

(2004) 04 JH CK 0003

Jharkhand High Court

Case No: W.P.C. No"s. 2279 and 4231 of 2003

Smt. Sulochana Devi and
Shambhu Nath Agrawal

APPELLANT

Vs

New Indian Assurance Company
Ltd. and Branch Manager, New
India Assurance Co. Ltd.

RESPONDENT

Date of Decision: April 20, 2004

Acts Referred:

- Motor Vehicles Act, 1988 - Section 146, 147

Citation: (2004) 3 TAC 203 : (2004) 3 ACC 26 : AIR 2004 Jhar 127 : (2005) ACJ 1894 : (2004) AIR Jhar HCR 2158 : (2004) 4 CivLJ 725 : (2004) 3 JCR 31

Hon'ble Judges: M.Y. Eqbal, J

Bench: Single Bench

Advocate: S.L. Agrawal and S. Berlia, for the Appellant; D.C. Ghosh and A. Sen, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M.Y. Eqbal, J.

1 .In these two writ petitions, since common question of law and facts are involved the same are disposed of by this common order.

2. Petitioners are aggrieved by the decision of the respondents Insurance Company communicated vide 17.3.2003 and 13.5.2003 whereby the

Insurance Company refused to issue comprehensive insurance policy in respect of the commercial vehicles owned and possessed by the petitioners.

3. In W.P.C. No. 4231 of 2003 petitioner's case is that he owned and possessed commercial vehicle bearing Registration No. UP-65A-6243

having been registered by the Motor Vehicle Department Varansi in the name of petitioner. Vehicle was lastly comprehensively insured on

28.5.2003 for a period from 29.5.2002 to 28.5.2003 being estimated value of the vehicle Rs. 3,30,000/-. While the policy was to be expired on

28.5.2003 petitioner sent proposal form alongwith a cheque of Rs. 11,771/- for the renewal of his insurance policy. The respondents by the

impugned letter dated 13.5.2003 informed the petitioner that they are unable to insure his vehicle comprehensively as a new policy decision has

been taken not to renew such old vehicles and consequently papers alongwith cheques were returned to the petitioner.

4. In W.P.C. No. 2279 of 2003, the case of the petitioner, Smt. Sulochana Devi is that she is the owner of the vehicle bearing registration No.

BEY 3611. She purchased the vehicle in 2002 and her name was transferred on 9.10.2002. The vehicle was earlier comprehensively insured in

the name of erstwhile owner Baijnath Agarwal for the period upto 26.3.2003. She also sent Bank draft of Rs. 11,734/- for renewal of

comprehensive insurance of the vehicle which was refused by the Insurance Company vide letter dated 17.3.2003.

5. The respondents/Insurance Company filed counter affidavit stating inter alia that the Insurance Company is not bound to provide comprehensive

policy in respect of the old vehicles of more than 10 years. In the instant case vehicles are of more than 10-14 years old and as per the Circular

dated 21.1.1997 the Company has decided to give comprehensive policy to TATA and LEYLAND Trucks only to those vehicles who are up to

7 years old and for other types of trucks 5 years only. Besides the above, respondents further case is that on inquiry respondents learnt that

petitioners and their family members filed different cases at different Consumer Forum, Hazaribagh and they are in the habit of purchasing old

vehicles and raising claim against the Insurance Company. It is alleged that the petitioner Shambhu Nath Agarwal is the acting President of

Consumer Forum and he is by profession Advocate and the proprietor of M/s. Mithilesh Industries. Chiranjee Lal Agarwal is father and Baijnath

Agarwal is younger brother of the petitioner. It is further alleged that petitioner and his family members filed different case before the Consumer

Forum being case Nos. 43/2000, 77/98, 1/2002, 5/99 and 44 of 2000. It is contended by the respondents that the Oriental Insurance Company

has also refused to provide comprehensive policy to the petitioner and his family members in respect of the old commercial vehicles.

6. Learned counsel for the petitioners mainly contended that refusal to insure the vehicles comprehensively by the Insurance Company is in the

teeth of the provisions of Section 147(2) of the Motor Vehicles Act, 1988. Learned counsel submitted that under the Insurance Act the Insurance

Companies are bound to insure vehicle comprehensively on payment of premium fixed by them and they can not refuse to insure the vehicles on the

ground of any policy decision. The denial by the Insurance Company to insure vehicles comprehensively is violative of provisions of Insurance laws

and Article 14 of the Constitution of India.

