(2007) ACJ 1168

Madhya Pradesh High Court

Case No: None

United India Insurance Co. Ltd.		APPELLANT
	Vs	
Annapurna Shandilya and Others		RESPONDENT

Date of Decision: July 26, 2005

Citation: (2007) ACJ 1168

Hon'ble Judges: U.C. Maheshwari, J; Arun Mishra, J

Bench: Division Bench

Judgement

Arun Mishra, J.
These appeals have been preferred by the appellant, United India Insurance Co. Ltd., aggrieved by the awards passed in different claim cases arising out of the same accident. Hence, the appeals are being decided by this common order.

2. On 29.7.1994 in a Maruti van No. MP 04-0554 deceased--Naresh Kumar Banerjee, Suresh Kumar Shandilya, Mamta Shandilya, Payrelal and Mohini Bai were travelling along with injured--Bharat, Awantika Kulshreshta, Ankita Shandilya, Narayan Singh and Narendra Kumar Gupta. Claim petitions were filed by the injured and the legal representatives of the deceased claiming compensation in Motor Accidents Claims Tribunal, Bhopal.

3. On 29.7.1994 the aforesaid Maruti van at about 11.30 p.m. in the night dashed against stationary truck (CPC 8452) near Carmel Convent School. There was heavy rain. Truck was parked on the road without any parking lights being on. Maruti van was driven at high speed. Driver Narendra Kumar Gupta was unable to control it, hence, it met with the accident. Maruti van was owned by Mahendra Kumar Singh. It was insured with United India Insurance Co. Ltd.

4. Owner filed written statement and denied the facts. It was submitted that the driver of Maruti van drove it cautiously. The truck was parked without switching on parking light. There was no fault on the part of the driver of Maruti van.

5. Insurer United India Insurance Co. Ltd. in the reply denied the allegations. It was contended that there was breach of terms and conditions of insurance policy, as such it was not liable to make the payment of compensation.

6. The Claims Tribunal has found that the driver of Maruti van was negligent. Accident took place owing to his rash and negligent act. He has not taken care of parked truck.

7. For compensation which has been awarded, the liability has been fastened on driver, owner and insurer of Maruti van. The insurer of Maruti van has preferred these appeals. Cross-objections have been filed by the claimants in M.A. Nos. 147 and 148 of 1997.

8. Mr. Sanjay Agrawal, learned Counsel appearing for the appellant United India Insurance Co. Ltd. has submitted that it is a case where there was breach of conditions of insurance policy. In Maruti van the owner was authorised to take 3 + 1 persons. 10 persons travelled at the time of accident, as such the insurer cannot be saddled with the liability. Apart from that, he has submitted that the vehicle was used for commercial use on hire, as such insurer cannot be saddled with the liability of making payment of compensation. He has further submitted that no issue was framed with respect to the commercial use of the vehicle.

9. Ms. Nupur Jain, learned Counsel appearing on behalf of the claimants in M.A. Nos. 147 and 148 of 1997 has pressed the cross-objections. She has submitted that on account of death of Mamta Shandilya and Suresh Shandilya the compensation awarded is inadequate. Appropriate multiplier has not been applied. Income has also not been properly assessed. As such, compensation be suitably enhanced.

10. Mr. Amit Verma, the learned Counsel appearing on behalf of the owner has submitted that there was no breach of the insurance policy. Vehicle was not used for hire or reward, as such liability has been rightly saddled.

11. Mrs. Amrit Ruprah, learned Counsel appearing for New India Assurance Co. Ltd. has submitted that no liability has been saddled on New India Assurance Co. Ltd., hence, no relief may be granted in the appeals as against the respondent.

