

(2003) 08 CAL CK 0044

Calcutta High Court

Case No: F.M.A. No. 25 of 2002

Dipali Chattopadhyay and
Another

APPELLANT

Vs

New India Assurance Co. Ltd.
and Others

RESPONDENT

Date of Decision: Aug. 29, 2003

Acts Referred:

- Motor Vehicles Act, 1988 - Section 163A

Citation: (2004) 1 ACC 760 : (2005) ACJ 923

Hon'ble Judges: Samaresh Banerjea, J; S.P. Talukdar, J

Bench: Division Bench

Advocate: Jyotsna Roy Mukherjee, for the Appellant; K.K. Das and Krishanu Banik, for the Respondent

Final Decision: Dismissed

Judgement

S.P. Talukdar, J.

The present appeal is directed against the judgment dated 31.8.2001 passed by the learned Judge, M.A.C. Tribunal, 3rd Court, Burdwan, in M.A.C.C. Nos. 96 and 404 of 2000.

2. Applicants before the learned Tribunal, namely, Dipali Chattopadhyay and Saugat Chattopadhyay filed an application u/s 163-A of Motor Vehicles Act, 1988 praying for compensation for the death of Shyamal Chattopadhyay. The applicants stated before the learned Claims Tribunal in the said application that on 13.10.2000 the said Shyamal Chattopadhyay, since deceased, was going on his own scooter bearing the No. BR 9A-0510 along G.T. Road and at about 1.15 p.m. while it reached near Muchipara, Durgapur it dashed against a truck. As a result of the said accident, he died on the spot. New India Assurance Co. Ltd. is the concerned insurance company in respect of scooter bearing the No. BR 9A-0510 which was involved in the said

accident. The victim, since deceased, was 55 years of age at the time of such accidental death. He was an employee of the Hindustan Fertilizer Co. The applicants are the wife and son of the deceased. The deceased was having an income of Rs. 6,490 per month. Referring to Second Schedule to Motor Vehicles Act, compensation of Rs. 2,30,000 was prayed for in the said application u/s 163-A of the Motor Vehicles Act, 1988.

3. Learned Tribunal by its judgment dated 31.8.2001 dismissed the claim application by observing that "if the owner dies in an accident while using his own vehicle which has been insured by him, he does not acquire any right to get compensation from the insurance company. A personal accident insurance policy alone can cover this claim and the policy issued to the deceased not being a personal accident insurance policy, it does not cover such liability of the insurance company. The insurance company insures the liability of the insured and does not insure the insured".

4. Referring to the decision in the case of [Om Parkash and Another Vs. Rajbiri and Others](#), it was submitted by the learned counsel for the appellants that the vehicle involved in the accident was insured and not the owner of it. It was argued that the liability of insurer depends on terms of contract between insured and insurer. [[Amrit Lal Sood and Another Vs. Smt. Kaushalya Devi Thapar and Others](#)]. In this context reference was also made to the decision in the cases of National Insurance Co. Ltd. v. Deepa Pant 1998 (2) TAC 648 (Allahabad) and [National Insurance Co. Ltd. Vs. Mahadeb Kar and Others](#).

5. On the other hand, it was submitted by the learned counsel for the respondent New India Assurance Co. Ltd. that insurance company cannot be held liable to compensate heirs of the insured. In this context reference was made to the decision in the case of [The Oriental Fire and General Insurance Co. Ltd. Vs. Smt. Shakuntala Devi](#). Referring to the decision in the case of [United India Insurance Company Limited, Gulbarga Vs. Siddanna Nimbanna Jawali and Another](#), it was submitted that insured is not covered by the policy and third party cannot include the owner. The decision of the Supreme Court in the case of Minu B. Mehta v. Balkrishna Ramachandra Nayan, 1977 ACJ 118, was followed therein. The unreported judgment of the Division Bench of this court presided over by Justice Aloke Chakrabarty in F.M.A. No. 112 of 2001 has been further referred to in support of the aforesaid legal position. It was categorically asserted 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. Learned counsel further added that liability of the insurance company is to compensate the insured towards the risk of the third party. [[National Insurance Co. Ltd. Vs. Sasilatha](#), and [United India Insurance Co. Ltd. Vs. Darshan Kaur etc.](#)].

