National Insurance Co. Ltd. Vs Pusau Ram Kurre

Court: CHHATTISGARH HIGH COURT

Date of Decision: Sept. 2, 2016

Citation: (2016) AAC 2431 : (2016) 168 AIC 359

Hon'ble Judges: Shri Deepak Gupta, CJ.

Bench: Single Bench

Advocate: Shri P.P. Sahu and Shri Aditya Kumar, Advocates, for the Claimants Daulal and others/(Appellants/Respondents); None, though served(Respondent), for the Claimant Pusau Ram; Shri Vasant Zokarkar and Shri D.N. Prajapati, Advocates, for the Owner and Driver/(

Final Decision: Disposed Off

Judgement

Shri Deepak Gupta, C.J. - The instant three cases are being disposed of by the following common judgment since the issues involved therein are

common.

2. The undisputed facts are that on 30.5.2002, an accident took place involving a truck bearing registration No.BR 20 E 3521. The allegation is

that Pusau Ram (injured) was riding his bicycle and Sitabai (deceased) was sitting on the same. They were travelling from Village Kodebod to

Village Marod. At about 12:00 noon, near Village Marod, the offending truck hit the bicycle. Both Pusau Ram and Sitabai sustained injuries and

Sitabai died as a result of the injuries sustained by her.

3. Pusau Ram filed a claim petition, being Claim Case No.36 of 2004 for compensation. The legal heirs of deceased Sitabai, i.e., her husband

Daulal and her three minor children Kumari Manisha, aged about 8 years, Master Indra Kumar, aged about 6 years and Master Manish Kumar,

aged about 3 years also filed a claim petition, being Claim Case No.37 of 2004 for compensation. Both the claim cases have been decided by a

common award dated 26.4.2005 by the Additional Motor Accidents Claims Tribunal, Dhamtari.

4. Pusau Ram, in his Claim Case No.36 of 2004, has been awarded compensation of Rs.4,500/- by the Claims Tribunal. Against this award, a

revision, being Civil Revision No.98 of 2005 has been filed by the National Insurance Company Limited against Pusau Ram and others.

5. In Claim Case No.37 of 2004 filed by Daulal and three others, the Claims Tribunal has awarded compensation of Rs.1,41,800/-. Being

aggrieved by this award, the National Insurance Company Limited has filed an appeal, being Miscellaneous Appeal No.931 of 2005 against

Claimants Daulal and others. This award has also been challenged by Claimants Daulal and others seeking enhancement of compensation by

preferring an appeal, being Miscellaneous Appeal No.298 of 2006 against driver, owner and insurer of the offending truck.

6. On behalf of the Insurance Company, it is urged that the truck in question was insured for the period from 17.4.2002 to 16.4.2003. The

premium for the insurance of the truck was paid by a cheque. However, on presentation of the cheque, the same was dishonoured vide intimation

received on 24.4.2002. Thereafter, the Insurance Company cancelled the policy of insurance and sent intimation thereof to the insured on

15.5.2002. The accident in question took place on 30.5.2002.

7. Learned Counsel appearing for the Insurance Company submits that since the Insurance Company had cancelled the policy of insurance and

had intimated the same to the insured, it cannot be held liable to pay the compensation.

8. As far as Claimants Daulal and others, i.e., the legal heirs of deceased Sitabai are concerned, their case is that deceased Sitabai was working as

an Anganbadi Worker and she was also doing household works and, therefore, the amount of compensation awarded by the Claims Tribunal is

very much on lower side.

9. Firstly, I shall take-up the appeal filed by Claimants Daulal and others, i.e., Miscellaneous Appeal No.298 of 2006 for determination of just

compensation.

10. Section 166 of the Motor Vehicles Act, 1988 (henceforth "the Act") mandates that the Claims Tribunal should award just compensation.

What is just compensation has been subject-matter of large number of cases and it is not necessary to multiply all the authorities. As far as the facts

of Miscellaneous Appeal No.298 of 2006 are concerned, deceased Sitabai was working as an Anganbadi Worker and was earning Rs. 950/- per

month and she was also doing household works.