12. First we shall come to the submission raised by Mr. Sanjay Agrawal, learned Counsel appearing on behalf of the appellant United India Insurance Co. Ltd. that number of persons travelling in the vehicle were 10, whereas the vehicle is insured and covers the insurance of 3 + 1 persons. In our considered opinion, taking passengers more in number than covered under insurance, insurer cannot escape from liability as it is not substantial breach of the policy as held by Apex Court in B.V. Nagaraju Vs. M/s. Oriental Insurance Co. Ltd., Divisional Officer, Hassan, . The Apex Court has followed the decision of

Skandia Insurance Co. Ltd. v. Kokilaben Chandravadan 1987 ACJ 411 (SC), in view of the fact that there was "breach of carrying humans in a goods vehicle more than the number permitted in terms of the insurance policy, it was laid down that the same cannot be said to be such fundamental breach so as to afford ground to the insurer to deny indemnification" unless there were some factors which contributed to the causing of the accident. The Supreme Court has laid down in B. V. Nagaraju (supra) that exclusion term of the insurance policy must be read down to serve the main purpose of it to indemnify the insured. Our conclusion is fortified by the above decision of the Apex Court in B.V. Nagaraju (supra) and Skandia Insurance Co. Ltd. (supra). The Supreme Court in B.V. Nagaraju (supra) has laid down thus:

(7) It is plain from the terms of the insurance policy that the insured vehicle was entitled to carry 6 workmen, excluding the driver. If those 6 workmen when travelling in the vehicle are assumed not to have increased any risk from the point of view of the insurance company on occurring of an accident, how could those added persons be said to have contributed to the causing of it is the poser, keeping apart the load it was carrying. Here, it is nobody''s case that the driver of the insured vehicle was responsible for the accident. In fact, it was not disputed that the oncoming vehicle had collided head-on against the insured vehicle, which resulted in the damage. Merely by lifting a person or two, or even three, by the driver or the cleaner of the vehicle, without the knowledge of owner, cannot be said to be such a fundamental breach that the owner should, in all events, be denied indemnification. The misuse of the vehicle was somewhat irregular though, but not so fundamental in nature so as to put an end to the contract, unless some factors existed which, by themselves, had gone to contribute to the causing of the accident. In the instant case, however, we do not find such contributory factor. In Skandia ''s case, this court paved the way towards reading down the contractual clause by observing as follows:

...When the option is between opting for a view which will relieve the distress and misery of the victims of accidents or their dependants on the one hand and the equally plausible view which will reduce the profitability of the insurer in regard to the occupational hazard undertaken by it, by way of business activity, there is hardly any choice. The court cannot but opt for the former view. Even if one were to make a strictly doctrinaire approach, the very same conclusion would emerge in obeisance to the doctrine of ''reading down'' the exclusion clause in the light of the ''main purpose'' of the provision so that the ''exclusion clause'' does not cross swords with the ''main purpose'' highlighted earlier. Effort must be made to harmonize the two instead of allowing the exclusion clause to snipe successfully at the main purpose. The theory which needs no support is supported by Carter''s Breach of Contract vide para 251. To quote:

Notwithstanding the general ability of contracting parties to agree to exclusion clauses which operate to define obligations there exists a rule, usually referred to as the ''main purpose rule'', which may limit the application of wide exclusion clauses defining a promisor''s contractual obligations. For example, in Glynn v. Margetson & Co. (1893) AC 351, Lord Halsbury, L.C. stated:

It seems to me that in construing this document, which is a contract of carriage between the parties, one must in the first instance look at the whole instrument and not at one part of it only. Looking at the whole instrument, and seeing what one must regard...as its main purpose, one must reject words, indeed whole provisions, if they are inconsistent with what one assumes to be the main purpose of the contract.

Although this rule played a role in the development of the doctrine of fundamental breach, the continued validity of the rule was acknowledged when the doctrine was rejected by the House of Lords in Suissee Atlantique Societe d''Armement Maritime S.A. v. N.V. Rotterdamsche Kolen Centrale (1967) 1 AC 361. Accordingly, wide exclusion clauses will be read down to the extent to which they are inconsistent with the main purpose, or the object of the contract".

