SUPREME COURT OF INDIA

The New Indian Insurance Company

Vs

Darshana Devi

Appeal (civil) 1232 of 2008

(S.B. Sinha and V.S. Sirpurkar)

12/02/2008

JUDGMENT

S.B. SINHA, J.

1. Leave granted.

2. This appeal is directed against a judgment and order dated 13.02.2004 passed by a Division Bench of the Punjab and Haryana High Court whereby and whereunder the appeal preferred by the appellant herein against the judgment and order dated 3.12.2003 passed by the Motor Accident Claims Tribunal, Hoshiarpur under Section 166 of the Motor Vehicles Act, 1988, was summarily dismissed.

3. The facts necessary to be noticed for the present appeal are that the tractor bearing Registration Number PB-070-1026 was owned by three brothers, namely, Mahinder Singh, Joginder Singh and

Jagdev Singh. Ajay Kumar son of Mahinder Singh was driving the said vehicle on 18.10.2000. He did not have a driving licence. The accident occurred at about 7.00 pm on the aforementioned date. The deceased, Baldev Singh, was said to have been travelling on the mudguard of the said tractor which was going to Hoshiarpur loaded with 'safeda' wood. Owing to rash and negligent driving by Ajay Kumar, the deceased fell down and came underneath the said tractor.

A claim petition was filed before the Motor Vehicle Accident Claims Tribunal on 19.07.2001 by the heirs and legal representatives of the said deceased. Appellant, in its written statement, inter alia, raised the following contentions:

(1) The deceased being a passenger in the said tractor, was not a third party within the meaning of the provisions of Section 147 of the Motor Vehicles Act.

(2) As he was travelling on the mudguard of the tractor in breach of conditions of contract of insurance, the insurance company was not liable to reimburse the owner of the vehicle; and

(3) Ajay Kumar, being the son of one of the owners of the tractor and having no licence to drive the same, the case comes within the purview of the exeption as regards the liability of the insurer as envisaged under sub-section (2) of Section 149 of the Motor Vehicles Act.

4. The Tribunal in the said proceedings, inter alia, framed the following issues:

"(2) Whether the respondent No.1 was not having any valid driving licence at the time of accident? OPR-2"

The findings of fact arrived at by the Tribunal are as under:

(i) Mohinder Singh, Baldev Singh and Jagdev Singh son of Pannu were the owners of the tractor.

(ii) Ajay Kumar is son of Mahinder Singh, co-respondent.

(iii) The tractor used to be plied on hire.

(iv) At the relevant time, it was not being used for agricultural purposes for which it was insured.

(v) Although the owners had contravened the contracts of insurance, the insurance company cannot escape its liability in regard to third party risk but was entitled to recover the amount of compensation from the insurer, namely, the owner of the offending vehicle. The Tribunal awarded a sum of Rs.2,04,000/- by way of compensation in favour of the claimants.

5. As indicated hereinbefore, a Division Bench of the High Court dismissed the appeal preferred by the insurance company summarily.

6. Ms.Kiran Suri, learned counsel appearing on behalf of the appellant, submitted that the Tribunal committed a serious error in passing the impugned judgment insofar as it failed to take into consideration that in a case of this nature, the insurance company was not liable at all in terms of the provisions of the Motor Vehicles Act, 1988.

7. Mr. Bakshi, learned counsel appearing on behalf of the respondent, on the other hand, urged that although no exception to the legal proposition can be taken but it is not a fit case where this Court should exercise its discretionary jurisdiction under Article 136 of the Constitution of India.

8. The liability of an insurance company to recompense the owner and driver of a vehicle, who are primarily responsible for payment of compensation to a victim or dependent of a deceased arising out of use of a motor vehicle, is statutory in nature. Whereas an owner of a motor vehicle is under a statutory obligation to get it compulsorily insured, the defence of an insurance company is limited. Sub-section (2) of Section 149 of the Motor Vehicles Act, 1988 reads thus :"(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment of award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:-

(a) That there has been a breach of a specified condition of the policy, being one of the following conditions, namely:-

(i) A condition excluding the use of the vehicle-

(a) For hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(ii) A condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) A condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) That the policy is void on the ground that it was obtained by the nondisclosure of a material fact or by a representation of fact which was false in some material particular."

