

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 22nd May, 2012
Pronounced on: 25th May, 2012

+ **MAC.APP. 220/2012**

NEW INDIA ASSURANCE CO LTD Appellant
Through: Mr. K.L.Nandwani, Adv.

versus

KRISHNA & ORS Respondents
Through: Mr. S.N. Parashar, Adv. for R-1
to R-4.
Mr. Yashpal Rangi, Adv. for R-
5 & R-6.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The Appellant New India Assurance Co. Ltd. impugns a judgment dated 05.12.2011 passed by the Claims Tribunal whereby a compensation of ₹5,63,200/- (including an interim compensation of ₹50,000/-) was awarded in favour of the Respondents No.1 to 4 on account of the death of Surender who was working as a helper on Truck No.RJ32-GA-2090 owned by the Respondent No.6 (Deepak Soni).
2. The contentions raised on behalf of the Appellant are:-

- i) The Insurance Company is not liable to pay the compensation at all as the accident took place because of the negligence of the deceased himself. The Appellant Insurance Company could put up a defence in this regard in a Claim Petition under Section 163-A on the basis of judgment of the Supreme Court in *National Insurance Company Limited v. Sinitha & Ors., 2011 (13) SCALE 84*.
 - ii) As per the contract of insurance between the Appellant and the owner(the Respondent No.6), the Appellant covered the risk of two employees under the Workmen Compensation Act. The Appellant was liable to pay the compensation restricted under the Workmen's Compensation Act, 1923 (W.C. Act). The excess compensation was payable only by the owner.
3. It is true that as per *Sinitha (supra)*, the owner/insurer can avoid the liability to pay the compensation where the accident takes place because of the wrongful act, neglect or default of the deceased himself. In other words, this limited defence is available to the owner/insurer of the vehicle. In this case, the deceased Surender was sleeping under the offending vehicle. In the FIR registered against the Respondent No.5, it has been stated that the accident was caused as the driver had failed to take care that the deceased who was working as a helper on the truck was sleeping under the truck. Moreover, the Appellant

Insurance Company did not lead any evidence as to the circumstances under which and the exact place where the deceased was sleeping at the time he was run over by the truck. In the circumstances, the Appellant's case is not covered by *Sinitha(supra)*.

4. Otherwise also, the Appellant's liability to pay the compensation is under the W.C. Act because of the contract of insurance. The question of wrongful act, neglect or default of the deceased employee or negligence of the employer are not relevant for award of compensation (*Gottumukkala Appala Narasimha Raju v. National Insurance Company Ltd. (2007) 13 SCC 446*). Thus, the Appellant Insurance Company cannot avoid its liability to pay the compensation.
5. I have perused the policy of insurance placed on record of the Trial Court. Insured (the Respondent No.6) paid a premium of ₹50/- to cover the risk of two employees under the W.C. Act. Thus, the Appellant's liability was not a statutory liability towards third party risk but was a contractual liability to pay the compensation under the W.C. Act.
6. In *National Insurance Co. Ltd. v. Prembai Patel & Ors., (2005) 6 SCC 172*, a three Judge Bench of the Supreme Court held that under Section 147(1)(b), the owner is under obligation to take a policy to cover the risk of an employee arising only under the W.C. Act. The owner could take any policy for extending the

risk by paying an additional premium. Paras 12, 13, 16 and 17 of the report are extracted hereunder:

“12. The heading of Chapter XI of the Act is Insurance of Motor Vehicles Against Third Party Risks and it contains Sections 145 to 164. Section 145(1) of the Act provides that 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 requirements of Chapter XI. Clause (b) of sub-section (1) of Section 147 provides that a policy of insurance must be a policy which insures 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 death of or bodily injury to any person or passenger or damages to any property of a third party caused by or arising out of the use of the vehicle in public place. Sub-clause (i) and (ii) of clause (b) are comprehensive in the sense that they cover both “any person” or “passenger”. An employee of owner of the vehicle like a driver or a conductor may also come within the purview of the words “any person” occurring in sub-clause (i). However, the proviso(i) to clause (b) of sub-section(a) of Section 147 says that a policy shall not be required to cover liability in respect of 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 Act in respect of death of or bodily injury to any such employee as is described in sub-clause (a) or (b) or (c). The effect of this proviso is that if an insurance policy covers the liability under the Workmen’s Act in respect of death of or bodily injury to any such employee as is described in sub-clause (a) or

