NEW INDIA ASSURANCE COMPANY LTD. A

v.

SADANAND MUKHI AND OTHERS

(Civil Appeal No. 7402 of 2008)

DECEMBER 18, 2008 B

[S.B. SINHA AND CYRIAC JOSEPH, JJ.]

Motor Vehicles Act, 1988: ss.147, 165 – Act policy – Death of son of owner of insured vehicle while driving the insured vehicle – Liability of insurance company to pay compensation to owner – Held: Not liable as son was not third party – Insurance Act, 1938. C

Insurance Act, 1938: Liability of insurer – Statutory or contractual – Distinction between.

The question which arose for consideration in the present appeal is whether the insurance company is liable to pay the compensation in relation to the accident occurred by use of vehicle which was driven by the son of insured. D

Allowing the appeal, the Court E

HELD:1.1. Contract of insurance of a motor vehicle is governed by the provisions of the Insurance Act. The terms of the policy as also the quantum of the premium payable for insuring the vehicle in question depends not only upon the carrying capacity of the vehicle but also F **on the purpose for which the same was being used and the extent of the risk covered thereby. By taking an 'act policy', the owner of a vehicle fulfils his statutory obligation as contained in Section 147 of the Motor Vehicles Act. The liability of the insurer is either statutory** G **or contractual. If it is contractual its liability extends to the risk covered by the policy of insurance. If additional risks are sought to be covered, additional premium has to be paid. It is one thing to say that the life is uncertain and the same is required to be covered, but it is another thing**

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A **to say that a statute must be read so as to grant relief to a person not contemplated by the Act. It is not for the court, unless a statute is found to be unconstitutional, to consider the rationality thereof. Even otherwise the provisions of the Act read with the provisions of the**
B **Insurance Act appear to be wholly rational. [Para 15] [1320-F-A; 1321-B-C]**

1.2. It is not a case where even Section 163-A of the Act was resorted to. Respondents filed an application under Section 166 of the Act. Only an Act policy was
C **taken in respect of the motor vehicle. Submission of the claimants that being a two wheeler, the vehicle was more prone to accident and, therefore, whosoever becomes victim of an accident arising out of the use thereof would come within the purview of the term "a person" as provided for in Section 147 of the Act is not correct.**
D **[Paras 13 and 14] [1320-E-F]**

United India Insurance Co. Ltd. v. Tilak Singh, **(2006) 4 SCC 404;** *Oriental Insurance Co. Ltd. v. Jhuma Saha,* **(2007) 9 SCC 263;** *Oriental Insurance Co. Ltd. v. Meena Variyal* **(2007) 5 SCC 428;** *United India Insurance Co. Ltd. v.*
E *Davinder Singh,* **(2007) 8 SCC 698 and** *National Insurance Co. Ltd. v. Laxmi Narain Dhut,* **(2007) 3 SCC 700, referred to.**

Case Law Reference:

(2006) 4 SCC 404	**referred to**	**Para 18**
(2007) 9 SCC 263	**referred to**	**Para 18**
(2007) 5 SCC 428	**referred to**	**Para 18**
(2007) 8 SCC 698	**referred to**	**Para 18**
(2007) 3 SCC 700	**referred to**	**Para 19**

G CIVIL APPELALTE JURISDICTION : Civil Appeal No. 7402 of 2008.

From the final Judgment and Order dated 18.1.2007 of the High Court of Jharkhand at Ranchi in M.A. No. 135 of 2004.

Pradeep Kumar Bakshi, Rajat Navet and Madhur Yadav
H for the Appellant.