11. In Arun Kumar Agrawal v. National Insurance Co. Ltd., AIR 2010 SC 3426, the Apex Court, while dealing with the issue as to how the

income of a housewife has to be assessed, approved the observation of the Andhra Pradesh High Court in the following terms:

27. In A. Rajam v. M. Manikya Reddy, 1989 ACJ 542 (Andhra Pradesh HC), M. Jagannadha Rao, J. (as he then was) advocated giving

of a wider meaning to the word "services" in cases relating to award of compensation to the dependents of a deceased wife/mother. Some of the

observations made in that judgment are extracted below:

The loss to the husband and children consequent upon the death of the housewife or mother has to be computed by estimating the loss of

''services'' to the family, if there was reasonable prospect of such services being rendered freely in the future, but for the death. It must be

remembered that any substitute to be so employed is not likely to be as economical as the housewife. Apart from the value of obtaining substituted

services, the expense of giving accommodation or food to the substitute must also be computed. From this total must be deducted the expense the

family would have otherwise been spending for the deceased housewife.

While estimating the ''services'' of the housewife, a narrow meaning should not be given to the meaning of the word ''services'' but it should be

construed broadly and one has to take into account the loss of ''personal care and attention'' by the deceased to her children, as a mother and to

her husband, as a wife. The award is not diminished merely because some close relation like a grandmother is prepared to render voluntary

services.

12. The Apex Court, in Arun Kumar Agrawal case (supra), recognised the fact that the contribution made by the housewife to her house is

invaluable and cannot be computed in terms of money. The gratuitous services, which are rendered by a housewife or a mother, are services

rendered with true love and affection. These services can never be replaced by hiring a maid. One must remember that in Indian society, a mother

not only serves her children, but she is also a teacher, guide, mentor and philosopher for them. A mother inculcates good habits in her children. It is

the mother who teaches her children what is good and what is bad. These are moral values which can be taught by a mother only and no one else.

While assessing the contribution of a mother, the Court should not only be guided by the material aspects, but also by the nature of the duties

performed by her. A mother works with selfless devotion. She has no hours of work. She can be the first person to get-up in the morning in the

house and can be the last person to go to sleep in the night. The contribution of a mother, in fact, can never be converted into rupees and paise.

But, within the constraints of law and facts of each case, this Court has to decide what is the contribution of a mother?

13. In the present case, i.e., Miscellaneous Appeal No.298 of 2006, the family, which is being dealt with, belongs to the poorest strata. Deceased

Sitabai was working as an Anganbadi Worker and, therefore, she must have been spending at least 5-6 hours outside her home. Even then, in the

morning and in the evening hours, she would have been helping and serving her children. She would bathe her children, provide them food and

when they would grew-up, she would prepare and send them to school. It is true that the deceased was virtually uneducated. Therefore, she would

not be able to teach her children their school books/courses for hours, but, even then, her contribution to her children and husband would be

immense. The Claims Tribunal has assessed the income of the deceased at Rs.950/- per month only. I assess the contribution of the mother

(deceased) to the house at Rs.3,000/- per month. Since, what I have assessed is the contribution of the deceased mother towards her family, no

further deduction is required to be made because this is the assessment of the contribution being made by her to her family members and not the

assessment of her earning capacity. Therefore, the annual compensation works out to (Rs.3,000/- x 12 =) Rs.36,000/-. The appropriate multiplier

applicable to this case is 18. As such, the compensation on account of loss of income works out to (Rs.36,000/- x 18 =) Rs.6,48,000/-. In

addition thereto, a sum of Rs.12,000/- is awarded for funeral expenses and a sum of Rs.40,000/- is awarded to the husband for loss of

consortium. Thus, the total compensation works out to (Rs.6,48,000/- + Rs.12,000/- + Rs.40,000/- =) Rs.7,00,000/-. Thus, the amount of

compensation of Rs.1,41,800/- awarded by the Claims Tribunal to Claimants Daulal and others is enhanced to Rs.7,00,000/-.

14. The break-up for disbursement of total amount of compensation of Rs.7,00,000/- among Claimants Daulal and others shall be thus:

Sl.No. Claimants Amount To Be Disbursed(Rs.)

