



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Miscellaneous Appeal No. 1219/2001

New India Assurance Co. Ltd. through its Regional Manager,
Nehru Place, Tonk Road, Jaipur.

----Appellant

Versus

1. Gain Singh
2. Smt. Radha Devi
3. Kumari Santosh
4. Dayal Singh

Claimant No.3 and 4 through their grandfather and father
claimant No.1

...Respondent Claimants

5. Gograj S/o Govind Ram Agarwal,

----Respondent-Owner
(Trolla No.HR-38/D-3461)

For Appellant(s) : Mr. Mudit Singhvi and Mr. Vineet
Mehta for Mr. Ashok Mehta

For Respondent(s) : Mr. J.P. Gupta

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

Order

24.07.2023

REPORTABLE

1. By way of filing this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, 'Act of 1988'), the appellant Insurance Company is seeking setting aside of award dated 22.05.2001 passed by the Motor Accident Claims Tribunal (for short, 'MACT') Beawar, Ajmer in Claim Case No.16/2000 by which a direction has been issued to the appellant to pay compensation



of Rs. 4,38,000/- with interest @ 9% per annum to the claimants/respondents w.e.f. the date of filing the claim petition.

2. The bone of the contention of the counsel for the appellant is that the deceased himself was driving the insured vehicle, hence, he could not be covered under Insurance Policy as per the Proviso contained under Section 147 (1) of the Act of 1988 and the claimants would be entitled to claim compensation only under the Workmen Compensation Act, 1923 (for short, 'WC Act of 1923').

3. This fact is not disputed that the deceased Shankar Singh was driving the trolly bearing No.HR-38/D-3461 on the fateful day when the driver of the truck bearing vehicle No.RJ27/G-3233 caused the accident on 24.12.1999 due to which the driver Shankar Singh died and two persons namely Norat and Daulat Singh sustained injuries.

4. The legal representatives of the deceased driver Shankar Singh filed a claim under Section 163A of the Act of 1988 for getting compensation of Rs.11,22,000/- before the Tribunal. The Insurance Company submitted reply and took the specific objection that the claim petition is not maintainable in view of Proviso contained under Section 147 (1) of the Act of 1948 and at the most the Insurance Company can be held responsible for liability under the Provisions of WC Act, 1923.

5. Overlooking the plea of the Insurance Company, the claim petition filed by the claimants was allowed with direction to the appellant to pay the compensation of Rs. 4,38,000/- to the claimants with interest @ 9% per annum.

6. The counsel for the claimants/respondents is not in a position to controvert this legal aspect of the matter that when the





deceased driver himself was driving the insured vehicle then the claim under Section 163A of the Act of 1988 was not maintainable against the Insurance Company. The claimant may get the compensation under the provisions of WC Act of 1923.

7. Heard and considered the submissions made by both sides and perused the record.

8. At the outset, it is noticed that without touching the legal issue raised by the Insurance Company, the Tribunal has held that the appellant is liable to pay the compensation under the provisions of the Act of 1988. While this fact is clear from the pleadings of the claimants that the deceased driver was driving the insured vehicle at the time of the accident. In this view of the matter, the provisions contained under Proviso to Section 147(1) of the Act 1988 would come into play.

9. The said provisions of law may be taken note as under:

“147. Requirements of policies and limits of liability-

(i) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)-

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) 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;

Provided that a police shall not required



(i) to cover liability in respect of the death, arising out of and in the course of his employment or 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 (8 of 1923) in respect of the death of, or bodily injury to any such employees

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or

(c) it it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

Explanation. For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

10. Perusal of the above provisions clearly indicates that when the driver of the insured vehicle is plying the said vehicle, and if such vehicle meets with an accident, thus, the liability of the Insurance Company would be restricted to payment of compensation under the provisions of WC Act 1923.

