REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8725 OF 2012

RAMCHANDRA ..Appellant

Versus

REGIONAL MANAGER
UNITED INDIA INSURANCE CO. LTD. ..Respondent

J U D G M E N T

GYAN SUDHA MISRA, J.

The judgment and order dated 17.4.2007 passed by the High Court of Karnataka at Bangalore in M.F.A.No. 6711/2004 (MV) is the subject matter of challenge in this appeal whereby the learned single Judge of the High Court was pleased to allow the appeal preferred by the respondent No.1- United India Insurance Company Ltd. through its Regional Manager holding

therein that the liability of the respondent No.1-United India Insurance Company Ltd. (shortly referred to as 'the Insurance Company') to pay compensation is restricted to one under the Workmen's Compensation Act, 1923 and the amount to which the respondent No.1 herein will be liable to pay is Rs.32091/- (Rupees Thirty Two Thousand and Ninety One Only) and the balance amount will have to be borne by the insured -owner of the vehicle who had been impleaded by the appellant/claimant as respondent No. 2 herein but was allowed to be deleted by this Court from the array of parties at the risk of the appellant/claimant herein. The High Court vide its impugned order was thus pleased to hold that the liability of the insurance company/respondent No.1 is restricted to the one under the Workmen's Compensation Act, 1923 only and hence was not liable to pay any compensation under the Motor Vehicles Act, 1988.

2. The substantial question of law in this appeal therefore is confined to determination of the question as to whether the learned single Judge of the High Court could have passed the impugned order holding therein

that when the labourer/employee is injured during the course of employment due to negligence of the driver of the vehicle which caused the accident, then whether the compensation could be limited to the amount admissible under the Workmen's Compensation Act or compensation would also be payable under the Motor Vehicles Act ?

The appellant/claimant has raised this question relying specially on the ratio of the judgment of this Court in ***Suresh Chandra*** vs. ***State of U.P. & Anr***. reported in ***1996 ACJ 1*** wherein this Hon'ble Court has held that when the labourer sustains injuries during the course of his employment due to negligence of the driver which met with an accident and the claim is made under the Motor Vehicles Act, the compensation could not be limited to the amount admissible under the Workmen's Compensation Act.

3. Relevant factual details giving rise to the aforesaid question in this appeal disclose that the appellant/claimant filed a claim petition claiming compensation for the injuries sustained by him in a road

traffic accident which took place on 10.9.1996 about 4.00 p.m. when the claimant was travelling in a Swaraj Mazda Matator bearing registration No. KA-01-2337 as a cleaner. According to the case of the claimant, the driver of the vehicle drove the same in a rash and negligent manner and when the said vehicle came near Doddabande Crossing, the vehicle dashed against the lorry bearing registration No. TN-28B-8397 which was parked on the road as a result of which the appellant who was travelling on the said vehicle as a cleaner sustained grievous injuries. The injured was, therefore, taken for the first aid treatment at Penukonda Government Hospital and was later shifted to Victoria Hospital, Bangalore as an inpatient. The 2nd respondent in this appeal was Mr. S. Sathyamurthy who admittedly is the owner of the vehicle Swaraj Mazda and the said vehicle was insured with the 1st respondent herein the United India Insurance Company Ltd. Hence, the claimant laid claim against both the respondents before the Motor Accident Claims Tribunal and Court of Small Causes at

Bangalore wherein he urged that the respondents are liable to pay just and adequate compensation.

4. The respondent No.1- insurance company appeared and filed objections contending therein that the vehicle was being driven without a valid and effective driving license in contravention of the provisions of the Act due to which the insurance company was not required to pay any compensation. It was further contended by the insurance company that the vehicle in question is a passenger carrying vehicle and the policy of insurance issued was only an act coverage in which the claimant appellant was proceeding as a cleaner. Hence the policy of insurance issued by the respondent does not cover the risk of the cleaner as per Section 147 of the Motor Vehicles Act since the policy of insurance covering the accident vehicle being an act of coverage does not cover the risk of the cleaner; hence the respondent insurance company was not liable to pay compensation. The respondent -insurance company, therefore, sought dismissal of the claim petition.