(b) or (c) of proviso (i) to Section 147(1)(b), it will be a valid policy and would comply with the requirements of Chapter XI of the Act. Section 149 of the Act imposes a duty upon the insurer (insurance company) to satisfy judgments and awards against persons insured in respect of third-party risks. The expression – “such liability as is required to be covered by a policy under clause (b) of sub-section (1) of Section 147 being a liability covered by the terms of the policy” – occurring in sub-section (1) of Section 149 is important. It clearly shows that any such liability, which is mandatorily required to be covered by a policy under clause (b) of Section 147(1), has to be satisfied by the insurance company. The effect of this provision is that an insurance policy, which covers only the liability arising under the Workmen’s Act in respect of death of or bodily injury to any such employee as described in sub-clause (a) or (b) or (c) to proviso (i) to Section 147(1)(b) of the Act is perfectly valid and permissible under the Act. Therefore, where any such policy has been taken by the owner of the vehicle, the liability of the insurance company will be confined to that arising under the Workmen’s Act.

13. The insurance policy being in the nature of a contract, it is permissible for an owner to take such a policy whereunder the entire liability in respect of the death of or bodily injury to any such employee as is described in sub-clauses (a) or (b) or (c) of proviso (i) to Section 147(1)(b) may be fastened upon the insurance company and insurance company may become liable to satisfy the entire award. However, for this purpose the owner must take a policy of that particular kind for which he may be required to pay additional premium and the policy must clearly show that the liability of the insurance company in case of death of or bodily injury to the aforesaid kind of employees is not restricted to that provided under the Workmen’s Act and is either

more or unlimited depending upon the quantum of premium paid and the terms of the policy.

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16. The High Court, in the impugned judgment, has held that if the legal representatives of the deceased employee approach the Motor Accidents Claims Tribunal for payment of compensation to them by moving a petition under Section 166 of the Act, the liability of the insurance company is not limited to the extent provided under the Workmen's Act and on its basis directed the appellant Insurance company to pay the entire amount of compensation to the claimants. As shown above, the insurance policy taken by the owner contained a clause that it was a policy for "Act Liability" only. This being the nature of policy the liability of the appellant would be restricted to that arising under the Workmen's Act. The judgment of the High Court, therefore, needs to be modified accordingly.

17. The judgment of the High Court insofar as it relates to quantum of compensation and interest, which is to be paid to the claimants(Respondents 3 to 6 herein) is affirmed. The liability of the appellant Insurance Company to satisfy the award would be restricted to that arising under the Workmen's Act. Respondents 1 and 2(owners of the vehicle) would be liable to satisfy the remaining portion of the award."

7. From *Prembai Patel(supra)*, it is evident that the Appellant's liability was only to pay the compensation to the extent of his liability under the W.C. Act. Since this was a contractual liability, the Insurance Company was liable to pay the compensation under the contract and rest of the compensation would be payable by the owner i.e. the Respondent No.6.

8. Under Section 163-A, the compensation has to be awarded as per the structured formula. (*Oriental Insurance Company v. Hansrajbhai V. Kodala*, (2001) 5 SCC 175 and *Deepal Girishbhai Soni v. United India Insurance Company Limited*, (2004) 5 SCC 385). The loss of dependency thus comes to ₹4,80,000/- (₹40,000/- x $\frac{2}{3}$ x 18). The Respondents No.1 to 4 would be entitled to a sum of ₹5,000/- towards loss of consortium, ₹2,500/- towards loss to estate and ₹2,000/- towards funeral expenses. The overall compensation comes to ₹4,89,500/-.
9. The compensation under Schedule IV of Section 4 of the W.C. Act on the basis of minimum wages of an unskilled worker (the deceased being a helper and in the absence of any proof of the deceased's income) comes to ₹3,94,017/- ₹(3633 ÷ 2 x $\frac{1}{2}$ x 216.91).
10. In view of the above discussion, the compensation of ₹3,94,017/- along with interest @ 7.5% per annum from the date of the filing of the Petition till its deposit shall be paid by the Appellant Insurance Company.
11. Rest of the compensation of ₹95,483/- along with interest @ 7.5% per annum from the date of the filing of the Petition till its deposit, shall be paid by the Respondent No.6 (owner).
12. The Respondent No.6 is directed to deposit the amount of ₹95,483/- along with interest in the name of the First Respondent within six weeks with UCO Bank, Delhi High

Court Branch, failing which the Respondents No.1 to 4 shall be entitled to take execution against the Respondent No.6.

13. The excess amount of compensation (after adjusting the amount of ₹3,94,017/- along with interest) shall be refunded to the Appellant Insurance Company.
14. The compensation payable to the Respondents No.1 to 4 shall be payable in the proportion as directed by the Claims Tribunal.
15. The statutory amount of ₹25,000/- shall also be refunded to the Appellant Insurance Company.
16. The Appeal is disposed of in above terms.

(G.P. MITTAL)
JUDGE

MAY 25, 2012

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