6. In the present case the owner of the scooter bearing No. BR 9A-0510 died in the accident when the said scooter was knocked down by a lorry. Unfortunately for the petitioners, the said offending vehicle remained undetected. By no stretch of

imagination it can be said that with the death of the owner of the scooter, any liability to pay compensation remained and, as such, question of the respondent insurance company indemnifying according to coverage could hardly arise.

7. Mr. Krishanu Banik, learned counsel for the respondents drew our attention to the rules, regulations, rates, advantages, terms and conditions for transaction of motor insurance business in India in accordance with the provisions of Part-II (B) of the Insurance Act, 1938 as laid down by the Tariff Advisory Committee. Mr. Banik emphatically points out that the provisions of this tariff are binding on all concerned and any breach of the tariff shall be a breach of the provisions of the Insurance Act, 1938. In this context, Mr. Banik referred to the decision in the case of [Daljit Sawhney Vs. Jagtar Singh etc.](#), wherein the single Judge of the High Court of Delhi held that the nationalised insurance companies which are instrumentalities of the State are bound by the directions of Tariff Advisory Committee which is a statutory committee. It is the duty of insurance companies to publish and widely publicise the instructions of the Tariff Advisory Committee which are meant for the benefit of the prospective policyholders.

8. It appears from the provisions of the tariff that there are two types of policies:

(i) Liability only policy: This covers third party liability for bodily injury and/or death and property damage, personal accident cover for owner-driver is also included.

(ii) Package policy: This covers loss or damage to the vehicle insured (O.D.) in addition to (i) above.

9. Significantly enough, General Regulation 36 which deals with personal accident (PA) cover under motor policy reads as follows:

"A. Compulsory personal accident cover for owner-driver: Compulsory personal accident cover shall be applicable under both liability only and package policies. The owner of insured vehicle holding an effective driving licence is termed as owner-driver for the purpose of this section.

Cover is provided to the owner-driver whilst driving the vehicle including mounting into/dismounting from or travelling in the insured vehicle as a co-driver.

N.B.: This provision deals with personal accident cover and only the registered owner in person is entitled to the compulsory cover where he/she holds an effective driving licence. Hence compulsory PA cover cannot be granted where a vehicle is owned by a company, a partnership firm or a similar body corporate or where the owner-driver does not hold an effective driving licence. In all such cases, where compulsory PA cover cannot be granted, the additional premium for the compulsory PA cover for the owner-driver should not be charged and the compulsory PA cover provision in the policy should also be deleted. Where the owner-driver owns more than one vehicle, compulsory PA cover can be granted for only one vehicle as opted by him/her."

10. Learned counsel for the appellant United India Insurance Co. Ltd., Mr. K.K. Das submitted that India Motor Tariff as amended up to 1.5.2001 which superseded India Motor Tariff in force from 1.4.1990 did not provide with any scope for such personal accident coverage.

11. It may be pointed out that the tariff, as referred to by Mr. Banik, supersedes the provisions of the India Motor Tariff in existence up to 30.6.2002. Having regard to the facts and materials of the present case, we are afraid, such regulation cannot be of any avail to the respondents in the present case. The tariff, as amended from time to time cannot be given retrospective effect so as to include the present respondents as beneficiaries of the said regulation. Moreover, the insurance policy in question does not also reflect any such personal coverage.

12. It is, no doubt, a matter of great concern if the benefit of social legislation like the Motor Vehicles Act cannot be extended to the owner/driver of a vehicle. The response in this regard in the form of tariff superseding the earlier one which was in existence up to 30.6.2002, thus, is welcome. After all, it is better late than never.

13. Though the original application is u/s 163-A of the Motor Vehicles Act where compensation is paid according to a structured formula, independent of any rash and negligent act on the part of the driver of the offending vehicle, but as pointed out earlier, in absence of any liability to pay compensation, there could be no rational justification for passing an award of compensation against respondent insurance company.

14. Considering all such facts and circumstances, we find it difficult to appreciate the grievances as ventilated on behalf of appellants-claimants and accordingly we find no substantial reason so as to justify interference in the judgment dated 31.8.2001.

15. Accordingly the appeal fails. There is no order as to costs.