

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

+ **MAC.A. 36/2012**

% *Judgment reserved on: 10th April, 2013*
 Judgment delivered on: 1st May, 2013

BAJAJ ALLIANZ GENERAL INSURANCE CO.
LTD.

..... Appellant

Through: Mr. Rajat Brar, Adv.

versus

RAM AVTAR YADAV & ORS.

..... Respondents

Through: Mr. Rupender Singh, Adv. for
Mr. J.N. Singh, Adv. for R1 to R4.
Mr. Rohit, Adv. for R5 and R6.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Instant appeal has been preferred against the judgment dated 17.11.2011 passed by the ld. Tribunal, whereby the appellant was directed to deposit Rs.50,000/- under Section 140 of Motor Vehicles Act,1988 as an interim award.

2. Ld. Counsel appearing on behalf of the appellant has mainly drawn the attention of this Court to the policy schedule which is at Page 21, annexed as Annexure-A which reads as under:

“Product: Contractors Plant and Machinery.

***MANUFACTURER: L&T KOMATSU, TYPE-
HYDRAULIC EXCAVATOR PC-2006, SR. NO: NL-
138838, YOM-48168002007***

Scope of Cover: As per the policy wording attached.
Subject to Clauses: Agreed Bank Clause, Third Party Liability. Excess for CPM and Terrorism Damage inclusion Endorsement as per Annexure Attached.”

3. Ld. Counsel further submits that in the policy schedule attached to the aforesaid policy it is mentioned as under:

“400-004 Third Party Liability

In consideration of the payment of the additional premium of Rs.1204, it is hereby agreed and declared that notwithstanding anything to the contrary stated in this policy, the company will indemnify the insured –

a) Against legal liability for the accidental loss or damage caused to the property of other persons.

b) Against legal liability (liability under contract excepted) for fatal or non-fatal injury to any persons other than the insured or his own employees or employee of the owner of the works / site / premises location or employees of the other firms / connected with any other work site / premises / location or members of the family of the insured or any of the aforesaid.”

4. He further submits that present case of accident caused by a Excavator, which is covered under Rule 2 (ca) of the Central Motor Vehicles Rules, 1989, however, he submits that since respondent no. 6 / owner of the said Excavator has not paid the additional premium of Rs.1204/-, therefore, the appellant is not liable to pay the 3rd Party risk caused to the deceased. The said deceased died in an accident caused by Vehicle No. HR-55F-3238.

5. Ld. Tribunal has come to the conclusion that the offending vehicle covers the 3rd Party liability, therefore, the appellant was directed to pay interim compensation of Rs.50,000/- under Section 140

of the Motor Vehicles Act.

6. Ld. Counsel has relied upon a case of ***Oriental Insurance Co. Ltd. v. Jhuma Shaha (Smt.) & Ors. 2007 (9) SCC 263***, wherein Hon'ble Supreme Court has held as under:

“The deceased was the owner of the vehicle. For the reasons stated in the claim petition or otherwise, he himself was to be blamed for the accident. The accident did not involve motor vehicle other than the one which he was driving. The question which arises for consideration is that the deceased himself being negligent, the claim petition under Section 166 of the Motor Vehicles Act, 1988 would be maintainable.

The additional premium was not paid in respect of the entire risk of death or bodily injury of the owner of the vehicle. If that be so, Section 147(b) of the Motor Vehicles Act which in no uncertain terms covers a risk of a third party only would be attracted in the present case.”

7. Ld. Counsel further submits that though the said machine comes under the Motor Vehicle Rules as mentioned above, however, in the absence of not paying the premium for 3rd Party risk, the appellant is not liable to pay any amount.

8. He further submits that there is special exclusion as per the policy wordings attached, therefore, the appellant is not liable to pay any compensation, not even liable to pay any fine amount.

9. On the other hand, ld. Counsel appearing on behalf of the respondents has submitted that in the policy itself, which is at Page 21,

the 3rd Party liability is mentioned and premium of Rs.27,893/- has been paid. Therefore, this covers the 3rd Party risk also.

10. Ld. Counsel has relied upon a case decided by Double Bench of Jammu and Kashmir High Court in case titled as ***New India Assurance Co. v. Smt. Shakuntala Devi & Ors. AIR 1997 Jammu and Kashmir 40***, wherein it is held as under:

“Section 147 it is quite comprehensive in scope and meaning. It has to be given wider, effective and practical meaning so that the object of the legislature which was faced with divergent views of various Courts of the country giving different interpretation to the provisions of S.95 (old) causing immense harm to many categories of persons by disentitling them from claiming compensation either from the insurer or the insure or both, in the facts and circumstances of the case. New provision, therefore, covers such kind of cases as well. The legislature clearly intended that every policy of insurance statutorily required to cover the risk of liability in respect of classes of persons relating to all types of vehicles without exception and with no defence to the Insurance Company disclaiming the liability with respect to particular class of persons or particular kind of vehicles. Thus the deceased being a labourer travelling in the truck, engaged by either of the parties, is covered under Section 147 of the Motor Vehicles Act, 1988 and the liability to pay the compensation has to fall on the insurance company.

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 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.

