Bajaj Allianz General Insurance Co. Ltd. Vs Champaben @ Chochiben Jerambhai Hapaliya and Others

Court: Gujarat High Court

Date of Decision: Sept. 6, 2006

Acts Referred: Motor Vehicles Act, 1939 â€" Section 110A, 92A
Motor Vehicles Act, 1988 â€" Section 140, 140(1), 140(3), 140(4), 141

Hon'ble Judges: M.S. Shah, J; K.M. Mehta, J

Bench: Division Bench

Advocate: PV Nanavati and Vibhuti Nanavati, for the Appellant; None, for the Respondent

Final Decision: Dismissed

Judgement

M.S. Shah, J.
Both these appeals are filed by the Bajaj Allianz General Insurance Co. Ltd. u/s 173 of the Motor Vehicles Act, 1988 for

challenging the orders passed by the Motor Accident Claims Tribunal (Main), Rajkot u/s 140 of the Act in the respective claim petitions whereby

the Tribunal has directed all the opponents in the respective claim petitions including the present appellant to pay Rs. 50,000/- as compensation to

the claimants in each petition on account of death of the concerned bread-winners in two separate motor vehicle accidents.

FACTS IN FIRST APPEAL No. 3158 of 2006

2.1 MAC Petition No. 1212 of 2005 is filed by the widow and children of Jerambhai Bhagwanjibhai Hapaliya who was riding a motor-cycle on

12.11.2005 at about 7-30 in the morning on the Rajkot-Ahmedabad Highway. The accident took place between Skoda Octavia Car owned by

opponent No. 1 in the claim petition and insured by Iffko Tokyo General Insurance Co. Ltd. (opponent No. 2 in the claim petition). The motor-

cycle in question which the deceased was riding was owned by opponent No. 3- Bharatbhai M Rahadia and insured by the present appellant. On

account of the serious injuries sustained by the motor-cyclist, the motor-cyclist was removed to a hospital where he succumbed to the injuries

during the course of treatment. The widow and children of the deceased motor-cyclist have filed the above-numbered petition claiming

compensation of Rs. 20 lakhs. During pendency of the petition, the claimants also filed an application claiming interim compensation of Rs.

50,000/- u/s 140 of the Act on the principle of "no fault liability".

2.2 The appellant insurance company contested the application and submitted that the deceased himself was driving the motor-cycle, but the

insurance policy at mark 30/1 did not cover the risk of the driver of the vehicle.

2.3 The Tribunal negatived the contention of the appellant-insurance company on the ground that the deceased, who was driving the motor-cycle

in question, was not the owner of the said vehicle, that means he was not the insured of the vehicle in question and, therefore, he was a third party

in the application u/s 140 of the Act. The Tribunal held that the deceased died in the motor vehicle accident involving the motor-cycle insured by

the appellant and the koda car and, therefore, the owner as well as insurance companies of both the vehicles were jointly and severally liable to

pay compensation u/s 140 of the Act. Accordingly, the impugned order came to be passed on 10.7.2006 whereby the Tribunal directed all the

four opponents to pay jointly and severally a sum of Rs. 50,000/- with interest at the rate of 10% p.a. from the date of the claim petition till

payment, subject to final adjustment. The appellant has challenged the said order in First Appeal No. 3158 of 2006.

FACTS IN FIRST APPEAL No. 3208 of 2006

3.1 First Appeal No. 3208 of 2006 arises from Claim Petition No. 948 of 2005 wherein also the Tribunal has passed a similar order u/s 140 of

the Act. On 13.9.2005, the deceased was riding a motor-cycle and sustained serious injuries in the accident between the bus of the Gujarat State

Road Transport Corporation and the motor-cycle insured by the present appellant. In this case also, the motor-cyclist sustained serious injuries

and succumbed to the injuries. The widow and six minor children of the deceased filed Claim Petition No. 948 of 2005 for compensation of Rs.

40 lakhs. The said claimants also filed an application for interim compensation of Rs. 50,000/- u/s 140 of the Act on the basis of the principle of

"no fault liability".