5. The respondent No.2/the owner of the vehicle herein although was served with the notice, he failed to appear before the tribunal and hence the matter proceeded only against the respondent – insurance company.

6. The Motor Accident Claims Tribunal on a scrutiny and analysis of the evidence led by the contesting parties, was pleased to record a finding that the appellant/claimant was travelling in the Matadar van and the accident took place due to rash and negligent driving of the said van by its driver due to which the appellant herein sustained grievous injuries. On the basis of the evidence it was further recorded that the appellant sustained fracture of right shaft femur. He was an inpatient at Victoria Hospital for a period of one and a half month wherein his leg was operated and rod was fixed to the fractured bone, head injury was sutured and treated conservatively. After discharge, he also had to undergo follow up treatment by visiting the hospital for a period of one year once in 15 days a month as advised by the doctors. The tribunal on an assessment

of the injury sustained by the claimant and the expenses incurred on the treatment was pleased to hold that the claimant was entitled to a sum of Rs.1,42,800/- towards compensation.

7. Since the quantum of compensation is not under challenge in this appeal, it is inessential to go into the details of the nature of injury and the amount awarded to the claimant. In addition, the plea of the insurance company that the driver was not holding a valid license had also been rejected by the tribunal which finding is not under challenge and hence it is equally inessential to deal with this aspect.

8. The principal ground of challenge at the instance of the respondent-insurance company was that the appellant was travelling in a matador van as a cleaner; hence his remedy was to claim compensation under the Workmen's Compensation Act and the tribunal had no jurisdiction to entertain the claim filed by the cleaner.

9. However, the tribunal referred to the law laid down by the full Bench of the Karnataka High Court in the

case of ***Karnataka State Road Transport Corporation and Ors.*** Vs. ***R. Maheshwari and Ors.*** reported in ILR 2003 Kar 3562, wherein it was held that the insurer shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover even in proceedings under the Motor Vehicles Act without such liability having been first determined or adjudged under the Workmen's Compensation Act. In view of the ratio of this decision, the tribunal was pleased to hold that the respondent-insurance company being the insurer was liable to pay compensation. The claim petition consequently was allowed in part awarding compensation of Rs. 1,42,800/- together with costs and interest at 6 per cent per annum from the date of filing of claim petition till the date of payment against the respondent – insurance company and respondent-insured/owner of the vehicle jointly and severally. However, the respondent-insurance company being the insurer of the offending vehicle, it was ordered to pay the entire compensation awarded.

10. The respondent-insurance company assailed the judgment and order of the tribunal by filing a first appeal bearing MFA No.6711/2004 in the High Court of Karnataka at Bangalore wherein the learned single Judge recorded that the only grievance of the appellant-insurance company was that while allowing the claim petition, the first respondent/claimant had put the entire burden on the appellant to satisfy the amount of Rs. 1,42,800/- which was awarded to the claimant. The counsel representing the insurance company submitted before the High Court that it was not in dispute that the claimant was travelling as a cleaner in the matador van in question and, therefore, the liability of the appellant ought to have been restricted under the Workmen's Compensation Act. As such, the order of the tribunal could not be sustained in law to the extent of liability over and above the liability under the Workmen's Compensation Act.