The contention of the appellant that the policy of insurance in respect of the vehicle in question did not cover the liability of the labourer for want of payment of additional premium within the meaning of Section 147 of the Motor Vehicles Act, 1988, has hardly any substance in view of the object and intendment of amended Section 147 of the Motor-Vehicles Act, 1988 statutorily covering all kinds of persons travelling by the vehicle without payment of additional premium. A bare reading of Section 147 demonstrated plainly that it is quite comprehensive in scope and meaning. It has to be given wider, effective and practical meaning so that the object of the legislature which was faced with divergent views of various Courts of the country giving different interpretation to the provisions of Section 95 (old) causing immense harm to many categories of persons by disentitling them from claiming compensation either from the insurer or the insured or both, in the facts and circumstances of the case. New provision, therefore, covers such kind of cases as well. The decisions referred to by the learned counsel for the appellant, turn on their own facts and have hardly any application under the amended Section 147 of the Motor Vehicles Act, 1988 which applies to the present case since the accident took place after this Act had come into force.

The learned single judge has rightly said that the legislature clearly intended that every policy of insurance statutorily required to cover the risk of liability in respect of classes of persons relating to all types of vehicles without exception and with no defence to the Insurance Company disclaiming the liability with respect to particular class or persons or particular kind of vehicles.

Therefore, the deceased Raj Pal, being the labourer travelling in the truck engaged by either of the parties, is covered under Section 147 of the Motor Vehicles Act, 1988 and the liability to pay the compensation has to fall on the appellant.”

11. Ld. Counsel further submits that the present appeal is against the no fault liability. The vehicle is insured with Insurance Company, therefore, at this stage, it is not to be decided whether the vehicle was at fault and that has to be decided while granting the final award. Therefore, ld. Tribunal has rightly granted the compensation vide order dated 17.11.2011.

12. The statutory scheme envisages that if there is a motor accident and due to which death or permanent disablement results from such accident, owner or owners of the vehicle or vehicles involved shall be liable to pay the prescribed compensation, if the vehicle is insured, naturally the liability would fall on the insurer. Permitting the insurer at that stage to raise any defence other than that there is no insurance policy in force at the relevant time or to raise the statutory defences contemplated in the succeeding chapter would frustrate the legislative object in introducing the concept of no fault liability.

13. The Supreme Court in ***K. Nandakumar Vs. M.D., Thanthai Periyar Transport Corpn. Ltd. 1996 2 SCC 736*** has dealt with a case of collision between a bus and a motorcycle due to the negligent driving of the motorcyclist who suffered permanent disablement. The Supreme Court while reversing the decision of High Court of Madras has held that though the injured/claimant was solely responsible for the

accident, he cannot be denied compensation under the head, 'no fault liability'. The Supreme Court also held that the Insurance Company should pay compensation with interest. Though the decision was rendered with reference to Section 92-A of the Motor Vehicles Act, 1939, the ratio laid down by the Supreme Court in this case would equally apply to the provisions of Section 140 of the Motor Vehicles Act, 1988.

14. In the present case, Excavator which is covered under Rule 2(ca) of the Central Motor Vehicles Rules, 1989, is reproduced as under:-

2(ca) "construction equipment vehicle" means rubber tyred (including pneumatic tyred), rubber padded or steel drum wheel mounted, self-propelled, excavator, loader, backhoe, compactor roller, dumper, motor grader, mobile crane, dozer, fork lift truck, self-loading concrete mixer or any other construction equipment vehicle or combination thereof designed for off-highway operations in mining, industrial undertaking, irrigation and general construction but modified and manufactured with "on or off" or "on and off" highway capabilities."

15. In the present case, there was an insurance between the appellant and owner of the vehicle/respondent No.6 as per policy No.0G-10-1101-0410-00000027 and amount of Rs.27,893/- was paid towards the premium. Though no additional amount has been paid in the instant case towards the third party liability, however, since the vehicle is covered under the Motor Vehicle Rules as a motor vehicle, the claimant / injured cannot be denied compensation under Section 140 of the Motor Vehicles Act, 1988.

16. In view of the above discussion and legal position, I find no merit in the instant appeal, therefore, I am not inclined to interfere with the order of the ld. Tribunal.

17. Accordingly, same is dismissed with no order as to costs.

18. I note, vide order dated 17.11.2011, ld. Tribunal directed the appellant to deposit Rs.50,000/- as an interim award within 30 days, failing which they shall be liable to pay interest @ 12% per annum on delayed payment. Thus the ld. Tribunal granted only one month's time i.e. up to 16.12.2011. Thereafter, appellant becomes liable to pay the interest mentioned above.

19. In view of the above, I direct the appellant to deposit Rs.50,000/- with interest @ 12% per annum within four weeks with the ld. Tribunal.

20. I here make it clear that if the ld. Tribunal comes to the conclusion that the appellant / insurance company is not liable to pay any compensation, then the appellant / insurance company shall be entitled to recover the paid amount from the owner of the offending vehicle.

CM. No. 453/2012 and CM. No. 5479/2012

In view of the above, instant applications have become infunctious and dismissed as such.

SURESH KAIT, J

MAY 01, 2013

Jg/sb