

Dhani Devi and ors. Vs. New India Assurance Company Limited

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Court : Uttaranchal

Decided On : Jul-14-2005

Reported in : II(2006)ACC666

Judge : P.C. Verma and; J.C.S. Rawat, JJ.

Appellant : Dhani Devi and ors.

Respondent : New India Assurance Company Limited

Advocate for Def. : Mr. R.B. Agarwal

Judgement :

J.C.S. Rawat, J.

1. This appeal has been filed by the claimants under Section 173 of the Motor Vehicles Act, 1988 against the judgment and order dated 10.7.2003 passed by Motor Accident Claims Tribunal/District Judge, Nainital in Claim Petition No. 20 of 2001, Smt. Dhani Devi and Three Ors. v. The New India Assurance Company Limited, by which the claim petition was dismissed by the Motor Accident Claims Tribunal.

2. Brief facts of the case giving rise to this appeal are that on 5.9.2000 Deewan Giri (deceased) was going from Bheemtal to Devidhura along with his friends and family members by his vehicle Jeep No. UP 2D/4317. When the said Jeep

reached near Padampuri, due to rash and negligent driving of the driver of Jeep, he lost the control over the Jeep as a result of which the said Jeep fell in to deep Khud. All the passengers of the Jeep sustained injuries. The deceased Deewan Giri also sustained injuries and he got admitted for treatment in P.H.C. Bhimtal and thereafter he got admitted in Krishna Nursing Home, Haldwani, from where he was taken to Delhi for better treatment. Due to grievous injuries Deewan Giri died on 8.10.2000. He was 50 years old at the time of accident and was Government contractor. He was earning Rs. 10,000 per month from that profession. The claimants, who are legal heirs and dependents of the deceased, filed the claim petition for compensation for the loss suffered due to death of deceased Deewan Giri.

3. The opposite party/Insurance Company contested the case before the Motor Accident Claims Tribunal (hereinafter referred to as the Tribunal). In its written statement the Insurance Company did not dispute the insurance of the offending vehicle with it. Several allegations were denied due to lack of knowledge. In additional pleas the Insurance Company alleged that the company is not responsible to pay the compensation to the third party.

4. On the pleadings of the parties, the Tribunal framed the necessary issues. Both the parties adduced their oral as well as documentary evidence. The Tribunal after appreciating the evidence dismissed the claim petition on the ground that the deceased does not come within the category of third party risk because he was owner of the vehicle and he himself was driving the vehicle at the time of accident. Under the conditions of the insurance policy the Insurance Company cannot be held liable for payment of compensation to the owner of the vehicle who himself was driving the vehicle at the time of accident. Feeling aggrieved, the claimants have come up in this appeal.

5. We have heard Mr. G.B. Pandey, learned Counsel for the claimants and Mr. R.B. Agarwal, learned Counsel for the respondent/insurance company. Learned Counsel for the appellants contended that in the cover note issued by the Insurance Company, Rs. 1,080 has been charged for nine passengers and a sum of Rs. 5,278 has been charged for the own damages of the vehicle and additional

premium of Rs. 1443 and Rs. 850 has also been taken as an additional premium from insured. It was further contended that the Insurance Company has taken the premium for obtaining an additional risk of the personal accident in policy, as such the company is liable to pay the compensation to the claimants. It was further contended that the Trial Court has erred in holding that the deceased was not holding the licence at the time of accident and the Insurance Company is not liable for payment of compensation.

6. It was contended on behalf of the Insurance Company that the owner of the vehicle exchanged his vehicle from Maxicab to economic vehicle and the amount already paid was adjusted in new vehicle by paying Rs. 1984. The extra premium was of the new vehicle. It was further contended that on the date of accident the personal accident of the owner of the vehicle was not insured. The policy, which is filed along with supplementary affidavit, does not indicate that any amount was paid towards the personal insurance of the deceased. In his evidence D. W. 1 Sri S.S. Kafasyal has accepted that the cover note has been issued by the Insurance Company and a sum of Rs. 1,443 and Rs. 850 has also been taken as additional premium from the insured. He has not admitted that this sum was taken as an amount as a personal insurance of the owner of the vehicle in question. The cover note does not indicate that the said amount was taken for the personal insurance of the passenger. As such the contention of the learned Counsel for the appellant is devoid of merit.