9. Extent of liability of an insurance company in terms of the said provision came up for consideration before this Court in a large number of decisions. We may notice some of these.In Dhanraj v. New India Assurance Co. Ltd. & Anr. [(2004) 8 SCC 553], this Court held:

"In the case of Oriental Insurance Co. Ltd. v. Sunita Rathi [(1998) 1 SCC 365] it has been held that the liability of an insurance company is only for the purpose of indemnifying the insured against liabilities incurred towards a third person or in respect of damages to property. Thus, where the insured i.e. an owner of the vehicle has no liability to a third party the insurance company has no liability also."

In United India Insurance Co. Ltd., Shimla v. Tilak Singh & Ors. [(2006)4 SCC 404], it was opined:

"In our view, although the observations made in Asha Rani case were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant Insurance Company that it owed no liability towards the injuries suffered by the deceased Rajinder Singh who was a pillion rider, as the insurance policy was a statutory policy, and hence it did not cover the risk of death of or bodily injury to a gratuitous passenger."

10. This Court, inter alia, opined that in a case where the driver has no licence to drive a particular category of motor vehicle, the insurance company would not be liable. [See National Insurance Company v. Swaran Singh & Ors[(2007) 3 SCC 297, para 84]

11. We may also take notice of a few recent pronouncements of this Court.

12. In New Indian Insurance Company Ltd. v. Vedwati & Ors. [2007 (3) SCALE 397], this Court held that passenger of a motor vehicle is not a third party, stating :

"The difference in the language of "goods vehicle" as appear in the old Act and "goods carriage" in the Act is of significance. A bare reading of the provisions makes it clear that the legislative intent was to prohibit goods vehicle from carrying any passenger. This is clear from the expression "in addition to passengers" as contained in definition of "good vehicle" in the old Act. The position becomes further clear because the expression used is "good carriage" is solely for the carriage of goods. Carrying of passengers in a goods carriage is not contemplated in the Act. There is no provision similar to Clause (ii) of the proviso appended to Section 95 of the old Act prescribing requirement of insurance policy. Even Section 147 of the Act mandates compulsory coverage against death of or bodily injury to any passenger of "public service vehicle". The proviso makes it further clear that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in goods vehicle would be limited to liability under the Workmen's Compensation Act, 1923 (in short 'WC Act"). There is no reference to any passenger in "goods carriage".

11. The inevitable conclusion, therefore, is that provisions of the Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefor."

In Oriental Insuirance Co. Ltd. v. Smt. Jhuma Saha & Ors. [AIR 2007 SC 1054], it was held:

"11. Liability of the insurer-company is to the extent of indemnification of the insured against the respondent or an injured person, a third person or in respect of damages of property. Thus, if the insured cannot be fastened with any liability under the provisions of Motor Vehicles Act, the question of the insurer being liable to indemnify insured, therefore, does not arise."

{See also New India Assurance Co. Ltd. v. Asha Rani & Ors. [(2003) 2 SCC 428}

In Oriental Insurance Co. Ltd. v. Meena Variyal & Ors.[(2007) 5 SCC 428], this Court held:

"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 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."

Swaran Singh (supra) was also distinguished stating that therein the vehicle involved having a third party risk stating:

"17. It is difficult to apply the ratio of this decision to a case not involving a third party. The whole protection provided by Chapter XI of the Act is against third party risk. Therefore, in a case where a person is not a third party within the meaning of the Act, the insurance company cannot be made automatically liable merely by resorting to the Swaran Singh (supra) ratio. This appears to be the position. This position was expounded recently by this Court in National Insurance Co. Ltd. v. Laxmi Narain Dhut [2007 (4) SCALE 36]. This Court after referring to Swaran Singh (supra) and discussing the law summed up the position thus:

In view of the above analysis the following situations emerge:

1. The decision in Swaran Singh's case (supra) has

no application to cases other than third party risks.

