SUPREME COURT OF INDIA

Balbir Kaur

Vs.

New India Assurance Company Ltd.

C.A.No.1838 of 2009

(S.B. Sinha and P. Sathasivam JJ.)

15.04.2009

JUDGMENT

S.B. Sinha, J.

1. Baljit Singh, deceased was riding on a two-wheeler (scooter) bearing Registration No. DAB 6529. The said scooter was hit by a bus driven by one Ramesh Singh Rawat. He suffered multiple grievous injuries in the said accident. He was taken to Deen Dayal Upadhya, Hospital, New Delhi where he was declared `brought dead'.

2. Appellants filed an application before the Motor Accident Claim Tribunal, Delhi (Tribunal) under Section 166 of the Motor Vehicles Act, 1988 (for short "the Act") claiming a sum of Rs. 20,00,000/- towards compensation for death of Baljit Singh inter alia on the premise that the accident was caused by reason of rash and negligent driving of the said bus by its driver Shri Ramesh Singh Rawat.

3. In the said claim petition, the income of the deceased was stated to be Rs. 4,000/- per month. He was aged 34 years on the date of accident.

> "Indisputably, in relation to the said accident, a criminal proceeding was also initiated under Sections 279 and 304A of the Indian Penal Code."

4. The Tribunal upon considering the materials brought on record by the parties awarded a sum of Rs. 7,96,000/- to the appellants. Respondent No. 1 preferred an appeal thereagainst before the High Court. By reason of the impugned judgment, the High Court set aside the award passed by the Tribunal opining that as the cover note of the insurance had been issued on 15.03.1996 but the same was to take effect from 19.03.1996 and the accident having taken place on 18.03.1996, the insurer was not liable therefor.

5. Appellants are, thus, before us.

6. By an order dated 13.08.2007, this Court issued a limited notice to the following effect:

> "Issue notice confined to the question as to whether in the peculiar facts and circumstances of the case and, particularly, in view of the fact that the petitioners have already withdrawn the amount deposited by the Insurance Company, this Court can issue a direction as to whether the Insurance Company may recover the amount from the owner and the driver in the same proceedings."

7. Before adverting to the contentions raised before us, we may notice that the High Court while issuing notice to the appellants directed the respondent No. 1 herein to deposit the awarded amount pursuant whereto the said amount has been deposited. Appellants have also withdrawn the same. However, the High Court, in its impugned judgment, directed refund of the said amount to the respondent No. 1.

8. The Tribunal in the said claim petition inter alia formulated the following issues:

> "1. Whether the insurance cover in the present case was effectively only from 19.3.96 to 10.3.97, replaced on behalf of R-3 in their WO7OPR3.
>
> 2. Whether premium insurance policy referred to in above issue No. 1 was paid on 15.3.96 and if so to what effect?"

9. On the first issue, the Tribunal noticed that in the cover note the policy was shown to have been issued with effect from 18.03.1996 in view of a circular issued by the insurance company but it had not been given effect to. Having regard to the fact that a photocopy thereof had been produced, it was held:

> "...Besides the proposal form relating to the impugned insurance policy has also not been produced to show as to what were the terms and conditions on which the insurance policy was to be executed with regard to the offending vehicle. There is no material on record to show that the insured was made aware of the office circular Ex-R3W1/B that if there was no other insurance policy in operation with regard to the offending vehicle immediately preceding 15.3.96 in these circumstances the insurance policy covering third party interest would be issued three days after the receipt of the proposal. The material on record placed by both the petitioner as well as respondent No. 3 in clear terms shows that the injured had made the payment of the premium on 15.3.96 and there was no reason for the insurance company to have issued the insurance policy covering third party interest w.e.f. 18.3.96..."

10. The High Court, on the other hand, having regard to the decisions of this Court in *National Insurance Co. Ltd. v. Jikubhai Nathuji Dabhi (SMT) and Ors.*[1] *and J. Kalaiveni and Ors. v. K. Sivshankar and Anr.*[2] held:

> "9. In view of the clear cut position of law explained by the Supreme Court, it is clear that policy of insurance commences risk coverage only in terms of the policy of

insurance and if certificate of insurance has not been issued, on the terms of the cover note."

11. Chapter XI of the Act provides for insurance of motor vehicles against third party risks. Indisputably, the deceased was a third party. In terms of Section 146 of the Act, an owner of a motor vehicle must take out an insurance in respect of a third party risk. Section 147 of the Act provides that a policy of insurance referred to in Section 146 thereof must be a policy which satisfies the conditions under Clauses (a) and (b) of Sub-section (1) thereof. Sub-section (5) of Section 147 reads as under:

> "(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a 6 policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons."

12. Section 64 VB of the *Insurance Act, 1938* merely provides that no insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such persons in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner.

13. For the purpose of this case, we would assume that an insurance policy, in law, could be issued from a future date. A policy, however, which is issued from a future date must be with the consent of the holder of the policy. The insurance company cannot issue a policy unilaterally from a future date without the consent of the holder of a policy. Even the said circular letter had not been produced and/ or no material was placed as to why the policy was issued from a later date. It is, however, not necessary for us to delve deep into the matter in view of the limited notice issued by this Court.

14. Respondent No. 3, however, owner of the vehicle has not questioned that part of the order passed by the High Court. He, therefore, accepted the judgment of the High Court. Accordingly, liability to pay the awarded amount by him is not in question.

15. Keeping in view the peculiar facts and circumstances of the case and in particular having regard to the fact that the appellants have already withdrawn the amount, the interest of justice would be subserved if this Court in exercise of its discretionary jurisdiction under Article 142 of the Constitution of India direct the insurance company not to recover the amount from the appellants herein, subject of course to its right of recovery from the owner and the driver of the vehicle.

16. The appeal is allowed to the aforementioned extent. No costs.

[1][(1997) 1 SCC 66] *[2][JT 2001 (10) SC 396]*