1. Appellant/Claimant Daulal (husband of deceased Sitabai) 2,50,000

Appellant/Claimant Ku. Manisha (Daughter of Appellant

2. 1,50,000

Daulal)

3. Appellant/Claimant Indra Kumar (Son of Appellant Daulal) 1,50,000

4. Appellant/Claimant Manish Kumar (Son of Appellant Daulal) 1,50,000

Total = 7,00,000

15. On the amount of compensation of Rs.7,00,000/-, simple interest @ 6% per annum shall also be paid to Claimants Daulal and others from the

date of filing of their claim petition till payment of the full amount of compensation. Amount of compensation already paid, if any, shall be adjustable

in the amount of compensation awarded herein above.

16. The next issue for consideration is as to whether the Insurance Company can be saddled with the liability to pay compensation.

17. Section 64-VB of the Insurance Act, 1938 runs thus:

64Ã¯Â¿Â½VB. No risk to be assumed unless premium is received in advance.-(1) No insurer shall assume any risk in India in respect of any insurance

business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be

paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is

made in advance in the prescribed manner.

(2) For the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than

the date on which the premium has been paid in cash or by cheque to the insurer.

Explanation.-Where the premium is tendered by postal money order or cheque sent by post, the risk may be assumed on the date on which the

money order is booked or the cheque is posted, as the case may be.

(3) Any refund of premium which may become due to an insured on account of the cancellation of a policy or alteration in its terms and conditions

or otherwise shall be paid by the insurer directly to the insured by a crossed or order cheque or by postal money order and a proper receipt shall

be obtained by the insurer from the insured, and such refund shall in no case be credited to the account of the agent.

(4) Where an insurance agent collects a premium on a policy of insurance on behalf of an insurer, he shall deposit with, or despatch by post to, the

insurer, the premium so collected in full without deduction of his commission within twentyÃ¯Â¿Â½four hours of the collection excluding bank and postal

holidays.

(5) The Central Government may, by rules, relax the requirements of subÃ¯Â¿Â½section (1) in respect of particular categories of insurance policies.

(6) The Authority may, from time to time, specify, by the regulations made by it, the manner of receipt of premium by the insurer.

18. Section 64-VB of the Insurance Act, 1938 clearly lays down that a policy of insurance can only be issued for consideration. It clearly provides

that no risk is to be assumed by the insurer unless the premium is received in advance. The Act (The Motor Vehicles Act, 1988) deals with

insurance of motor vehicles in its Chapter XI. Section 146 of the Act mandates that no person can use, except as a passenger, a motor vehicle in a

public place, unless the said motor vehicle is covered by a policy of insurance complying with the provisions of Chapter XI of the Act. The owner

and/or person-in-charge of a motor vehicle is statutorily bound to obtain insurance for the motor vehicle to cover third party risk except in

exempted categories under which the present case does not fall.

19. Section 147 of the Act deals with the requirements of insurance policies and limits of liability. We are concerned with sub-section (5) of

Section 147 of the Act, which runs thus:

147. Requirements of policies and limits of liability.-(1)

xxxxx xxxxx

xxxxx xxxxx

(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.

20. Sub-section (5) of Section 147 of the Act clearly mandates that once a policy of insurance has been issued, the Insurance Company is liable to

indemnify the person or classes of persons in respect of compensation payable to them so long it is covered under the terms and conditions of the

policy of insurance.

21. As far as third party risks are concerned, they are dealt with under sub-section (1) of Section 149 of the Act, which reads thus:

149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.-(1) If, after a certificate of insurance

has been issued under subÃ¯Â¿Â½section (3) of Section 147 in favour of the person by whom a policy has been effected, judgment or award in respect

of any such liability as is required to be covered by a policy under clause (b) of subsection (1) of Section 147 (being a liability covered by the

terms of the policy) or under the provisions of Section 163Ã¯Â¿Â½A is obtained against any person insured by the policy then, notwithstanding that the

insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section,

pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment

debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by

virtue of any enactment relating to interest on judgments.