2. Where originally the licence was a fake one, renewal cannot cure the inherent fatality.

3. In case of third party risks the insurer has to indemnify the amount and if so advised, to recover the same from the insured.

4. The concept of purposive interpretation has no application to cases relatable to Section 149 of the Act.

The High Courts/Commissions shall now consider the mater afresh in the light of the position in law as delineated above.

We are in respectful agreement with the above view."

Asha Rani (supra) was followed.Yet again, in Oriental Insurance Co. Ltd. v. Brij Mohan & Ors. [2007

(7) SCALE 753], wherein one of us (S.B. Sinha, J.) was a member, this Court noticed Asha Rani and other decisions. Following the same, it was stated:

"10. Furthermore, respondent was not the owner of the tractor. He was also not the driver thereof. He was merely a passenger travelling on the trolley attached to the tractor. His claim petition, therefore, could not have been allowed in view of the decision of this Court in New India Assurance Co. Ltd. v. Asha Rani and Ors. [(2003) 2 SCC 223] wherein the earlier decision of this Court in New India Assurance Co. v. Satpal Singh [(2000) 1 SCC 237] was overruled. In Asha Rani (supra) it was, inter alia, held:

'25. Section 147 of the 1988 Act, inter alia, prescribes compulsory coverage against the death of or

bodily injury to any passenger of "public service vehicle". Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under the Workmen Compensation Act. It does not speak of any passenger in a "goods carriage".

26. In view of the changes in the relevant provisions in the 1988 Act vis-`a-vis the 1939 Act, we are of the opinion that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e. "a third party". Keeping in view the provisions of the 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor.27. Furthermore, Sub-clause (i) of Clause (b) of Sub-section (1) of Section 147 speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place, whereas Sub-clause (ii) thereof deals with liability which may be incurred by the owner of a vehicle against the 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.'[See also National Insurance Co. Ltd. v. Bommithi Subbhayamma and Ors. [(2005) 12 SCC 243]; United India Insurance Co. Ltd., Shimla v. Tilak Singh and Ors. [(2006) 4 SCC 404]; Prem Kumar & Ors. v. Prahlad Dev & Ors. [2008 (1) SCALE 531] and Oriental Insurance Co. Ltd. v. Prithvi Raj [2008 (1) SCALE 727]"

Having said so, we must take notice of the fact that the deceased Baldev Singh was labourer. The Tribunal has found that besides being a labourer, he also used to deal in Safeda wood. He was the owner of the 'Safeda' wood which was being transported to the market for its sale. The first respondent, Darshana Devi, in her deposition, stated that the deceased used to purchase wood from the State of Himachal Pradesh on contract basis. Only Gurdial Singh and Ravinder Singh were accompanying him as labourer. His income was assessed only at Rs.2, 400 per month.

13.In this view of the matter, we are of the opinion that it is not a fit case where this Court should exercise its discretionary jurisdiction under Article 136 of the Constitution of India. Even in Brij Mohan (supra), this Court held:

"13. However, respondent No. 1 is a poor labourer. He had suffered grievous injuries. He had become disabled to a great extent. The amount of compensation awarded in his favour appears to be on a lower side. In the aforementioned situation, although we reject the other contentions of Ms. Indu Malhotra, we are inclined to exercise our extraordinary jurisdiction under Article 142 of the Constitution of India so as to direct that the award may be satisfied by the appellant but it would be entitled to realize the same from the owner of the tractor and the trolley wherefor it would not be necessary for it to initiate any separate proceedings for recovery of the amount as provided for under the Motor Vehicles Act.14. It is well settled that in a situation of this nature this Court in exercise of its jurisdiction under Article 142 of the Constitution of India read with Article 136

thereof can issue suit directions for doing complete justice to the parties."

14. We, therefore, while dismissing the appeal would direct that for the purpose of realization of dues, the insurance company need not file a separate execution petition against the owner. If an application is filed for realization or recovery of dues before the Tribunal, the Tribunal shall take appropriate steps in this behalf. The appeal is disposed of accordingly. No costs.