13. Coming to next submission whether vehicle was plied for hire or reward: There is no evidence on record is fairly conceded by Mr. Sanjay Agrawal, learned Counsel appearing for the appellant, United India Insurance Co. Ltd., the insurer. However, he has submitted that the issue ought to have been framed by the learned Claims Tribunal. In our opinion, issue was covered in the issue as to liability to compensate, it was for the insurer to cross-examine the witnesses on the line of the case set up in the written statement and to adduce evidence to show that the vehicle was used in violation of terms and conditions of the insurance policy, there is no evidence on record. This point was not raised before the Claims Tribunal also. It was not argued before the Claims Tribunal that vehicle was used for hire or reward. We are unable to accept the submission of Mr. Sanjay Agrawal, learned Counsel appearing for the insurer.

14. Coming to cross-objection filed in M.A No. 147 of 1997, relating to death claim of Suresh Shandilya. Age of the deceased was 32 years, income of the deceased has been assessed at Rs. 3,500. We find no fault in it. However, it is clear that for working out the compensation, dependency has been taken at Rs. 1,000 per month. 1/3rd amount ought to have been deducted and not more than 1/3rd. Thus we find that the Claims Tribunal has committed error of law while working out the dependency at Rs. 1,000 per month. Daughter and sister of the deceased are the claimants. However, due to death of wife of deceased Suresh Shandilya in the accident, deduction has been made by Claims Tribunal, in our opinion, just compensation cannot be deprived to the minor daughter due to death of others. Thus, the approach of the Tribunal cannot be said to be legal and justified. Deduction of the amount on account of the death of wife of deceased Suresh Shandilya is impermissible. Thus we find that only 1/3rd amount should have been deducted as provided in the Second Schedule to the Motor Vehicles Act, 1988. Thus, deducting 1/3rd amount of the salary of Rs. 3,500 per month, the loss of monthly dependency comes to Rs. 2,333. Appropriate multiplier at the age of 32 years is 17. As minor daughter aged 3 years is one of the claimants, we apply the multiplier of 17. Thus, total loss of dependency comes to Rs. 2,333 x 12 x 17= Rs. 4,75,932. In addition, the claimants are entitled for a sum of Rs. 2,000 on account of funeral expenses, Rs. 2,500 on account of loss to estate and Rs. 5,000 on account of loss of expectancy of life. Thus

the total compensation comes to Rs. 4,85,432 (rupees four lakh eighty-five thousand four hundred and thirty-two). The enhanced amount to carry interest at the rate of 6 per cent per annum from the date of filing of the claim petition.

15. Coming to cross-objection filed in M.A. No. 148 of 1997: relating to death claim of Mamta Bai Shandilya. Her income has been assessed by the learned Claims Tribunal at Rs. 700 per month. She was taking tuitions. She was earning Rs. 2,000 per month. In our opinion, earning has to be taken of the deceased Mamta Bai Shandilya at the notional figure provided in the Second Schedule to the Motor Vehicles Act, 1988 at Rs. 15,000 per annum in the facts and circumstances of the case. 1/3rd amount has to be deducted towards self expenditure of the deceased which she would have incurred had she been alive. Thus, the loss of annual dependency comes to Rs. 10,000. Age of the deceased was 28 years. Multiplier of 18 is applicable as a minor daughter of 3 years age is one of the claimants. Thus, total loss of dependency comes to Rs. 10,000 x 18 = Rs. 1,80,000. In addition the claimants are entitled for a sum of Rs. 2,000 on account of funeral expenses, Rs. 2,500 on account of loss to estate and Rs. 5,000 on account of loss of expectancy of life. Thus the total compensation comes to Rs. 1,89,500 (rupees one lakh eighty-nine thousand five hundred). The enhanced amount to carry interest at the rate of 6 per cent per annum from the date of filing of the claim petition.

16. Thus, we find that the appeals are devoid of merits and are dismissed. Cross-objections filed in M.A. Nos. 147 and 148 of 1997 are allowed to the aforesaid extent. Parties to bear their own costs.