Arup Banerjee, R.K. Srivastava and T. Mukherjee for the Respondent. A

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

2. This appeal is directed against a judgment and order dated 18th January, 2007 passed by a Division Bench of the High Court of Jharkhand at Ranchi whereby and whereunder an appeal preferred by the appellant herein under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') from a judgment and award dated 26th March, 2004 passed by the District Judge-cum-Motor Vehicle Accident Claim Tribunal at Seraikella was dismissed. B C

3. The admitted fact of the mater is as under :-

First respondent was owner of a motor cycle. He got the said vehicle insured with the appellant company; the policy being valid for the period 9.9.1999 and 8.9.2000. On 8th September, 2000 Tasu Mukhi, son of the insured, while driving the motor cycle met with an accident and died. The accident allegedly took place as a stray dog came in front of the vehicle. A First Information Report was also lodged. Respondents herein filed a claim petition. Amongst them, first respondent, who is the owner of the insured vehicle, was the applicant. D E

4. Appellant herein raised a specific contention that keeping in view the relationship between the deceased and the owner of the motor vehicle i.e. father and son, he was not a third party, stating :- F

> "5. That section 165 M.V. Act clearly postulates that the insurer is liable to indemnify the risk of the Third party. During the motor vehicle accident and the policy also speaks that in the case of rash and negligent driving the insurer is liable to indemnify the owner. Here in this case the driver of the vehicle is admittedly not a third party and as such the Tribunal has no jurisdiction to pass any order under the Motor Vehicle Act. G
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> 6. That so far the negligence of the driver of the Motor cycle is concerned the claimants must establish affirmatively and H

A unless it is proved the Claim Tribunal cannot pass any order of compensation under the Motor Vehicle Act, 1988.

7. That it is further submitted that the claimants had failed to plead in their claim petition about the negligence which resulted the accident. On the other hand, the
B circumstances speak that it was the deceased himself who was driving the motor vehicle in uncontrollable speed and in rash and negligent manner which cause accident as a result of which he and the pillion rider fell down and deceased died. Therefore, in absence of negligence on
C the part of the owner of the vehicle the Claimants cannot seek compensation on the basis of the provisions of the Act.

8. That the act suggests that the deceased not being a third party himself caused the accident and out of such act
D the loss allegedly occurred to him is not supposed to be a person coming within the scope, ambit and provisions of either section 165(1) of section (1) of the Motor Vehicles Act, 1988."

5. In view of the aforementioned pleadings of the parties,
E issues were framed in the following terms :-

"1. Whether the claimants have any cause of action or right to sue and the case is maintainable and the deceased was a third party?

2. Whether the accident took place due to rash and
F negligent driving of the vehicle Yamaha Motor Cycle No.BR-16B-6002 by the driver?

3. Whether the deceased was himself rash & negligent in driving the vehicle and was responsible for the accident and whether the deceased died
G due to motor vehicle accident?

4. Whether the owner have violated the terms and conditions of the vehicle for which the vehicle has been insured under the Insurer, The New India Assurance Co. Ltd. ?

H 5. Whether the claimants are entitled to receive the

compensation amount and if so what should be the quantum of compensation? A

6. Whether the insurer of the vehicle is liable to indemnify the insured owner of the vehicle?

7. Whether the claimants are entitled to get any relief or reliefs as claimed by them?" B

6. The Tribunal did not enter into the question involved herein.

However, while determining issue Nos.2 and 3 it was held:-

"So the evidence led on behalf of claimant is practically ex-parte in nature and it goes to show that the deceased died in connection with a vehicular accident. In other words, he died out of the use of a vehicle. Both the issues are decided in this way in favour of the claimants. C

On issue Nos. 1 and 7 it was opined :- D

"Issue Nos. 1 and 7 : On the basis of the discussions made above, it follows that the claimants application is maintainable and the applicants are entitled to receive compensation from the O.P. No.1 as indicated above. Both the issues are accordingly decided in favour of the applicants." E

Evidently, therefore, no decision was rendered on the said issue.

7. Before the High Court appellant raised specific contentions in its Memorandum of Appeal, which are as under:- F

"C. For that the learned Court below ought to have considered that as in the present case the deceased was not third party rather he was the son of the insured at the relevant time of accident who was driving the vehicle rashly and negligently, the G insured cannot claim compensation until and unless negligence on the part of the insured is established and proved.

