

National Insurance Company Ltd

v.

Savitri Devi & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE DEEPAK VERMA HON'BLE MR. JUSTICE K.S. RADHAKRISHNAN

C. A. Nos. 1207-1208 of 2012 (SLP(C) No. 1711-1712 of 2006) & CA. Nos. 1209 of 2012 (SLP(C) No, 7407 of 2006 | 31-01-2012

1. Leave granted.

2. National Insurance Company Ltd. (in short, "Insurance Company") is before us against the judgment and Order passed by the High Court of Himachal Pradesh at Shimla in four First Appeals, two preferred by the Insurance Company and two preferred by the claimants, which were heard together and disposed of by the common impugned Order dated 28.07.2005. According to Appellant - Insurance Company, no liability could have been fastened on it as admittedly, on the date of the accident on 12.11.1996, a barat was being carried in Tata mini open truck, bearing registration number HPK 9276. It is unfortunate that in the said accident, four persons including the owner-cum-driver of the mini truck had lost their lives.

3. Since four persons had died, obviously, four claim petitions came to be filed before Motor Accident Claims Tribunal-II, Kangra at Dharamshala (in short, "Claims Tribunal"). On the strength of the pleadings of the parties, the Claims Tribunal framed Issue No. 4, which is relevant for deciding the aforesaid appeals as mentioned hereinbelow:

"Whether the vehicle involved in accident was being driven in contravention of the terms and conditions of the Insurance Policy at the relevant time, if so, its effect?"

4. The Appellant - Insurance Company submitted the policy No. 31/21/95/948 before the Claims Tribunal, marked as Exhibit R-1, but did not lead any oral evidence with respect to this issue. However, it was not disputed that the said policy pertained to the aforesaid Tata mini open truck and was in force at the relevant point of time. For our perusal, a copy thereof has been submitted before us once again. We have gone through it critically. It was insured as Goods Carrying Vehicle only. The terms and conditions of the policy categorically say that the policy would not cover the following contingencies:

i) Use for organised racing pace making reliability trial or speed testing;

ii) Use whilst drawing a trailer except the towing (other than for reward) of any one disabled mechanically propelled vehicles.

iii) Use for carrying passengers in the vehicle except employees (other than the driver) not exceeding six (6) in number coming under the purview of Workman's Compensation Act, 1923.

5. The Claims Tribunal was largely impressed by the fact that even though it was insured only as a goods carrying vehicle, but was being used regularly for carrying members of marriage parties on the occasion of marriages. Thus, on the strength of the evidence of PW-3 and PW-4, the Claims Tribunal, in its wisdom, deemed it fit that even if such an act violated the clear terms and conditions of the policy, but since the truck was being used to carry passengers on a regular basis for such a long period, therefore, the Appellant-Insurance Company could be held liable to pay the amount of compensation. To make the things clear, we deem it fit and proper to reproduce paragraph 13, dealing with Issue No. 4 by the Tribunal:

"ISSUE No. 4

The onus of this issue too was on the Insurance Company Respondent No. 4. The Respondent No. 4 has not led any evidence, worth the name, except tendering policy, Ex. R-1. Indeed, the insurance company has not proved the relevant and specific exclusion clause of the insurance policy under which it seeks exoneration of the liability. It is no doubt true that as per policy Ex. R-1, the vehicle in question was a tempo, but it has come in the evidence of PW-3 and PW-4 that the said tempo, apart from carrying the goods, used to be regularly used for carrying members of the marriage parties in the marriages, and as such it used to be hired frequently for that purpose, which means that tempo in question was used for carrying passengers for hire or reward and in such a situation, the deceased cannot be treated as gratuitous passenger, especially when as seen above, Respondent No. 4 has led no evidence."

6. In the light of this, the Claims Tribunal awarded compensation to the claimants and thereby holding the Appellant-Insurance Company liable to pay the compensation to them, but liability of the Appellant-Insurance Company in each case was fixed only to Rs.70,000/-.

