

THE HIGH COURT OF TRIPURA

AGARTALA

MFA(WC) No. 02 of 2010

Appellant :

The Oriental Insurance Co. Limited,
Represented by its Senior Divisional Manager,
Divisional Office, Central Road, Kaman
Chowmuhani, Agartala, West Tripura, (Insurer
of vehicle No. TR-01-A-1332 (Mini Bus).

By Advocates :

Mr. P. Gautam, Adv.
Mr. S. Debnath, Adv.

Claimant-Respondent :

1. Shri Pardip Saha,
S/o. Late Durga Sankar Saha,
Vill.- North Brajapur, P.S- Bishalgarh,
West Tripura District.

Owner-Respondent :

2. Shri Amit Chakraborty,
S/o. Ashit Ranjan Chakraborty,
Resident of Vill. Noagaon Krishnanagar.
P.S- East Agartala, West Tripura District.
(Owner of vehicle N o. TR-01-A-1332, Mini
Bus).

By Advocate :

None.

B E F O R E

THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing &
Judgment & Order : **30th March, 2015.**

Whether fit for reporting :

Yes	No
✓	

JUDGMENT & ORDER (ORAL)

Despite service the respondents has not appeared in the case
and, therefore, this appeal is disposed of in the absence of the respondents.

[2] The claimant filed a petition claiming compensation under the provisions of the Workmen's Compensation Act, 1923. In the claim petition the claimant stated that he was working as an Assistant i.e. workman as per the instructions of the O.P No.1, Sri Amit Chakraborty, owner of the vehicle and employer of the petitioner. It was alleged that an accident took place on 24.07.2005 and due to this accident the claimant suffered injuries and his leg was amputated.

[3] The stand of the insurance company was that it was not liable to pay compensation as no premium had been paid under the terms of the insurance policy for coverage of any employee other than the driver of the vehicle. As far as the owner-employer is concerned he filed a reply stating that the claimant, Sri Pradip Saha was engaged as Assistant of the vehicle and he was on duty as Assistant and that he sustained injuries in an accident during the course of his employment.

[4] The claimant appeared as a witness and again stated that he was working as an Assistant in the vehicle. What was the nature of duties has not been mentioned in the petition. He also stated that no FIR was lodged with regard to the occurrence. P.W-2, one doctor appeared and submitted that the disability of the claimant at 60%. Thereafter, the learned Commissioner, Workmen's Compensation assessed the compensation at Rs.5,08,296/- and held the insurance company liable to pay the same.

[5] This appeal was admitted on the following two substantial questions of law:

(i) Whether the learned Commissioner of Workmen's Compensation, West Tripura, Agartala, committed error of law, contrary to the settled proposition of law, laid down by the Hon'ble Apex Court as well as Hon'ble Division

Bench of this Court, and decided the case against the appellant Insurance Company, without considering the terms and conditions of the policy, in question, wherein no premium was paid by the owner of the offending vehicle to cover the risk of the Assistant/Helper of the alleged passenger vehicle (Mini Bus)?

(ii) Whether the learned Commissioner, passed the order, contrary to the provisions of Workmen's Compensation Act, 1923, as laid down under Section 4(A), Sub-Section 3(a) as well as without following the mandate of the Hon'ble Apex Court, in respect of determination of rate of interest and its proper effect i.e. from the date of adjudication of the case?"

At the time hearing Sri P. Gautam also alleged that the disability has wrongly been taken to be 60%. I am not at all in agreement with the submission because P.W-2, the doctor has stepped into the witness box and stated that the disability was 60% and, therefore, no error in the judgment can be found on this aspect.

[6] The main issue is whether an Assistant/Helper of the bus was covered under the terms of the policy. The policy in question was produced by the owner before the Tribunal. I have gone through the entire policy and I find that only premium was paid in respect of legal liability to the driver. The vehicle was a passenger carrying commercial vehicle and covered 18 passengers. The question is whether there was liability to cover the Assistant in terms of Section 147 of the Motor Vehicles Act, 1988. (for short the M.V. Act).

[7] Section 147 of the M. V. Act deals with requirements of policies and limits of liability. Any policy of insurance must covered the liability mentioned in Section 147 of the M. V. Act and even if premium is not paid then also the insurance company having issued a policy cannot urge that it is not liable because it had not charged premium. The policy issued strictly in terms of Section 147 of the M.V. Act is commonly known as an Act Policy. No

insurance company can issue a policy which covers liability less than that required under section 147 of the M. V. Act. At the same time, the insurance company is not liable to cover liability in excess of Section 147 unless the insured pays premium for covering the excess.