7. Learned Counsel for the claimant/appellants further contended that the policy of the offending Jeep No. UP02 D-4317 is comprehensive policy. The Tribunal did not consider this fact in its judgment and thus erred in law and fact. The judgment of the Tribunal is illegal and erroneous.

8. The respondent-insurance company in appeal by way of supplementary affidavit filed carbon copy of original insurance policy. We have seen the said policy. No doubt it is a comprehensive policy. Now the question remains to be decided is whether a comprehensive policy would cover the risk of injury to the owner of the vehicle also? The controversy has been decided by the Apex Court in the case Ramashray Singh v. New India Assurance Company Limited and Ors. reported in

II (2003) ACC 706 (SC) : 2004 Supreme Court Cases (Cri.) 953, In the said case law the Apex Court has discussed about the mandatory requirements of such insurance policy which have been provided in Section 147 of the Motor Vehicles Act, 1988 and observed in Para-6 that Chapter XI of the Act covers the subject 'Insurance of Motor Vehicles Against Third-Party Risks' under Section 146(1) of which no person shall use a motor vehicle in public unless there is a valid policy of insurance which complies with the requirements of the Chapter. The mandatory requirements of such insurance policy have been provided in Section 147. The Apex Court has quoted the relevant extract of Section 147 with emphasis on the words on which the appellant's case rests which is as under:

147. Requirements of policies and limits of liability.--(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which--

(a) **

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

(i) against any liability which may be insured by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorized 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 policy shall not be required--

(i) 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 (8 of 1923) in respect of the death of, or bodily injury to, any such employee--

(a) engaged in driving the vehicle, or

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

(c) if it is a goods carriage, being carried in the vehicle, or (ii) to cover any contractual liability.

9. The Apex Court further observed in the said judgment that over and above the risks which are covered by this statutory provision, parties may of course enter into a contract by which the insurer agrees to cover additional risks. It is not the appellant's case that apart from the policy of insurance there was any contract between the appellant and the Insurance Company. The policy has a clause which defines the limits of liability in respect of death or bodily injury to any person caused by or arising out of the use of the motor vehicle under Section 11(1) of the terms and conditions of the policy. In proviso (b) to Section 11(1), it has been expressly stated that--

Except so far as is necessary to meet the requirements of the Motor Vehicles Act, the Company shall not be liable in respect of death of or bodily injury to any person in the employment of the insured arising out of and in the course of such employment.

10. In the aforesaid case the Apex Court did not accept the submission of the appellant that as the policy was a comprehensive one, it would cover all risks including the death of the Khalsi and held that an insurance policy only covers the person or classes of persons specified in the policy.

11. Besides this, the law of the point has been laid down by the Apex Court recently in the case of *Dhanraj v. New India Assurance Company Limited and Another*, reported in MANU/SC/0823/2004 : (2004)8SCC553 . In the said case the Apex Court has elaborately discussed the provision of Section 147 of the Motor Vehicles Act, 1988 and observed that an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorized 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. Section 147 does not require an Insurance Company to

assume risk for death or bodily injury to the owner of the vehicle. The Apex Court in the said case further observed that in the case of Oriental Insurance Co. Ltd. v. Sunita Ralil MANU/SC/0840/1998 : AIR 1997 SC4228 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.

12. In the instant case, we have gone through the carbon copy of original insurance policy. Nowhere it has been shown that the policy covered any risk for injury to the owner himself. It is also clear from the policy that the premium paid was for damage to the vehicle and not for injury to the person of the owner. The Apex Court clearly held that an owner of a vehicle can only claim provided a personal accident insurance has been taken out. In the instant case there is no such insurance.

13. In view of above we see no infirmity in the judgment of the Tribunal. There is no reason to interfere with the same.

14. No other point was pressed before us in this appeal.

15. The appeal has no force and is accordingly dismissed. No order as to costs.

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