7. On the other hand, Mr. D.C. Ghosh, learned counsel for the Insurance Company contended that although Insurance Companies are the

instrumentality of the Government of India but at the same time they are custodian of public money and they have every right to scrutinise pros and

cons of every transaction. Learned counsel submitted that the Insurance Companies are bound to provide third party insurance policy in respect of

any type of vehicles which is the mandatory requirement of law but so far comprehensive insurance policy is concerned, it is purely governed by

contractual obligations and the Insurance Company can take appropriate decision before taking contractual liability by insuring the vehicle

comprehensively.

8. Chapter VIII of the Motor Vehicles Act, 1939, corresponding to Chapter XI of the Motor Vehicles Act, 1988 lays down the provisions

regarding insurance of vehicles against the third party risk. The object of the provisions under this chapter is to ensure that third party suffers on

account of use of motor vehicle would be able to get damages for death/bodily injury or damages to property as a result of accident by a motor

vehicle and that their liability to get damages should not be made dependent on the financial condition either of the driver of the vehicle who is user

led to causing of the injury or financial capacity of the owner of the vehicle who permitted to such user.

9. Chapter VIII of the Motor Vehicles Act, 1939 corresponding to Chapter XI of the Motor Vehicles Act makes provision for insurance of

vehicles against third party risks. Its provision ensures that third party who suffer an accident of user of motor vehicles would be able to get

damages for bodily injuries or damage to property suffered as a result of accident to get damages should not be made dependant on the financial

condition either of the driver of the vehicle whose use let to causing of injury or the financial capacity of the owner of the vehicle who permitted

such user. This statutory policy of insurance mandatorily required to be taken out in respect of motor vehicle u/s 147 of the Act of 1988 (Section

95 of 1939 Act) does not cover any liability which may be incurred by the owner of the vehicle unless policy expressly stipulates to cover such

wider risk.

10. Section 146 of the Act reads as under :

Section 146. Necessity for Insurance against third party risk.--(1) No person shall use, except as a passenger or cause or allow any other person

to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case

may be a policy of insurance complying with the requirements of this chapter.

[Provided that in case of a vehicle carrying or meant in carry, dangerous or hazardous goods, there shall also be a policy of insurance under this

Public Liability Insurance Act, 1991].

Explanation.--A person driving a motor vehicle merely as a paid employee, while there is in force in relation to the use of the vehicle no such policy

as is required by this sub-section, shall not be deemed to act in contravention of sub-section unless he knows or has reason to believe that there is

no such policy in force.

(2) Sub-section (1) shall not apply to any vehicle owned by the Central Government or a State Government and used for Government purposes

unconnected with any commercial enterprises.

(3) The appropriate Government may, by order, exempt from the operation of Sub-section (1) any vehicle owned by any of the following

authorities, namely :--

(a) the Central Government or a State Government, if the vehicle is used for Government purposes unconnected with any commercial enterprise;

(b) any local authority;

(c) any State Transport Undertaking :

Provided that no such order shall be made in relation to any such authority unless a fund has been established and is maintained by that authority in

accordance with the rules made in that behalf under this Act for meeting any liability arising out of the use of any vehicle of that authority which that

authority or any person in its employment may incur to third parties.

Explanation.--For the purposes of this sub-section, "appropriate Government" means the Central Government or a State Government, as the case

may be, and--

(i) in relation to any corporation or company owned by the Central Government, means the Central Government or the State Government;

(ii) in relation to any corporation or company owned by the Central Government and one or more State Governments, means the Central

Government;

(iii) in relation to any other State Transport Undertaking, or any local authority, means that the Government which has control over that undertaking

or authority.

11. From the aforesaid provisions it is clear that provision cast duty upon the owner of the vehicle to get the vehicle ensured and there is a penal

provision contained in Section 196 of the Act of 1988 corresponding to Section 125 of the Act of 1939 wherein it manifest that person who drives

motor vehicle in contravention of the provision of Section 146 shall be prosecuted. Section 147 of the Act provides statutory extent to the

coverage under the policy. Section 147 reads as under :

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) is issued by a person who is an authorized insurer; and

(b) insurer 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

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 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

(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 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.