11. The learned single Judge of the High Court almost summarily allowed the appeal as he was of the view that the claimant having been a cleaner in the matador van

insured with the appellant herein, the liability could not have been over and above the liability under the Workmen's Compensation Act. The learned single Judge in support of his view relied upon the judgment and order reported in the case of ***National Insurance Company Ltd***. Vs. ***Lagamanna & Ors***. reported in ***2007 ACJ 50***. The learned single Judge recorded that the Division Bench in the said decision had held that when no cover premium is paid to cover larger liability, the liability of the insurance company will be restricted to the one under the Workmen's Compensation Act. It was, therefore, held that in the light of such settled position of law, the tribunal could not have put the entire liability on the appellant. The learned single Judge, therefore, directed that the liability of the insurance company was restricted to one under the Workmen's Compensation Act which would be Rs.32,091/- and the balance will have to be shouldered by the insured/owner of the vehicle. It was further ordered that the rate of interest will be as per order of the Motor Accident Claims Tribunal. The appeal was allowed to this extent but a further direction was

given that if excess amount had been deposited, the same will be refunded to the insurance company.

12. Since, the insured/owner of the vehicle had never appeared either before the tribunal or the High Court, the claimant-appellant felt aggrieved and has, therefore, come up in appeal before this court assailing the judgment and order of the High Court wherein the directions recorded hereinabove is under challenge.

13. Learned counsel for the appellant/claimant in substance contended that the High Court ought not to have passed the impugned order in view of the ratio of the judgment and order passed by this Court in ***Suresh Chandra*** vs. ***State of U.P. & Anr***. reported in 1996 ACJ 1 wherein this Hon'ble Court has held that when the labourers sustain injuries during the course of his employment due to the negligence of the driver and the claim is made under the Motor Vehicles Act, the compensation could not be limited to the amount admissible under the Workmen's Compensation Act. Therefore, it was submitted that the impugned order is liable to be set aside by this Court. The counsel had

further submitted that the tribunal was justified and rightly directed the respondent-insurance company to pay the compensation together with costs and interest at 6 per cent per annum from the date of petition to the date of payment and the first respondent/insurance company being the insurer of the vehicle was rightly directed to pay the entire compensation. The learned single Judge was thus in error in allowing the appeal of the respondent insurance company in part which is fit to be struck down as illegal and invalid.

14. Learned counsel representing the insurance company repelled the arguments advanced by the counsel for the claimant/appellant and essentially submitted that the liability of the insurance company to pay compensation to the claimant cleaner who was injured during the course of employment due to negligence of the driver would not be entitled to claim compensation under the Motor Vehicles Act but his compensation would be limited to the amount admissible under the Workmen's Compensation Act. Learned counsel while elaborating his submission

however yielded to the extent that although the insurance company may be held liable to pay compensation under the Motor Vehicles Act beyond what is admissible under Workmen's Compensation Act, the same would be payable provided the insured/owner of the vehicle had paid higher premium to cover the liability of its employees and only then the insurance company would be liable to pay the compensation to the employees over and above the liability under the Workmen's Compensation Act. In absence of payment of cover premium, the liability of insurance company will be restricted only to the one which is payable under the Workmen's Compensation Act. It was, therefore, submittedthat the High Court was correct in allowing the appeal of the insurance company by restricting its liability to Rs. 32,091/- only and rightly ordered refund of the amount by the claimant/appellant which has been assailed by the claimant herein.

15. In support of his submission, counsel for the insurance company has invited the attention of this Court to the case of ***National Insurance Company*** vs.

Prembai Patel & Ors., reported in (2005) 6 SCC 172. In this matter, the claim petition had been filed by the respondent/claimant 3 to 6 claiming compensation for the death of one Sunder Singh who was an employee of the insured/owner of the vehicle who died in the accident in course of his employment and a claim petition was filed claiming compensation under the Motor Vehicles Act. The main question which arose for consideration in the said appeal was whether the appellant/insurance company was liable to pay the entire amount of compensation awarded to the claimants or its liability was restricted to that which was prescribed under the Workmen's Compensation Act. The learned Judges in this matter observed as under:

"The insurance policy being in the nature of a contract, it is permissible for an owner to take such a policy wherein the entire liability in respect of the death of or bodily injury to any such employee as is described in sub clauses (a) or (b) or (c) of the proviso 1 to Section 147 (1)(b) of the Motor Vehicles Act may be fastened upon the insurance company and the insurance company may become liable to satisfy the entire award. However, for this purpose, the owner must take a policy of that particular kind for which he may be required to pay additional premium and the policy must clearly show that the liability of the insurance company in case of death of or bodily injury in the aforesaid kind of

employee is not restricted to that provided under the Workmen's Compensation Act and is either more or unlimited depending upon the quantum of premium paid and the terms of the policy."