11. Similar question had arisen in case reported as **National Insurance Company Ltd. v. Prem Bai Patel & Ors., II (2005) ACC 365 (SC)**: wherein the Supreme Court upheld similar contention raised by the Insurance Company with following observations in para Nos. 16 and 17 which reads as under:-



"16. The High Court, in the impugned judgment, has held that if the legal representatives of the deceased employee approach the Motor Accident Claims Tribunal for payment of compensation to them by moving a petition under Section 166 of the Act, the liability of the Insurance Company is not limited to the extent provided under the Workmen's Act and on its basis directed the appellant Insurance Company to pay the entire amount of compensation to the claimants. As shown above, the insurance policy taken by the owner contained a clause that it was a policy for 'Act Liability' only. This being the nature of policy the liability of the appellant would be restricted to that arising under the Workmen's Act. The judgment of the High Court, therefore, needs to be modified accordingly.

17. The judgment of the High Court insofar as it relates to quantum of compensation and interest, which is to be paid to the claimants (respondent Nos. 3 to 6 herein) is affirmed. The liability of the appellant Insurance Company to satisfy the award would be restricted to that arising under the Workmen's Act. The respondent Nos. 1 and 2 (owners of the vehicle) would be liable to satisfy the remaining portion of the award."

12. The similar matter again came up for consideration in the case of **Oriental Insurance Co. Ltd. v. Meena Variyal [(2007) 5 SCC 428]** before the Apex Court wherein it was observed:

"13. 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. Uninfluenced by authorities, we find no difficulty in understanding this provision as one providing that the policy must insure an owner against any liability to a third party caused by or arising out of the use of the vehicle in a public place, and against death or bodily injury to any passenger of a public service vehicle





caused by or arising out of the use of vehicle in a public place.

The proviso clarifies that the policy shall not be required to cover an employee of the insured in respect of bodily injury or death arising out of and in the course of his employment. Then, an exception is provided to the last foregoing to the effect that the policy must cover a liability arising under the Workmen's Compensation Act, 1923 in respect of the death or bodily injury to an employee who is engaged in driving the vehicle or who serves as a conductor in a public service vehicle or an employee who travels in the vehicle of the employer carrying goods if it is a goods carriage. Section 149(1), which casts an obligation on an insurer to satisfy an award, also speaks only of award in respect of such liability as is required to be covered by a policy under clause (b) of Sub-section (1) of Section 147 (being a liability covered by the terms of the policy). This provision cannot therefore be used to enlarge the liability if it does not exist in terms of Section 147 of the Act.

14. The object of the insistence on insurance under Chapter XI of the Act thus seems to be to compulsorily cover the liability relating to their person or properties of third parties and in respect of employees of the insured employer, the liability that may arise under the Workmen's Compensation Act, 1923 in respect of the driver, the conductor and the one carried in a goods vehicle carrying goods. On this plain understanding of Section 147, we find it difficult to hold that the Insurance Company, in the case on hand, was liable to indemnify the owner, the employer Company, the insured, in respect of the death of one of its employees, who according to the claim, was not the driver. Be it noted that the liability is not one arising under the Workmen's Compensation Act, 1923 and it is doubtful, on the case put forward by the claimant, whether the deceased could be understood as a workman coming within the Workmen's Compensation Act, 1923. Therefore, on a plain reading of Section 147 of the Act, it appears to be clear that the Insurance Company is not liable to indemnify the insured in the case on hand."

13. In view of the provisions contained under proviso attached to Section 147(1) of the Act, this Court finds itself unable to uphold that the appellant Insurance Company is liable to make compensation under Section 163A of the Act of 1988 when



admittedly the vehicle in question was being driven by the deceased driver himself in such capacity, in the course of employment of the owner of the vehicle, hence, the liability of the Insurance Company in terms of the Insurance policy would have to be restricted to the one enforceable under the WC Act of 1923.

14. Thus, the appeal is allowed. The direction given by the Tribunal in the impugned award is modified with further direction to the Tribunal to recalculate the amount of compensation as per provisions of WC Act, 1923.

15. It goes without saying that the liability of the appellant Insurance Company would be restricted to that arising under the WC Act 1923. The respondent No.5 (owner) would be liable to satisfy the remaining part of the award.

16. Before parting with the order, it is made clear that till calculation of the award, the amount received by the claimants shall not be recovered. And in case, less amount is calculated in terms of WC Act 1923, the claimants would be bound to return the excess amount received by them to the Insurance Company.

17. With the aforesaid directions, the matter is closed. Stay application and all applications (pending, if any) also stand disposed of.

(ANOOP KUMAR DHAND),J

KuD/9/Pcg