[8] Under Section 147 of the M.V. Act as far as employees are concerned the liability is as follows:

**"147 Requirements of policies and limits of liability.
— (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—**

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—

(i) against any liability which may be incurred by him in respect of the death of or bodily [injury to any person, including owner of the goods or his authorised representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required—

(i) to cover liability in respect of the 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 Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee—

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability."

Clause (a) of Sub-Section(1) requires that the policy must be issued by an authorized insurer. Sub Clause (i) of Clause (b) mandates that the insured shall be covered against any liability which may be incurred by him in respect of death or bodily injury to any person including owner of the goods or his authorized representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public service. Sub Clause (ii) covers liability in respect of any passenger of a public service vehicle. The proviso to Sub Section (i) of Section 147 clearly provides that no policy of insurance shall be required to cover liability in respect of employees except (a) engaged in driving the vehicle i.e. the driver (b) if the vehicle is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle (c) if it is a goods carriage, being carried in the vehicle. The liability is limited to the liability under the Workmen's Compensation Act and therefore even if the claim is made under the M. V. Act, 1988 the liability of the insurance company shall be limited to the amount payable under the workmen's compensation Act.

[9] As far as present case is concerned admittedly the vehicle is a public service vehicle. Therefore, the insurance company was liable to cover liability in respect of the driver and the conductor. Admittedly, the claimant was not a driver. The moot question would be whether an Assistant can be equated to be a conductor. Neither the claimant nor the owner stated that he was engaged in examining the tickets. The job of the conductor is defined in Section 2(5) of the M.V. Act as follows:

2(5). "Conductor" in relation to a stage carriage, means a person engaged in collecting fares from passengers, regulating their entrance into, or exit from, the stage carriage and performing such other functions as may be prescribed."

Under Section 29 of the M.V. Act no person can employed as a conductor unless he has a conductor's licence. Section 29 of the M.V. Act reads as follows:

"29. Necessity for conductor's licence.—

(1) No person shall act as a conductor of a stage carriage unless he holds an effective conductor's licence issued to him authorising him to act as such conductor; and no person shall employ or permit any person who is not so licensed to act as a conductor of a stage carriage.

(2) A State Government may prescribe the conditions subject to which sub-section (1) shall not apply to a driver of a stage carriage performing the functions of a conductor or to a person employed to act as a conductor for a period not exceeding one month."

Section 30 of the M.V. Act lays down the procedure for grants of conductor's licence and the conductor licence has been defined in Section 2(6) of the M. V. Act. No person can work as a conductor unless he is duly licensed in terms of Chapter-III of the M. V. Act.

[10] In the present case there is neither any averment nor any proof that the claimant was working as a conductor of the vehicle. Reference in this behalf may also be placed upon the judgment of the Apex Court in ***Ramashray Singh Vrs. New India Assurance Co. Ltd. and Others : AIR 2003 SC 2877*** wherein the Apex Court dealing with Section 147 of the M.V. Act, 1988 held as follows:

"8. Over and above the risks which are covered by this statutory provision, parties may of course enter into a contract by which the insurer agrees to cover additional risks. It is not the appellant's case that apart from the policy of insurance there was any contract between the appellant and the insurance company. The policy has a clause which defines the limits of liability in respect of death or bodily injury to any person caused by or arising out of the use of the motor vehicle under Section 11(1) of the terms and conditions of the Policy. In proviso (b) to Section 11 (1), it has been expressly stated that "except so far as is necessary to meet the requirements of the Motor Vehicles Act, the Company shall not be liable in respect of death of or bodily

injury to any person in the employment of the insured arising out of and in the course of such employment".

It would be pertinent to mention that the terms of the policy in the present case are identical to those of the policy before the Apex Court. Thereafter the Apex Court held as follows:

“9. A copy of the original policy was produced by the respondents in the course of arguments. The appellant has objected to the production of the policy at this stage. We would have understood and upheld the submission had the appellant not based his claim on the policy. Indeed, in the absence of the policy, we could not have entertained the appellant's claim at all. [See: Dr. T.V. Jose V. Chacko P.M. alias Thankachan 2001 (8) SCC 748.]