D. For that the learned Court ought to have considered that Motor Vehicle Act provides provisions for H

A compensation for the death of the third party from the insured vis-à-vis the insurance company but there is no provision in the Act wherein an insured may claim himself compensation from himself"

8. The High Court has also not expressed its opinion on B the said issue.

9. Mr. Pradeep Kumar Bakshi, learned counsel appearing on behalf of the appellant would submit that having regard to the provisions contained in Sections 146, 147 and 149 (2) of the Act, for the death of the son of the insured, it could not have C been held to be liable

10. Mr. Arup Banerjee, learned counsel appearing on behalf of the respondents, on the other hand, would contend that the legislative policy underlining compulsory insurance of a motor vehicle was thought of in view of the fact that life being D uncertain, the same was required to be covered. Learned counsel would contend that it cannot be held to exclude a rider, although son of the owner, and, thus, he would be a third party in relation to the insurance company. According to the learned counsel, it would be wholly unfair to exclude a driver using the E vehicle as on his death his family suffers.

Mr. Banerjee would contend that, indisputably, use of a motor vehicle is hazardous in nature and thus there cannot be any reason whatsoever to hold that the provisions containing compulsory insurance would be held to have excluded the F driver. According to learned counsel the matter might have been different if the accident had occurred due to rash and negligent driving on the part of the driver and in a case of this nature, where the accident had occurred, which was beyond anybody's control, the High Court judgment should not be interfered with.

G 11. Provisions relating to grant of compensation occurring in Chapter XI and XII of the Act have been enacted by the Parliament in order to achieve the purpose and object stated therein.

12. Section 146 of the Act lays down the requirements for

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insurance against third party risk. Where a third party risk is involved, an insurance policy is required to be mandatorily taken out.

The requirements of policies and the limits of liability, however, have been stated in Section 147 of the Act. Section 147(1)(b) of the Act, reads 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-
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> * * *
>
> *(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;
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> *(ii)* against the death of or bodily injury to any passenger of a public service vehicle caused by or arisiog 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-
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> (a) engaged in driving the vehicle, or
>
> (b) if it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or
>
> (c) if it is a goods carriage, being carried in the

A 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 B 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 C occurred in a public place."

13. The provisions of the Act, therefore, provide for two types of insurance – one statutory in nature and the other contractual in nature. Whereas the insurance company is bound to compensate the owner or the driver of the motor vehicle in D case any person dies or suffers injury as a result of an accident; in case involving owner of the vehicle or others are proposed to be covered, an additional premium is required to be paid for covering their life and property.

14. It is not a case where even Section 163-A of the Act E was resorted to. Respondents filed an application under Section 166 of the Act. Only an act policy was taken in respect of the motor vehicle. Submission of the learned counsel that being a two wheelers, the vehicle was more prone to accident and, therefore, whosoever becomes victim of an accident F arising out of the use thereof would come within the purview of the term "a person" as provided for in Section 147 of the Act, in our opinion, is not correct.

15. Contract of insurance of a motor vehicle is governed by the provisions of the Insurance Act. The terms of the policy G as also the quantum of the premium payable for insuring the vehicle in question depends not only upon the carrying capacity of the vehicle but also on the purpose for which the same was being used and the extent of the risk covered thereby. By taking an 'act policy', the owner of a vehicle fulfils his statutory obligation as contained in Section 147 of the Act. The liability H

of the insurer is either statutory or contractual. If it is contractual its liability extends to the risk covered by the policy of insurance. If additional risks are sought to be covered, additional premium has to be paid. If the contention of the learned counsel is to be accepted, then to a large extent, the provisions of the Insurance Act become otiose. By reason of such an interpretation the insurer would be liable to cover risk of not only a third party but also others who would not otherwise come within the purview thereof. It is one thing to say that the life is uncertain and the same is required to be covered, but it is another thing to say that we must read a statute so as to grant relief to a person not contemplated by the Act. It is not for the court, unless a statute is found to be unconstitutional, to consider the rationality thereof. Even otherwise the provisions of the Act read with the provisions of the Insurance Act appear to be wholly rational.