3.2 In this case also, the insurance company contended that the policy did not cover the risk of the driver of the motor-cycle insured by the

appellant insurance company and, therefore, it was not liable to pay compensation either u/s 166 of the Act or u/s 140 of the Act.

3.3 In this case also, the Tribunal passed order dated 19.6.2006 directing all the three opponents i.e. the Gujarat State Road Transport

Corporation, as well as the owner of the motor-cycle and the present appellant (insurer of the motor-cycle) to pay jointly and severally a sum of

Rs. 50,000/- with interest at the rate of 10% p.a. from the date of the claim petition till payment, subject to final adjustment. The appellant is,

therefore, in appeal against the said order also.

CONTENTIONS ON BEHALF OF APPELLANT-INSURANCE COMPANY

4. Mr. Vibhuti P Nanavati, learned Counsel for the appellant-insurance company has submitted that -

(i) in each case the deceased himself was driving the concerned motor-cycle and, therefore, the deceased himself was the tort-feasor. Hence, the

claimants are not entitled to receive any compensation either u/s 166 of the Act or u/s 140 of the Act. It is submitted that the Tribunal erred in not

correctly interpreting the expression Sthird party by treating the driver as the third party merely because he was not the insured.

Strong reliance is placed on the decision of this Court in United India Insurance Co. Ltd. v. Jagatsinh Valsinh 1986 GLH 573. Reliance is also

placed on the following decisions of the Apex Court -

(a) Dhanraj Vs. New India Assurance Co. Ltd. and Another,

(b) Oriental Insurance Co. Ltd. Vs. Sunita Rathi and Others,

(c) New India Assurance Co. Ltd Vs. Smt. Sita Bai and Ors,

(ii) It is also alternatively contended that the insurance policy issued by the appellant in each of these two cases did not cover any liability for

compensation payable to the driver of the insured vehicle and that unless extra premium is paid for covering the risk of the driver/owner of the

vehicle, the appellant-insurance company cannot be held liable to pay even interim compensation u/s 140 of the Act.

DISCUSSION

5. Section 140 of the Motor Vehicles Act, 1988 reads as under:

140 Liability to pay compensation in certain cases on the principle of no fault-

(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles,

the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in

respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under Sub-section (1) in respect of the death of any person shall be a fixed sum of fifty

thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a

fixed sum of twenty-five thousand rupees.

(3) In any claim for compensation under Sub-section (1), the claimant shall not be required to plead and establish that the death or permanent

disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or

vehicles concerned or of any other person.

(4) A claim for compensation under Sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect

of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or

permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement. (5)

Notwithstanding anything contained in Sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to

give compensation for relief, he is also liable to pay compensation under any other law for the time being in force.

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under

this section or u/s 163A.

Contention (i)

6. With the insertion of Section 92-A in the Motor Vehicles Act, 1939 and embodiment of the said principle in Section 140 of the Motor Vehicles

Act, 1988, in an application u/s 140 of the Act, the heirs of the deceased or the injured claimant are not required to plead and establish that the

death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or

owners of the vehicle or vehicles concerned or of any other person. This is clearly provided in Sub-section (3) of Section 140. Sub-section (4) of

Section 140 then clarifies that a claim for compensation under Sub-section (1) of Section 140 shall not be defeated by reason of any wrongful act,

neglect or default of the person in respect of whose death or permanent disablement, the claim has been made nor shall the quantum of

compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the

responsibility for such death or permanent disablement. In other words, even the injured claimant who was himself responsible for causing the

accident by his neglect or wrongful act or default is entitled to claim compensation from the owner of the vehicle under Sub-section (1) of Section

140. Similarly, if the driver of the vehicle has died on account of the injuries received in a motor vehicle accident caused by his own wrongful act or

neglect or default, even then his heirs are entitled to claim compensation under Sub-section (1) of Section 140. This clarification given in Sub-

section (4) of Section 140 is a complete answer to the doubt sought to be raised on behalf of the insurer.