10. The appellant's first submission was that Shashi Bhushan Singh was a passenger. The appellant's submission that the phrases 'any person' and "any passenger" in clauses (i) and (ii) of sub section (b) to Section 147(1) are of wide amplitude, is correct. [See: New India Assurance Company V. Satpal Singh and Others 2000 (1) SCC 237]. However, the proviso to the sub-section carves out an exception in respect of one class of persons and passengers, namely, employees of the insured, in other words, if the "person" or "passenger" is an employee, then the insurer is required under the statute to cover only certain employees. As stated earlier, this would still allow the insured to enter into an agreement to cover other employees, but under the proviso to Section 147 (1)(b), it is clear that for the purposes of Section 146(1), a policy shall not be required to cover liability in respect of the death arising out of and in the course of any employment of the person insured unless: first : the liability of the insured arises under the Workmen's Compensation Act, 1923 and second. If the employee is engaged in driving the vehicle and if it is a public service vehicle, is engaged as conductor of the vehicle or in examining tickets on the vehicle. If the concerned employee is neither a driver nor conductor nor examiner of tickets, the insured cannot claim that the employee would come under the description of "any person" or "passenger". If this were permissible, then there would be no need to make special provisions for employees of the insured. The mere mention of the word "cleaner" while describing the seating capacity of the vehicle does not mean that the cleaner was therefore a passenger. Besides the claim of the deceased employee was adjudicated upon by the Workmen's Compensation Court which could have assumed jurisdiction and passed an order directing compensation only on the basis that the deceased was an employee. This order cannot now be enforced on the basis that the deceased was a passenger.

11. The decision of the Full Bench of the Kerala High Court relied on by the appellant National Insurance Co. Ltd. v. Philomena Mathew : 1993 ACJ 1116 was based on a construction of Section 95 of the Motor Vehicles Act, 1939 the corresponding section to which under the present Act is section 147. The relevant provisions of the two sections which are otherwise in pari materia are materially different in one respect. Section 95 covered a fourth category of employee after the three now mentioned in clauses (a)(b) and (c) to the proviso to Section 147 (1)(b) viz.,:

"where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event, out of which a claim arises". (emphasis supplied)

12. So a person carried in pursuance of a contract of employment would be a passenger and would be covered as such. The exclusion of this clause in the proviso to Section 147(1)(b) of the present Act bolsters our reasoning that employees other than the three mentioned are not covered by Section 147 (1)(b).

13. The appellant's next submission was that the concerned employee was a 'conductor'. It is doubtful whether a 'khalasi' and a conductor are the same. But assuming this were so, there is nothing to show that the appellant had paid any additional premium to cover the risk of injury to a conductor. On the contrary, the policy shows that premium was paid for 13 passengers and 1 driver. There is no payment of premium for a conductor.

14. The appellant's final submission was that as the policy was a comprehensive one, it would cover all risks including the death of the khalasi. The submission is unacceptable. An insurance policy only covers the person or classes of persons specified in the policy. A comprehensive policy merely means that the loss sustained by such person/persons will be payable upto the insured amount irrespective of the actual loss suffered. [See: New India Insurance Co. Ltd. v. J.M. Jaya 2002 (2) SCC 278; Colinvaux's: Law of Insurance (7th Edition) p. 93-94].

15. Consequently, although the appellant's claim under the insurance policy arose under the Workmen's Compensation Act, since the concerned employee was not engaged in the capacity of driver in respect of whom alone premium was paid apart from the passengers, his claim is unsustainable."

The aforesaid judgment applies on all fours to the present case.

In the present case also there is nothing to show that the Assistant and

conductor are the same. The policy shows that the premium was paid only in respect of a driver. The claimant was not the driver.

[11] In view of the above discussion, the appeal filed by insurance company is allowed and it is exonerated of its liability to pay the compensation. It is only the employer-owner of the vehicle Sri Amit Chakraborty who shall be liable to pay the entire compensation. Since this issue has been decided in favour of the insurance company there is no need to decide the second issue framed with regard to payment of interest.

In case the insurance company has paid the awarded amount, it can now proceed against the owner to recover the amount. It will however, take no steps to recover the amount from the original claimant but may recover the same from the owner.

[12] The appeal is disposed of in the aforesaid terms. No order as to costs.

Send down the LCRs forthwith.

CHIEF JUSTICE