22. Sub-section (1) of Section 149 of the Act virtually puts the insurer in the shoes of the tortfeasor and the insurer is liable to pay compensation.

The question as to how the liability of the Insurance Company has to be assessed in those cases where after the premium is paid by cheque and the

said cheque is dishonoured, has been the subject-matter of a number of decisions. A three-Judge Bench of the Apex Court dealt with the issue in

Oriental Insurance Co. Ltd. v. Inderjit Kaur, (1998) 1 SCC 371. In this case, the policy of insurance was issued on 30.11.1989 and the

premium was paid by cheque which was dishonoured. The Insurance Company sent a letter to the insured on 23.1.1990 that the cheque towards

the premium had been dishonoured and, therefore, the policy of insurance stood cancelled and the Insurance Company was no longer liable for

payment of compensation. The premium was paid in cash on 2.5.1990. However, an accident took place on 19.4.1990 before the premium had

been paid. Dealing with this issue, the Apex Court held as follows:

9. We have, therefore, this position. Despite the bar created by Section 64Ã¯Â¿Â½VB of the Insurance Act, the appellant, an authorised insurer,

issued a policy of insurance to cover the bus without receiving the premium therefor. By reason of the provisions of Sections 147(5) and 149(1) of

the Motor Vehicles Act, the appellant became liable to indemnify third parties in respect of the liability which that policy covered and to satisfy

awards of compensation in respect thereof notwithstanding its entitlement (upon which we do not express any opinion) to avoid or cancel the

policy for the reason that the cheque issued in payment of the premium thereon had not been honoured.

10. The policy of insurance that the appellant issued was a representation upon which the authorities and third parties were entitled to act. The

appellant was not absolved of its obligations to third parties under the policy because it did not receive the premium. Its remedies in this behalf lay

against the insured.

12. It must also be noted that it was the appellant itself who was responsible for its predicament. It had issued the policy of insurance upon receipt

only of a cheque towards the premium in contravention of the provisions of Section 64Ã¯Â¿Â½VB of the Insurance Act. The public interest that a

policy of insurance serves must, clearly, prevail over the interest of the appellant.

23. The Apex Court in Inderjit Kaur case (supra) has held that keeping in view the provisions of Section 64-VB of the Insurance Act, an insurer

could issue a policy of insurance and could make itself liable to indemnify third parties in respect of the liability which the policy of insurance would

cover only after receipt of premium in advance. However, the Apex Court left open the question whether the insurer was entitled to avoid or

cancel the policy of insurance as against the insured when the cheque issued for payment of premium was dishonoured.

24. A similar matter came-up for consideration before the Apex Court in New India Assurance Co. Ltd. v. Rula, (2000) 3 SCC 195. In this

case also, the premium had been paid by cheque and the policy was issued. After the cheque bounced, the policy of insurance was cancelled by

the Insurance Company. However, in this case, the accident took place before the Insurance Company had cancelled the policy of insurance and

the Apex Court relying upon Inderjit Kaur case (supra) held that the Insurance Company was liable to pay the compensation.

25. The judgment in National Insurance Co. Ltd. v. Seema Malhotra, (2001) 3 SCC 151, in my view, is not strictly applicable to the case in

hand because it relates to claim of insured"s own damages. The occurrence in this case did not involve any third party. In this context, the Apex

Court held that once the cheque had been dishonoured and the insurer had sent intimation, the insurance policy stood cancelled and the Insurance

Company was not liable to indemnify. This judgment is not strictly applicable because it deals with the claim of the insured himself. Once the

cheque of the insured himself is bounced, obviously the Claimant cannot claim personal benefits for himself.