7. The Insurance Company, feeling aggrieved, carried the matter in appeal before the High Court.

8. The learned Single Judge of the High Court, under misconception, directed the Appellant-Insurance Company to make the payment to the claimants and then recover the amount from the estate of the owner by filing an execution petition, without taking recourse to a separate proceeding. The amount of compensation was also enhanced to RS.1,64,500/- from RS.70,000/- (in each case) by the High Court in the appeals preferred by the claimants. It is against this consolidated Judgment, the Appellant-Insurance Company is before us.

9. After having gone through the award of the Claims Tribunal and the judgment and Order passed by the learned Single Judge of the High Court, we are not able to understand as to how it has been found that the Appellant-Insurance Company can still be held liable to pay the amount of compensation as there has been a categorical finding by both the Courts recording that the vehicle in question was insured only as "Goods carrying Vehicle". The custom of carrying barat in the village on the said truck will not be sufficient to hold the Appellant-Insurance Company liable to pay the amount of compensation. Admittedly, Appellant-Insurance Company would not know unless the accident takes place as to for what purpose the vehicle in question was being used. The terms and conditions of the Insurance Policy are very clear and categorical and it creates a specific bar on carrying of any passengers, except the employees other than the driver, not exceeding six (6) in number, who should also come under the purview of Workman's Compensation Act.

10. The specific case of the claimants was that the barat was being taken in the said open truck on 12.11.1996 when the accident had taken place. Thus, according to us, it clearly violates the terms and conditions of the policy.

11. Dealing with similar circumstance, this Court has held in ACJ 2005 (2) 721 titled as "National Insurance Company Ltd. v. Bommithi Subbhayamma and others" as under:

"8....

It is, therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to persons other than the owner of the goods or his authorized representative remains the same. Although the owner of the goods or his authorized representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor any premium was paid to the extent of the benefit of insurance to such category of people.

9. The same view was reiterated in National Insurance Company Ltd. v. Challa Bharathamma, 2004 ACJ 2094 (SC); Pramod Kumar Agrawal v. Mushtari Begum, 2004 ACJ

1903 (SC) and also in National Insurance Company Ltd. v. V. Chinnamma, 2004 ACJ 1909 (SC).

10. In view of the aforementioned authoritative pronouncements of this Court, the impugned judgment of the High Court cannot be sustained which is set aside accordingly. This Appeal is allowed. We, however, make it clear that the claimants-respondents will be entitled to recover the amount of compensation granted in their favour by the Motor Vehicle Accidents Claims Tribunal from the owner of the vehicle. No costs."

12. Similar view has been reiterated in (2009) 2 SCC 75, titled as "National Insurance Company Limited v. Rattani and others", paragraph 14 and 15 of which are reproduced hereunder:

"14. The question as to whether burden of proof has been discharged by a party to the is or not would depend upon the facts and circumstances of the case. If the facts are admitted or, if otherwise, sufficient materials have been brought on record so as to enable a court to arrive at a definite conclusion, it is idle to contend that the party on whom the burden of proof lay would still be liable to produce direct evidence to establish that the deceased and the injured passengers were gratuitous passengers.

15. As indicated hereinbefore, the First Information Report as such may or may not be taken into consideration for the purpose of arriving at a finding in regard to the question raised by the Appellant herein, but, when the First Information Report itself has been made a part of the claim petition, there cannot be any doubt whatsoever that the same can be looked into for the aforementioned purpose."

13. In the light of the aforesaid judgments, we have no doubt in our minds that the impugned judgment and Order of the learned Single Judge dated 28.7.2005 cannot be sustained. The same is hereby set aside and quashed. No liability can be fastened on the Appellant-Insurance Company. The appeals of the Appellant-Insurance Company are allowed to this extent.

14. However, it is clarified that if any amount has already been paid by the Insurance Company, it shall not be permissible for it to recover the amount from the claimants. It is also clarified that the claimants, in any case, would be entitled to recover the balance amount of the compensation awarded to them vide impugned judgment and Order of the learned Single Judge dated 28.7.2005 from the estate of the deceased owner. The appeals are allowed to this

extent. The award and the finding of the learned Single Judge fastening the liability on the Appellant-Insurance Company is set aside. The parties to bear their own costs.