence? We think not. Here again, the position that the [Motor Vehicles Act](#) vis-à-vis claim for compensation arising out of an accident is a beneficent piece of legislation, cannot lead a Tribunal trained in law to forget all basic principles of establishing liability and establishing the quantum of compensation payable. The Tribunal, in this case, has chosen to merely go by the oral evidence of the widow when without any difficulty the claimants could have got the employer company to produce the relevant documents to show the income that was being derived by the deceased from his employment. Of course, in this case, the

above two aspects become relevant only if we find the insurance company liable. If we find that only the owner of the vehicle, the employer of the deceased was liable, there will be no occasion to further consider these aspects since the owner has acquiesced in the award passed by the Tribunal against it.

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.