7. The very object of providing no fault liability through insertion of Section 92A in the Motor Vehicles Act, 1939 and through enactment of

Section 140 in the Motor Vehicles Act, 1988 was to provide quick relief to the heirs of the deceased driver or to the injured driver, without

undertaking any inquiry about his alleged negligence, default or wrongful act. The law in this behalf is already well-settled as per the decision of the

Apex Court in K. Nandakumar Vs. Managing Director, Thanthal Periyar Transport Corpn., wherein the Apex Court has explained the object

underlying the provisions of Section 92-A of the Motor Vehicles Act, 1939 which is an absolute liability cast upon the owner of the vehicle to pay

compensation in respect of death or permanent disablement resulting from an accident arising out of its use. In that case the claimant was riding a

motor-cycle which collided with a bus belonging to the respondent. The claimant suffered permanent disablement and claimed compensation of Rs.

2 lacs. The Tribunal as well as the High Court held the claimant to be negligent and on that ground refused to award even the compensation u/s

92A. The Apex Court held that on a plain reading of Section 92A, particularly Sub-section (4), the claim for compensation on the basis of no fault

principle could not have been defeated.

8. Very recently, the Scheme of Chapter X of the Act of 1988 containing Section 140 and other allied provisions has been examined by a Full

Bench of this Court in United India Insurance Co. Ltd. Vs. Kadviben Udabhai Rathwa and Another, and it has been held that an application u/s

140 of the Act is maintainable without filing an application for compensation u/s 166 or 163A of the Act, but if an application u/s 166 or 163A is

filed, the compensation awarded u/s 140(1) shall be adjusted against any higher or equal amount of compensation awarded u/s 166 or 163A of the

Act. In any case, the amount paid u/s 140 is not required to be refunded merely because a claim petition u/s 166 of the Act is dismissed on

account of negligence of the claimant himself.

In Payalben Jayeshbhai Yagnik v. Jayeshbhai G Yagnik 2003 (2) GLH 555, one of us (K.M. Mehta, J) sitting as a Single Judge also had an

occasion to examine the scope of Section 92A of the Motor Vehicles Act, 1939 and Section 140 of the Motor Vehicles Act, 1988, and observed

as under:

The no fault provision as propounded in Section 92A of old Act (New Section 140) of the Motor Vehicles Act is in the nature of a beneficial

legislation enacted with a view to confer the benefit of expeditious payment of a limited amount by way of compensation to the victims of an

accident arising out of the use of a motor vehicle on the basis of no fault liability. In the matter of interpretation of a beneficial legislation the

approach of the Courts is to adopt a construction which advances the beneficent purpose underlying the enactment in preference to a construction

which tends to defeat that purpose.

9. It is thus clear that the decision of this Court in United India Insurance Co. Ltd. v. Jagatsinh Valsinh 1986 GLH 573 (the accident there took

place in 1981) and the decision of the Apex Court in Dhanraj Vs. New India Assurance Co. Ltd. and Another, dealt with claim petitions filed u/s

110B of the Motor Vehicles Act, 1939/Section 166 of the Motor Vehicles Act, 1988. These decisions will, therefore, not apply to cases where

the applications are filed u/s 92A of the 1939 Act or u/s 140 of the 1988 Act.

10. In Oriental Insurance Co. Ltd. Vs. Sunita Rathi and Others, the Court was dealing with a motor vehicle accident which occurred on

10.12.1991 at 2-20 PM. The cover note was issued by the Insurance Company at 2-55 PM. The Tribunal and the High Court simply assumed

that the owner of the vehicle was not liable and that the insurer alone was liable. Disapproving the said conclusion, the Apex Court held that the

liability of the insurer arises only when the liability of the insured has been upheld for the purpose of indemnifying the insured under the contract of

insurance. The Court held that in the facts of the case, the insurance commenced after the accident and, therefore, the insurance company was not

liable under the contract to indemnify the insured. However, in the facts of that case, since the insurer had already paid compensation to the

claimants, the insurer did not pressed for refund of the amount from the claimants to the insurer.

The same view was taken in New India Assurance Co. Ltd Vs. Smt. Sita Bai and Ors,

We fail to see how these decisions are of any avail to the appellant-insurance company, which had admittedly insured the motor-cycles involved in

both the cases, much prior to the date of the respective accidents.