16. Only because driving of a motor vehicle may cause accident involving loss of life and property not only of a third party but also the owner of the vehicle and the insured vehicle itself, different provisions have been made in the Insurance Act as also the Act laying down different types of insurance policies. The amount of premium required to be paid for each of the policy is governed by the Insurance Act. A statutory regulatory authority fixes the norms and the guidelines.

17. Keeping in view the aforementioned Parliamentary object, let us consider the fact of the present case so as to consider as to whether the insurer is liable to pay the amount of compensation in relation to the accident occurred by use of the vehicle which was being driven by the son of the insured.

18. We may, for the said purpose, notice certain decisions covering different categories of the claims.

In *United India Insurance Co. Ltd. v. Tilak Singh,* [(2006) 4 SCC 404] this Court considered the provisions of the Motor Vehicles Act, 1939 as also 1988 Act and inter alia opined that the insurance company would have no liability towards the injuries suffered by the deceased who was a pillion rider, as the insurance policy was a statutory policy which did not cover the gratuitous passenger.

A In *Oriental Insurance Co. Ltd. v. Jhuma Saha,* [(2007) 9 SCC 263], it was held :-

> **"10.** The deceased was the owner of the vehicle. For the reasons stated in the claim petition or otherwise, he himself was to be blamed for the accident. The accident
B did not involve motor vehicle other than the one which he was driving. The question which arises for consideration is that the deceased himself being negligent, the claim petition under Section 166 of the Motor Vehicles Act, 1988 would be maintainable.
>
> C **11.** Liability of the insurer Company is to the extent of indemnification of the insured against the respondent or an injured person, a third person or in respect of damages of property. Thus, if the insured cannot be fastened with any liability under the provisions of the Motor Vehicles Act,
D the question of the insurer being liable to indemnify the insured, therefore, does not arise."

It was furthermore held :-

> **"13.** The additional premium was not paid in respect of the entire risk of death or bodily injury of the owner of the
E vehicle. If that be so, Section 147(b) of the Motor Vehicles Act which in no uncertain terms covers a risk of a third party only would be attracted in the present case."

The matter came up for consideration yet again in *Oriental Insurance Co. Ltd. v. Meena Variyal* [(2007) 5 SCC 428]
F 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
G 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
H 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,

A 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
B indemnify the insured in the case on hand."

The said principle was reiterated in *United India Insurance Co. Ltd. v. Davinder Singh,* [(2007) 8 SCC 698] holding :-

"10. It is, thus, axiomatic that whereas an insurance company may be held to be liable to indemnify the owner
C for the purpose of meeting the object and purport of the provisions of the Motor Vehicles Act, the same may not be necessary in a case where an insurance company may refuse to compensate the owner of the vehicle towards his own loss. A distinction must be borne in mind as regards
D the statutory liability of the insurer vis-à-vis the purport and object sought to be achieved by a beneficent legislation before a forum constituted under the Motor Vehicles Act and enforcement of a contract qua contract before a Consumer Forum."

E 19. Learned counsel for the respondents would contend that the object and purport of the Act being to cover the risk to life of any person, the said decision should be applied in this case also. We do not think that it would be a correct reading of the said judgment as therein *National Insurance Co. Ltd. v. Laxmi Narain Dhut,* [(2007) 3 SCC 700] has been followed.
F In Laxmi Narain Dhut (supra) a distinction between a statutory policy and a contractual policy has clearly been made out.

These decisions, clearly, are applicable to the fact of the present case.

G 20. In view of the aforementioned authoritative pronouncements, we have no hesitation of hold that the insurance company was not liable. The impugned judgments, therefore, cannot be sustained. They are set aside accordingly. The appeal is allowed. No costs.

H D.G. Appeal allowed.