The learned Judges in this ruling held that this interpretation is in consonance with the view expressed by a Constitution Bench in ***New India Assurance Company Ltd***. vs. ***C.M. Jaya & Ors***., reported in (2002) 2 SCC 278 wherein while interpreting the provisions of Section 95 (2) of the Motor Vehicles Act 1939, the Court held as under in para 10 of the report :-

".....The liability could be statutory or contractual. A statutory liability cannot be more than what is required under the statute itself. However, there is nothing in Section 95 of the Act prohibiting the parties from contracting to create unlimited or higher liability to cover wider risk. In such an event, the insurer is bound by the terms of the contract as specified in the policy in regard to unlimited or higher liability as the case may be. In the absence of such a term or clause in the policy, pursuant to the contract of insurance, a limited statutory liability cannot be expanded to make it unlimited or higher. If it is so done, it amounts to rewriting the statute or the contract of insurance which is not permissible."

Several other authorities were also relied upon which were rendered in ***New India Assurance Co***. ***Ltd.*** vs.

Shanti Bai & Ors. (1995) 2 SCC 539 and ***Amrit Lal Sood*** vs. ***Kaushalya Devi Thapar*** & Ors., (1998) 3 SCC 744 wherein it was held that in case of insurance policy not taking any higher liability by accepting a higher premium, the liability of the insurance company is neither unlimited nor higher than the statutory liability fixed under Section 95 (2) of the Motor Vehicles Act 1939. It was further laid down that it is open to the insured to make payment of additional higher premium and get higher risk covered in respect of 3rd party also. But in the absence of any such clause in the insurance policy, the liability of the insurer cannot be unlimited in respect of 3rd party and it is limited only to the statutory liability.

16. The learned Judges therefore held that in case the owner of the vehicle wants the liability of the insurance company in respect of death of or bodily injury to any such employee as is described in clauses (a) or (b) or (c) of proviso (i) to Section 147 (1) (b), the same should not be restricted to that under the Workmen's Compensation Act but should be more or unlimited, but he must take such a policy by making payment of extra premium and

the policy should also contain a clause to that effect. However, where the policy mentions "a policy for Act Liability" or "Act Liability", the liability of the insurance company qua the employees as aforesaid would not be unlimited but would be limited to that arising under the Workmen's Compensation Act. The learned Judges were, therefore, pleased to hold that the liability of the insurance company to satisfy the award would be restricted to that arising under the Workmen's Compensation Act and the owner of the vehicle was held liable to satisfy the remaining portion of the award.

17. A perusal of the aforesaid judgment and order of this Court thus indicate that this Court has clearly held that the liability to pay compensation in respect of death or bodily injury to an employee should not be restricted to that under the Workmen's Compensation Act but should be more or unlimited. However, the determination would depend whether a policy has been taken by the vehicle owner by making payment of extra premium and whether the policy also contains a clause to that effect.

18. Thus in so far as the view of the High Court is concerned to the extent that the compensation would be restricted to be paid only to the extent which is payable under the Workmen's Compensation Act by making a sweeping generalisation, the same is clearly contrary to the view taken by this Court even in the judgment and order on which reliance has been placed by the counsel for the respondent-insurance company as it is sufficiently clear and unambiguously laid down which is recorded hereinbefore that the compensation payable to the employee cannot be restricted merely under the Workmen's Compensation Act and it can be expanded provided the contractual document which is the policy of insurance incorporates such clause regarding the premium to be paid taking into account the nature of the policy.