Contention (ii) Elaborated:

11. Now we will set out the next contention raised on behalf of the appellant - insurance company.

The learned Counsel for the appellant-insurance company has submitted that Section 140, even while providing no-fault liability, does not expand

the statutory liability of the insurance company which is only to cover the risk to the third party. Merely because the driver of one of the vehicles

injured in a motor vehicle accident is not required to prove the negligence of the other driver or merely because compensation payable to the

injured driver is not to be reduced by attributing any negligence to such injured driver who is the claimant, it does not necessarily follow that the

insurance company which is not otherwise liable to cover the risk of the driver is fastened with the liability to cover such risk to the driver. Section

140(1) does not super-impose any such additional liability to cover the risk to the driver of the vehicle. Under the provisions of Section 147(1) of

the Act, the insurance company is liable to cover only the risk in respect of death or bodily injury to a third party. The driver of the vehicle in

respect of which the insurance policy is issued is not a third party contemplated by the provisions of Chapter XI of the Motor Vehicles Act, 1988.

DISCUSSION

12. We may first examine the statutory scheme.

12.1 The liability of the owner under Sub-section (1) of Section 140 is provided in Chapter X of the Act with the title, SLiability without Fault in

certain cases. Section 141 provides that the right to claim compensation u/s 140 in respect of death or permanent disablement of any person shall

be in addition to any other right (except the right to claim under the Scheme referred to u/s 163-A of the Act) to claim compensation in respect

thereof under any other provision of the Motor Vehicles Act or of any other law for the time being in force. Section 144 gives over-riding effect to

the provisions of Chapter X notwithstanding anything contained in any other provisions of the Motor Vehicles Act or of any other law for the time

being in force.

12.2 Chapter XI contains provisions for compulsory insurance. Section 145 containing the definition clause defines ''liability'' as under:

145(C) Sliability, wherever used in relation to the death of or bodily injury to any person, includes liability in respect thereof u/s 140.

12.3 Although the title to Chapter XI and the marginal note to Section 146 refer to the insurance against third party risk, Sub-section (1) of

Section 146 provides that, no person shall use...a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that

person a policy of insurance complying with the requirements of this Chapter.

Section 147 provides for requirements of policies and limits of liability. Sub-section (1) thereof specifically provides that in order to comply with

the requirements of this Chapter (Chapter XI), the policy of insurance must insure the person or classes of persons specified in the policy to the

extent specified in Sub-section (2) against any liability which may be incurred by him in respect of the death or bodily injury to any person

..., or

damage to any property of a third party

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

Sub-section (2) of Section 147 also provides that the policy of insurance shall cover any liability incurred in respect of any accident, subject to the

ceiling of Rs. 6000/- in respect of damage to any property of a third party.

13. Sub-section (1) of Section 147, therefore, refers to the property of a third party, but as far as the liability in respect of the death or bodily

injury is concerned, it provides for covering the liability which may be incurred by the insurer in respect of the death of or bodily injury to Sany

person. The wide expression Sany person has been narrowed down by the Apex Court by excluding the liability of the passengers in a goods

vehicle or passengers in a private vehicle only on the ground that such liability is impliedly excluded by the provisions of the proviso to Sub-section

(1) and of Sub-section (2) of Section 147 of the Act or Section 149 of the Act. No such implied exclusion can be inferred in case of liability of the

insurer in respect of the death or bodily injury of the driver of the vehicle. Moreover, the express provisions of Sub-section (4) of Section 140 read

with Section 145(c) negate even the possibility of any such inference being drawn.

14. In Rikhi Ram and Another Vs. Smt. Sukhrania and Others, a three Judge Bench of the Apex Court has defined the expression Sthird party

who can claim against the insurance company (reference is to analogous provisions of the 1939 Act) in paras 4 to 6 of the judgment as under:

4. A perusal of Sections 94 and 95 would further show that the said provisions do not make compulsory insurance to the vehicle or to the owners.