(2) Subject to the proviso to Sub-section (1) a policy of insurance referred to in Sub-section (1) shall cover any liability incurred in respect of any accident, up to the following limits, namely :--

(a) save as provided in Clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand :

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this act, shall continue

to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

(3) A policy shall be -of no effect, for the purposes of this chapter unless and until this is issued by the insurer in favour of the person by whom the

policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the

policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this chapter or the rules made thereunder is not followed by a policy of insurer

within the prescribed time, the insurer, shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the

registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State

Government may prescribe.

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section 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 in the case of

that person or those classes of persons.

12. From bare perusal of the aforesaid provision of the Act, it is manifest that the type of insurance which is made compulsory in chapter VIII

broadly prescribed as insurance of motor vehicle against third party risk. But this does not mean that there may not be insurance contract in respect

of the vehicle which is more comprehensive and cover other risks. Generally a comprehensive motor insurance policy covers risk in respect of

liability of third party, loss of damages to the insured motor vehicle, personal accident to the insured and other miscellaneous benefits. Provision of

Section 147 relates to requirements of policies and limits of liability is similar to the provisions of Road Traffic Act, 1930. When a policy of

insurance covers wider risk or undertakes to cover unlimited liability, it will be liable to pay entire compensation.

13. Part VI of the English Road Traffic Act, 1988 governs the compulsory aspect of the Motor Insurance and provides special protection to the

injured third party from the strict contractual right of the insurer as against the insured. Subject to exception in Section 144, Section 143 provides

that a person must not use, cause or permit any person to use a motor vehicle on road or public place unless there is in enforce a policy, which

complies with the Act covering the required third party risk. Under the said Act also failure to comply that the obligation lead to a criminal

prosecution for an offence of strict liability.

14. It is, therefore, clear that neither the Road Traffic Act nor the Motor Vehicle Act make it obligatory on the part of the insurer to issue

comprehensive insurance policy in respect of a vehicle. Any insurance of the Vehicle covering the risk other than third party risk shall be governed

by the terms and conditions of the contract of insurance. The Insurance Company cannot be compelled to issue a comprehensive policy in respect

of any type of vehicle.

15. Thus considering the aforesaid provisions of the Act it is clear that the Insurance Company is not legally and statutorily bound to issue

comprehensive insurance policy covering the liability with respect to damage to the property of the insured or damage to the vehicle unless a

separate contract to that effect is entered into by and between the owner of the vehicle and the Insurance Company on fulfillment of terms and

conditions and the guidelines time to time issued by the Insurance Company.

16. The Insurance Company adopted sound underwriting policy involving a careful selection of risk, charging adequate premium and imposing

necessary restriction in the matter of issuance of comprehensive cover. In respect of commercial vehicle (public career) the underwriting guidelines

reads as under :

(a) Comprehensive cover should be given upto 7 years for TMB and Leyland trucks, and upto 5 years for other trucks. Regional Managers may relax this upto 10 years and 7 years respectively in cases deserving special consideration after necessary inspection and imposition of proper excess.

(b) Third party cover may be given for trucks upto any age if the vehicle has a fitness certificate. Tonnage should be carefully checked as per tonnage recorded in the registration certificate and correct premium should be charged. The D.O. should also consult the local R.T.O.s regarding the carrying capacity for each make of vehicle in their state and rely on it. It may be noted that insuring the vehicle for lower tonnage than the actual carrying capacity constitutes a breach of warranty and any claim can be repudiated.

(b) Policies with more than 2 claims should not be renewed.

(b) T.P.P.I. cover in excess of Rs. 1,50,000 should not be given. Proposals for cover in excess of said limit should be referred to the Regional Office with recommendations for consideration and approval.

17. It is, therefore, clear that the Insurance Company has to follow the under writing guidelines before issuance of coverage of comprehensive

liability. Following the aforesaid underwriting guidelines the Insurance Company issued circular dated 21.1.1997 whereby it was decided to give

comprehensive policy to some specified vehicles which are 7 years old and for other types to commercial vehicles which are 5 years old. If the

Insurance Company refused to issue comprehensive policy on the basis of cogent reasons like in the instant case where petitioners after purchasing

old vehicles demanded comprehensive insurance policy the action of the Insurance Company cannot be held arbitrary or mala fide. In such

circumstances, no mandamus can be issued directing the respondent-Insurance Company to issue comprehensive insurance, policy in respect of

the old vehicles which does not fulfill the necessary condition imposed by Insurance Company in the Motor under writing guidelines.

18. For the aforesaid reasons, no relief can be granted to the petitioners. These writ applications are, therefore, dismissed.