19. In the light of the aforesaid legal position, it is clear that the High Court was not correct in holding that the claimant/appellant was not entitled to any compensation over and above the liability under the Workmen's Compensation Act and hence the direction issued by the

High Court that the appellant/insurance company, respondent herein, will be liable to pay only Rs. 32091/- and the balance will have to be shouldered by the insured/owner of the vehicle is fit to be struck down as invalid as the High Court had failed to examine the nature and clauses of the policy which was not produced even before the Tribunal.

20. The claimant/appellant is surely entitled to the amount of compensation over and above the Workmen's Compensation Act in view of the ratio of the decisions referred to hereinbefore. The rider no doubt is that the statutory liability cannot be more than what is required under the statute under Section 95 of the Motor Vehicles Act which cannot bind the parties or prohibit them from contracting or creating unlimited or higher liability to cover wider risk and the insured is bound by the terms of the contract specified in the policy in regard to unlimited or higher liability as the case may be. Thus, it is although correct that limited statutory liability cannot be extended to make it unlimited or higher, it is also manifestly clear that insofar as the entitlement of

the claimant/deceased cleaner of the vehicle is concerned, the same cannot be restricted to the compensation under the Workmen's Compensation Act and is entitled to compensation even under the Motor Vehicles Act which will depend upon the terms and conditions of the policy of insurance.

21. From this legal position it is also equally clear that in the instant matter insofar as the entitlement of the claimant to the compensation under the Motor Vehicle Act is concerned, the right of the claimant is not affected. However, the respondent/insurance company had filed an appeal in the High Court contending that the order of the Tribunal could not be sustained in law to the extent of liability over and above the liability under the Workmen's Compensation Act and on this point the contention of the appellant/company has been accepted by the High Court overlooking the more important fact that the Respondent insurer company had neither produced the policy of insurance before the High Court nor led any evidence to establish that as per terms and conditions of policy extra premium had not been paid.

22. The question, therefore, is whether the amount of compensation could rightly be apportioned between the insurer/insurance company and the insured/owner of the vehicle. However, the owner of the vehicle had not appeared before the tribunal but the insurance company allowed the matter to be proceeded before the tribunal and when the respondent/insurance company filed an appeal in the High Court, the insured/owner of the vehicle once again failed to appear but the Respondent-Insurance Company did not pursue for his appearance. The High Court, however, further overlooked that the apportionment of the amount of compensation between the owner of the vehicle and the insurance company was an *inter se* dispute between insurance company and the insured/owner of the vehicle and, therefore, the order due to non-appearance of the insured/owner of the vehicle could not have been passed to the detriment of the claimant as the claimant in any case is entitled to the amount of compensation determined by the tribunal. If the insurance company acquiesced with the situation and allowed the proceeding to continue even in absence of

the insured/owner of the vehicle who has been held liable to pay the amount even though the insured might have been liable to pay higher premium, the consequence of the same obviously will have to be borne by the insurance company and the claimant cannot be made to suffer.

23. Hence, at the stage of appeal before the High Court, we find no legal justification for the High Court to leave it open to the insurance company to realize the amount of compensation beyond Rs.32,091/- from the insured/owner as the plea of the respondent/insurance company althrough was that the claimant is not entitled to any compensation beyond the extent of liability under the Workmen's Compensation Act and the respondent/insurance company had not taken the alternative plea either before the tribunal or the High Court that in case the claimant is held entitled to compensation beyond the extent of liability under the Workmen's Compensation Act, the same was not payable as no extra premium was paid by the insured/owner under the policy of insurance. The

insurance company had failed to raise any plea before the courts below i.e. either the Motor Accident Claims Tribunal or the High Court and it did not even contend that in case the claimant is entitled to any compensation beyond what was payable under the Workmen's Compensation Act, it is the insured owner who was liable to pay as it had no contractual liability since the insured/owner of the vehicle had not paid any extra premium. Thus, this plea was never put to test or gone into by the Motor Accident Claims Tribunal since the insurance company neither took this plea nor adduced any evidence to that effect so as to give a cause to the High Court to accept this plea of the insurance company straight away at the appellate stage.

