

**SUPREME COURT OF INDIA**

Praveenbhai S Khambhayata

Vs.

United India Insurance Co. Ltd

C.A.No.1970 of 2015

(V.Gopala Gowda and R.Banumathi JJ.)

17.02.2015

**JUDGMENT**

**R. BANUMATHI, J.**

1. Leave granted.

2. This appeal is preferred against the judgment dated 16.04.2014 passed by the High Court of Gujarat at Ahmedabad dismissing the appellant's First Appeal No.282 of 2014 observing that the Insurance Company was not liable to indemnify him, thereby confirming the order dated 11.11.2013 passed by the Commissioner for Workmen's Compensation/Labour Court, Rajkot.

3. The brief facts which led to the filing of this appeal are as follows:- Proforma respondents 2-4/claimants, namely, Lalmani Yadav- father, Dashmiya Lalmani yadav-mother and Janaki alias Babli Ramesh Yadav- wife of the deceased, Ramesh Lalmani Yadav filed a claim petition before Commissioner for Workmen's Compensation/Labour Court, Rajkot, claiming compensation for the death of deceased Ramesh Lalmani Yadav on 20.05.2002 in the course of his employment. On the fateful day of 20.05.2002, deceased Ramesh Lalmani Yadav was working as a cleaner in the vehicle bearing No.GJ-3V-7785, in the employment of the appellant and respondent No.5. In the afternoon at about 12.30 p.m., deceased was filling water in the radiator of the vehicle when suddenly the bonnet of the vehicle fell down on the head of the deceased, as a result of which he fell down and died. Stating that Ramesh Lalmani Yadav died in the course of his employment, respondents No.2 to 4 filed the claim petition claiming compensation of

Rs.4,15,093/- and that appellant and respondent No.5- Insurance Company are liable to pay the compensation of Rs.4,15,093/-.

4. Before the Commissioner, both the parties adduced oral and documentary evidence. Upon consideration of the records, the Commissioner held that FIR dated 20.05.2002 was lodged by the driver of the vehicle bearing No. GJ-3V-7785 in which it was mentioned that on the fateful day while reversing the said vehicle he saw deceased putting water in the radiator of another vehicle bearing no. GJ-3U-5391 and that he slipped on the bonnet of vehicle, fell on his head and deceased Ramesh Lalmani Yadav sustained injuries and died. The Labour Court/Commissioner held that the insurance policy produced before him was in respect of the vehicle GJ-3V- 7785 which was not involved in the vehicular accident and therefore Insurance Company-first respondent is not liable to pay the compensation. However, the learned Commissioner held that the appellant and respondent No.5 being the owner of the vehicle, were jointly and severally liable to pay the compensation of Rs.3,25,365/- along with 10% penalty and annual interest at the rate of 6%.

5. Being aggrieved, the appellant-owner of the vehicle preferred the first appeal in the High Court of Gujarat. Vide order dated 16.04.2014, the High Court dismissed the appeal filed by the appellant observing that since vehicle No.GJ-3V-7785 was not involved in the accident and that only vehicle No.GJ-3U-5391 was involved and since the deceased was employed as a cleaner was only in vehicle No. GJ-3V-7785, the insurance company is not liable to indemnify the appellant for the accident caused by the vehicle bearing No.GJ-3U-5391. In this appeal, the appellant seeks to assail the said judgment.

6. Learned counsel for the appellant contended that both the vehicles, namely, GJ-3V-7785 and GJ-3U-5391 were duly owned by the appellant and both the vehicles were insured with the same insurance company viz. the first respondent-United India Insurance company and while so, the courts below are not justified in holding that the first respondent- insurance company is not liable to indemnify the appellant. It was submitted that the deceased was an employee of the appellant in vehicle No.GJ-3V-7785 and died during the course of the employment and as such, the fact that he was employed in another vehicle cannot exonerate the insurance company from indemnifying the appellant. It was further submitted that under Section 147 of the Motor Vehicles Act 1988, being a beneficial legislation and both the vehicles being insured with the first respondent, the courts below erred in observing that the insurance company is not responsible for any liability even though under Section 147 of the Act. The insurance company is bound to

indemnify the appellant for the loss occurring on account of the death of workman in the course of his employment. In support of his contention, reliance was placed upon Ved Prakash Garg vs. Premi Devi & Ors.[1]

7. Learned counsel for the first respondent-insurance company submitted that the deceased-Ramesh Lalmani Yadav was employed as a cleaner only in the vehicle GJ-3V-7785 and since only GJ-3U-5391 was involved in the accident, insurance company does not have any responsibility to pay any compensation and to indemnify the insurer and the courts below rightly exonerated the insurance company from indemnifying the insurer.

8. It is an admitted fact that the deceased was employed as a cleaner in vehicle No. GJ-3V-7785 and on perusal of the statement of Ramlallu D. Patel, the driver of the above-said vehicle, it emerged that the deceased was actually filling water in the radiator of the another dumper bearing No. GJ-3U-5391 and met with an accident and died due to the injuries sustained by him. The same is substantiated by the panchnama of the scene of the accident. From the written statement filed by fifth respondent - Viraj Krishna Techtonics Pvt. Ltd. Vijayrath, it is apparent that the employer has admitted that the death of Ramesh Lalmani Yadav was caused while he was filling water in the radiator of the vehicle bearing No. GJ-3U-5391 owned by him. Taking into consideration the facts of the case, it is evident that vehicle GJ-3V-7785 was not involved in the accident.