Thus, it is manifest that compulsory insurance is for the benefit of third parties. The scheme of the Act shows that an insurance policy can cover

three kinds of risks, i.e. owner of the vehicle, property (vehicle) and third party. The liability of the owner to have compulsory insurance is only in

regard to the third party and not to the property. Section 95(5) of the Act runs as follows:

Notwithstanding anything elsewhere contained in any law, a person issuing a policy of insurance under this section shall be liable to indemnify the

person or classes of person specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those

classes of person.

5. The aforesaid provision shows that it was intended to cover two legal objectives. Firstly, that no one who was not a party to a contract would

bring an action on a contract; and secondly, that a person who has no interest in the subject-matter of an insurance can claim the benefit of an

insurance. Thus, once the vehicle is insured, the owner as well as any other person can use the vehicle with the consent of the owner. Section 94

does not provide that any person who will use the vehicle shall insure the vehicle in respect of his separate use.

6. On an analysis of Sections 94 and 95, we further find that there are two third parties when a vehicle is transferred by the owner to a purchaser.

The purchaser is one of the third parties to the contract and other third party is for whose benefit the vehicle was insured. So far, the transferee

who is the third party in the contract, cannot get any personal benefit under the policy unless there is a compliance of the provisions of the Act.

However, so far as third party injured or victim is concerned, he can enforce liability undertaken by the insurer.

15. Read in light of the above judgment, the corresponding provisions of the 1988 Act i.e. the provisions of Section 147 read with Section 140 do

impose on the insurer the liability to pay compensation in respect of the death of or bodily injury to any person including the driver of a vehicle

involved in the accident, notwithstanding the fact that the said driver had any alleged share in the responsibility for the accident resulting into his

death or bodily injury.

16. In view of the above discussion, we have no manner of doubt in holding that the liability of the insurance company u/s 147(1) read with

Sections 140, 144 and 145(c) of the Act covers the liability to pay compensation under the no-fault liability principle even to an injured driver or to

the heirs of driver who dies in a motor vehicle accident.

17. It is thus clear that under Sections 145, 146 and 147 the owner of the vehicle is required to obtain a policy of insurance complying with the

requirements of Chapter XI as well as covering the liability u/s 140 of the Act. It is, therefore, difficult to appreciate the contention urged on behalf

of the appellant- insurance company that the liability u/s 140 of the Act is not covered by the policy when the driver of the insured vehicle sustains

injuries or dies in a motor vehicle accident. By expressly clarifying in Sub-section (4) of Section 140, the Legislature has left no room for doubt that

the compensation under Sub-section (1) of Section 140 is payable even where the driver of the insured vehicle himself was negligent or had

committed any wrongful act or default resulting into the accident. It is, therefore, not possible to entertain the submission that the insurance

company is not required under the Act to cover the risk to the driver of the vehicle if no additional premium is paid for the driver.

18. At the fag end of arguments, Mr. Nanavati for the appellant- insurance company submitted that since the owner of the motor-cycles in the two

cases had not paid extra premium for covering the risk of the driver of the motor-cycle in question, the appellant-insurance company was not liable

to pay even the compensation u/s 140 of the Act. The owner/driver of the vehicle was covered under the policy for personal accident cover of Rs.

1 lakh on account of payment of premium of Rs. 50/- and, therefore, there would be no liability to pay compensation u/s 140(1) of the Act.

19. This contention was not urged before the Tribunal and, therefore, we have not allowed the learned Counsel for the appellant- insurance

company to raise this contention before us.

20. If at all such a contention is available to the insurance company, it may raise the contention at the hearing of the application u/s 166 of the Act.

This, however, does not detract from our finding that the insurer''s liability u/s 147(1) read with Section 140(1) and 145(c) of the Act encompasses

the liability to pay compensation on the basis of no-fault principle u/s 140(1) of the Act even in case of a driver who is alleged to be responsible in

causing the accident in question. Section 140 does not permit any inquiry into allegation of negligence to be entertained.

21. In view of the above discussion, we do not find any merit in these appeals.

The appeals are, therefore, summarily dismissed.

The amounts deposited before this Court at the time of filing the appeals shall be transmitted to the Tribunal.

22. Since the appeals are dismissed, the civil applications for stay are also dismissed.