24. Consequently, the High Court's view impliedly holding that the claimant/appellant was not entitled to any compensation under the Motor Vehicles Act beyond the entitlement under the Workmen's Compensation Act so as to leave it open to the Respondent/Insurance Company to realise it from the owner of the vehicle at the belated stage of appeal before the High Court when the

respondent/insurance company had failed even to urge the alternative plea regarding non-payment of extra premium by the owner of the vehicle and had even reconciled to the fact that the owner of the vehicle had failed to appear in spite of service of notice, is not fit to be sustained.

25. At this stage, we deem it appropriate to take note of an important step which the insurance company generally fail to take and that is related to non appearance of the owner of the vehicle in spite of service of notice. The insurance companies although contend before the Motor Accident Claims Tribunal and even at the appeal stage that it is the owner of the vehicle which is liable to bear a part or the entire liability of making the payment of compensation to the claimant in view of the nature of policy, or even due to invalid licence by the driver of the owner of the vehicle, the insurance company fails to lead any evidence to establish as to how the owner and not the insurance company is liable to pay the compensation and even submits to non appearance of the owner of the vehicle whose appearance is vital in

view of inter se contest between the owner of the vehicle and the insurance company. In absence of the owner of the vehicle, when the Motor Accident Claims Tribunal or the High Court leaves it open to the insurance company subsequently to realise the amount from the owner of the vehicle by instituting a fresh proceeding in view of the ratio of the case of ***General Manager, Kerala State Road Transport Corporation, Trivandrum*** Vs**.** ***Sussama Thomas***, (1994) 2 SCC 176, it gives rise to a fresh proceeding between the owner and the insurance company putting unnecessary burden on the Motor Accident Claims Tribunal to try the issue all over again. In fact, if the insurance company were to succeed in establishing by leading cogent evidence at the initial stage itself before the Tribunal that it is the owner of the vehicle which is liable to pay even if the evidence is ex parte in nature, it would at least facilitate the issue in the subsequent proceeding when the insurer initiates proceeding for realising the amount from the owner/insured. But in absence of such evidence, the insurer/companies are a loser and enures advantage to

the owner who happens to gain by choosing not to appear. The Insurance Companies would fair better if they were to address this issue before the Tribunal itself instead of becoming wiser at the stage of appeal. What is wished to be emphasized is that if the owner chooses not to appear before the Tribunal although his appearance is necessary in a given case, the insurance company would do well instead of acquiescing with their absence to their detriment giving an upper edge to the owner at their own peril.

26. In the instant matter, we have noted that the High Court although had granted liberty to the insurance company to realise the amount from the owner of the vehicle, it failed to record expressly that the respondent insurance company shall pay the amount to the appellant/claimant determined by the Motor Accident Claims Tribunal although impliedly the High Court has not denied the amount to the claimant/appellant. But in absence of a categorical direction to the respondent/insurance company to pay the entire amount to the appellant as determined by the Motor Accident

Claims Tribunal, the appellant is bound to confront impediments in realizing the amount. Hence, the direction of the High Court is clarified to the extent by recording that the respondent/insurance company shall pay the balance amount also beyond Rs.32,091/- along with interest to the Claimant expeditiously but not later than a period of six weeks from the date of receipt of this order.

27. We are , thus, pleased to hold that the judgment and order of the High Court which impliedly held that the employee/claimant is entitled to compensation only under the Workmens' Compensation Act and not under the Motor Vehicle's Act stands set aside and the liberty granted to the Respondent/Insurance Company to realise the amount from the owner without a corresponding direction to the Respondent/Insurance company to pay the amount to the Claimant/Appellant making the appellant liable to realise it from the owner of the vehicle stands modified as indicated hereinbefore. The appeal accordingly is allowed but we refrain from making any order as to costs.

.....J
(G.S. Singhvi)

.....J
(Gyan Sudha Misra)

New Delhi,
August 2, 2013