26. However, in respect of third parties, the position is different. The issue with regard to liability in respect of third parties was considered in

Deddappa v. Branch Manager, National Insurance Co. Ltd., (2008) 2 SCC 595. In this case, the cheque was issued on 15.10.1997 and the

policy of insurance was issued for the period from 17.10.1997 to 16.10.1998. The Bank issued a memo on 21.10.1997 disclosing that the cheque

had been dishonoured. Thereafter, the Insurance Company cancelled the policy of insurance by communicating to the owner of the vehicle and

intimation was sent to the concerned Regional Transport Officer (RTO) also. On these facts, the Apex Court held that the Insurance Company

would not be liable even in respect of third party risk. Reference may be made to the following observations of the Apex Court:

24. We are not oblivious of the distinction between the statutory liability of the insurance company visÃ¯Â¿Â½a-vis a third party in the context of

Sections 147 and 149 of the Act and its liabilities in other cases. But the same liabilities arising under a contract of insurance would have to be met

if the contract is valid. If the contract of insurance has been cancelled and all concerned have been intimated thereabout, we are of the opinion, the

insurance company would not be liable to satisfy the claim.

However, the Apex Court invoking its extra-ordinary jurisdiction under Article 142 of the Constitution of India directed that the Insurance

Company would pay the amount.

27. The same question came-up for consideration before the Apex Court in United India Insurance Company Limited v. Laxmamma, (2012)

5 SCC 234, and after discussing the entire law on the subject, the Apex Court summarised the legal position in the following manner:

26. In our view, the legal position is this: where the policy of insurance is issued by an authorised insurer on receipt of cheque towards the

payment of premium and such a cheque is returned dishonoured, the liability of the authorised insurer to indemnify the third parties in respect of the

liability which that policy covered subsists and it has to satisfy the award of compensation by reason of the provisions of Sections 147(5) and

149(1) of the MV Act unless the policy of insurance is cancelled by the authorised insurer and intimation of such cancellation has reached the

insured before the accident. In other words, where the policy of insurance is issued by an authorised insurer to cover a vehicle on receipt of the

cheque paid towards premium and the cheque gets dishonoured and before the accident of the vehicle occurs, such insurance company cancels the

policy of insurance and sends intimation thereof to the owner, the insurance company''s liability to indemnify the third parties which that policy

covered ceases and the insurance company is not liable to satisfy awards of compensation in respect thereof.

28. It would be pertinent to note that in Laxmamma case (supra), the policy of insurance was cancelled only after the accident had taken place.

29. As far as the present matter is concerned, the Insurance Company had sent intimation on 15.5.2002 to the insured that her cheque had been

dishonoured and the policy of insurance had been cancelled. Admittedly, no intimation was sent to the concerned RTO. If Section 146 of the Act

is read, it is obvious that no person can use a motor vehicle unless it is properly insured. In the judgments cited herein above, it has been held that if

the Insurance Company wants to avoid its liability, it must send intimation to the owner and the concerned RTO. The reason for sending intimation

to the concerned RTO is that if the concerned RTO is informed that a vehicle is no longer insured, the said RTO can take steps to ensure that the

vehicle is not plied in the public place. I am also of the considered view that to avoid third party liability as held in Deddappa case (supra) and

Laxmamma case (supra), the Insurance Company should not only cancel the policy of insurance, but also send intimation not only to the insured

but also to the concerned RTO. In the present case, since the concerned RTO had not been intimated, the Insurance Company cannot be

absolved of liability to make payment of compensation. At the same time, since the Insurance Company had intimated the insured about the

cancellation of the policy of insurance and the insured took no step to pay the premium, the Insurance Company should be given the right to

recover the amount paid by it as compensation from the insured and for recovery of the same, it will not have to file a separate proceeding, but can

take out certificate proceeding within the meaning of Section 174 of the Act.

30. As far as Civil Revision No.98 of 2005 filed by the Insurance Company against Pusau Ram and others is concerned, since the amount

involved is trivial, the revision of the Insurance Company is dismissed without making it a precedent for the other cases.

31. As far as Miscellaneous Appeal No.298 of 2006 filed by Claimants Daulal and others seeking enhancement of compensation is concerned, it

is allowed and the compensation is awarded/enhanced as indicated above.

32. As far as Miscellaneous Appeal No.931 of 2005 filed by the Insurance Company against Claimants Daulal and others is concerned, the same

is partly allowed. It is held that the Insurance Company shall satisfy the award passed herein above within forty-five days from today, but shall be

entitled to recover the amount deposited by it from the owner of the offending truck in the manner provided herein above.