9. Vehicle No. GJ-3V-7785 was insured with the first respondent- insurance company under Section 147 of the Act. The insurance policy of a public service vehicle is deemed to cover an employee engaged in the said vehicle and the liability of the insurance company to pay compensation for the death or injuries sustained by the workman. Payment of compensation for the death of workman or injuries sustained by the workman is limited to the liability arising in the Employers Compensation Act, 1923. Since vehicle No.GJ-3V-7785 was not involved in the accident, insurance company was not liable to indemnify the owner of the vehicle towards the compensation payable to his employee - deceased-cleaner Ramesh Lalmani Yadav under Workmen's Compensation Act, 1923.

10. As noticed earlier, only the dumper bearing No.GJ-3U-5391 was involved in the accident. The insurance policy of the vehicle No.GJ-3U- 5391 was not produced either before the Commissioner or before the High Court. Insurance policy of the said vehicle No.GJ-3U-5391 for the period from 13.09.2001 to 12.09.2002 was produced before this Court. The accident was on 20.05.2002 during which period the vehicle No. GJ-3U-5391 had a valid insurance policy.

11. The point falling for consideration is that even if the vehicle No. GJ-3U-5391 had a valid insurance policy, whether the first respondent- insurance company is liable to indemnify the owner of the vehicle for death of a person who was employed by him in another vehicle. Insofar as vehicle dumper No.GJ-3U-5391, admittedly deceased-Ramesh Lalmani Yadav was not an employee and he was only a third party. Onbehalf of the appellant, an argument was advanced that since both the vehicles were insured with the same insurance company viz., United India Insurance Company and since Section 147 of the Motor Vehicles Act is a beneficial legislation, the insurance company ought to have been held liable to indemnify the insured. As contended by the appellant, both the vehicles were insured with the respondent-insurance company and both the vehicles are one and the same. Considering the facts of the case, both the vehicles were parked in the same space and it can be safely stated that the deceased cleaner was filling the water in the radiator of vehicle no.GJ-3U-5391 only on the direction of the employer and thus the cleaner was working in the course of employment. The High Court rejected the claim of the appellant on the ground that the insurance policy of vehicle No. GJ-3V-7785 was not produced but now since the appellant has produced the insurance policy which covers the vehicle involved in the accident which provides to indemnify the owner of the vehicle in case of any accident caused to the workman limited to the extent of liability under Workmen's Compensation Act.

12. Both the vehicles were insured with the first respondent- insurance company and the owner being one and the same and since the deceased being the cleaner and the claimants hailing from the lowest strata of society, in our considered view, in exercise of our extra-ordinary jurisdiction under Article 142 of the Constitution of India, it is appropriate to direct the first respondent-insurance company to indemnify the appellant for the death of deceased.

13. In a situation of this nature for doing complete justice between the parties, this Court has always exercised the jurisdiction under Article 142 of the Constitution of India. In Oriental Insurance Company Ltd. vs. Brij Mohan And Ors.[2], this Court has held as under:- "13. However, Respondent 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 realise 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. In *Deddappa & Ors. vs. National Insurance Company Ltd.*[3], it was observed as under:-

"26. However, as the appellant hails from the lowest strata of society, we are of the opinion that in a case of this nature, we should, in exercise of our extraordinary jurisdiction under Article 142 of the Constitution of India, direct Respondent 1 to pay the amount of claim to the appellants herein and recover the same from the owner of the vehicle viz. Respondent 2, particularly in view of the fact that no appeal was preferred by him. We direct accordingly".

15. Labour Court awarded compensation of Rs.6,42,921/- along with 10% penalty and 6% interest per annum. As per Section 4-A (3)(a) of the Workmen's Compensation Act, where any employer commits default in paying the compensation due under the Act within one month from the date it fell due, the Commissioner shall direct the employer to pay simple interest thereon at the rate of 12% per annum or at such higher rate not exceeding maximum of the lending rates of any scheduled bank as may be specified by the Central Government. As per Section 4-A (3)(b), in addition to the amount of arrears and the interest thereon, the Commissioner shall direct the employer to pay further sum not exceeding 50% of such amount by way of penalty. The legal representatives of the deceased employee are thus entitled to the statutory interest at the rate of 12% and penalty not exceeding 50% of the amount of compensation. The Commissioner for Workmen's Compensation has awarded only 6% interest and 10% penalty as against the statutory entitlement of the dependents of the deceased employee in terms of Section 4-A(3) of the Act. Having regard to the passage of time and in the interest of justice, in our considered view, statutory rate of penalty i.e. 15% is to be ordered in addition to the statutory interest payable at the rate of 12% per annum.

16. The appellant has deposited Rs.3,25,365/- i.e. the principal amount with the Labour Court/Commissioner for Workmen's Compensation, Rajkot on 18.2.2014. The matter was listed before the Supreme Court Lok Adalat on 6.12.2014 wherein the appellant was directed to deposit the balance amount. The 1st respondent-

insurance company shall deposit the balance compensation being 15% penalty and the interest at the rate of 12% after one month from the date when the compensation amount fell due and also 15% penalty with the Labour Court/Commissioner for Workmen's Compensation within a period of six weeks from today. On such deposit, the same shall be disbursed to respondents No.2 to 4. The amount of Rs.3,25,365/- already deposited by the appellant with the Commissioner for Workmen's Compensation shall also be disbursed to respondents No. 2 to 4 if not already disbursed. After disbursing the amount to the dependents No.2 to 4, the Commissioner for Workmen's Compensation, Rajkot shall submit a report to this Court regarding compliance at an early date preferably not exceeding four months from today. The 1st respondent-insurance company shall pay the amount of Rs.3,25,365/- to the appellant which it has already deposited towards compensation within a period of six weeks. The impugned judgment of the High Court is set aside and the appeal is allowed in terms of the above directions. In the facts and circumstances of the case, we make no order as to costs.

[1]

[2] (1997) 8 SCC 1

[3]

[4] (2007) 7 SCC 56

[5]

[6] (2008) 2 SCC 595