

CASE NO.:
Appeal (civil) 280 of 2007

PETITIONER:
Oriental Insurance Co. Ltd.

RESPONDENT:
Jhuma Saha and Ors.

DATE OF JUDGMENT: 16/01/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
JUDGMENT

S.B. SINHA, J. :

1. Leave granted.

2. This appeal is directed against judgment and order dated 28.10.2003 passed by the Gauhati High Court in C.R.P. No. 69 of 2003 whereby and whereunder the appeal preferred by the appellant herein was dismissed.

3. The deceased was the owner of an insured vehicle bearing Registration No. TR 03-2304, a maruti van. While he was driving the said vehicle, allegedly, in order to save a goat which was running across the road, the steering of the vehicle failed and it dashed with a tree on the road side. He suffered injuries. He later on succumbed thereto.

4. On the aforementioned premise a claim petition under Section 166 of the Motor Vehicles Act, 1988 was filed.

5. The insurer resisted the claim petition when served with a notice, inter alia, contending as under :

"That as per Motor Vehicle Acts and Rules the owner is not entitled to get any compensation if he drives the vehicle and falls in an accident- As the Insurance Policy is a third party in nature- The contract between the insured and insurer is that if any accident occurred out of the use of Motor Vehicle then only third party is entitled to get compensation. The insurer and insured is the first and second party and other than the all are third party. But in this case as per the version of the petition the deceased was the owner of the vehicle and was driving the vehicle and he met with an accident. Though the deceased had valid driving licence still he is not the third party as per Rules and Acts. Hence the petitioners are not entitled to get any compensation..."

6. The said contention of the appellant, however did not find favour with the Motor Vehicle Accident Claims Tribunal which, inter alia, held that the vehicle being insured and an additional premium for the death of the driver or conductor having been paid, the liability was covered by the Insurance Policy.

7. In the appeal preferred by the appellant before the High Court, however, the contention of the respondents herein that in view of the decision of this Court in National Insurance Co. Ltd. Chandigarh v. Nicolletta Rohtagi and Ors., [2002] 7 SCC 456, the appeal was not maintainable, was accepted.

8. Before us a short question has been raised by the learned counsel appearing on behalf of the appellant stating that in view of Section 147 of the Motor Vehicles Act, 1988, the jurisdiction of the Tribunal was confined

to a third party claim and, thus, the impugned judgment cannot be sustained.

9. Section 147(1)(b) of the Motor Vehicles Act, with which we are concerned, 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-

(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 the 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 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 vehicle, or

(i) 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. 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 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.

11. Liability of the insurer-Company is to the extent of indemnification of the insured against the respondent or a 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 Motor Vehicle Act, the question of the insurer being liable to indemnify insured, therefore, does not arise.

12. In *Dhanraj v. New India Assurance Co. Ltd. & Anr.*, [2004] 8 SCC 553, it

is stated as follows :

"8. thus, 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 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. Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle.

10. In this case, it has not been shown that the policy covered any risk for injury to the owner himself. We are unable to accept the contention that the premium of Rs. 4989 paid under the heading "Own damage" is for covering liability towards personal injury. "Under the heading "Own damage", the words "premium on vehicle and non-electrical accessories" appear. It is thus clear that this premium is towards damage to the vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim provided a personal accident insurance has been taken out. In this case there is not such insurance."

13. The additional premium was not paid in respect of the entire risk of death or bodily injury of the owner of the 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.

14. In that view of the matter, the impugned judgment cannot be sustained. The appeal is allowed.