

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

Pronounced on: 28th April, 2015

+ MAC.APP. 996/2011

NEW INDIA ASSURANCE CO. LTD. Appellant
Through Mr. K.K. Bhat, Advocate

versus

NEELAM SHARMA & ANR. Respondents
Through None

**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 Company Limited impugns the award dated 11.08.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby compensation of Rs.4,33,000/- was awarded in favour of Respondent no.1 for the death of her bachelor son Tarun Sharma.
2. During inquiry before the Claims Tribunal in a petition under Section 163-A of the Motor Vehicles Act, 1988 (the Act), it was

stated by Respondent no.1 that deceased Tarun Sharma was in private service with Respondent no.2 Naresh Grover, owner of the two wheeler bearing registration no.DL-4S-AE-8473 involved in the accident. It was pleaded that on 25.02.2008 at about 11:45 p.m., deceased Tarun Sharma was riding the two wheeler bearing registration no. DL-4S-AE-8473 from the place of his work to his residence. When the motorcycle reached at NSIT Chowk, Dwarka, an unknown vehicle came from the crossing.

3. Deceased Tarun lost control over his motorcycle and hit the divider. He suffered injuries which proved fatal. The identity of the other vehicle alleged to be involved in the accident was not known.
4. In the written statement filed by Naresh Grover, Respondent no.2 herein, the averments made in Para 23 of the petition were not denied specifically or by necessary implication. Respondent no.2 at the same time admitted that deceased Tarun Sharma was employed with him (Respondent no.2) as a Field Assistant and was earning Rs.3,000/- per month. Respondent no.2 also stated

that as a Field Assistant, deceased Tarun Sharma used to take the vehicle belonging to Respondent no.2 in the field and sometimes he would also take the vehicle with him at his home. On the day of the accident, the deceased was taking the vehicle with him at his home.

5. In the written statement filed by Appellant Insurance Company, it was stated that deceased Tarun Sharma died due to his own negligence. He was not a third party and hence, the Appellant Insurance Company was not liable to pay the compensation.
6. On appreciation of evidence and law, the Claims Tribunal found that negligence is not required to be proved by the legal heirs of the deceased victim to claim compensation under Section 163-A of the Motor Vehicles Act, 1988 (the Act). The Claims Tribunal further held that in case of liability to pay compensation to an employee under the Employees Compensation Act, 1923, also negligence is not required to be proved. While referring to Section 147 of the Act, the Claims Tribunal opined that the liability in respect of the employee is required to be covered under the insurance policy and yet it

proceeded to award the compensation payable by the Appellant.

7. At this stage, it will be appropriate to refer to the insurance policy in the instant case. Although the insurance policy was not specifically proved, a copy thereof seems to be placed on record by the Respondent claimant which has not been disputed by the Appellant Insurance Company. The policy is in respect of a two wheeler under which premium towards own damage (OD) and Third Party (TP) of 394, stamp duty of Re.1/- and service tax of Rs.49/- was charged. The question whether the insurer would be liable to pay the compensation in respect of an employee who is himself driving a vehicle was gone into by the Supreme Court in *Oriental Insurance Company Limited v. Meena Variyal and Ors.*, AIR 2007 SC 1609 and it was observed that under Section 147(1) of the Act, insurance policy need not cover the liability in respect of death or injury arising in the course of employment of an employee of the person insured by the policy, unless it be a liability arising under the Workmen's Compensation Act, 1923 in respect of a driver or the conductor, in respect of a public service vehicle if it is goods

carriage being carried in the vehicle.

8. Thus, two questions arise for consideration in the instant appeal, first, whether the risk of an employee was necessarily to be covered under Section 147 of the Act. Admittedly, the deceased did not fall in the category of the three employees as provided in proviso to Section 147 of the Act. The proviso is extracted hereunder:

“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) xxx

(ii) xxx

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 a 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”*

9. Second, question which arises is whether deceased Tarun Sharma was an employee within the meaning of Section 2(dd) of the Employees Compensation Act, 1923. Section 2(dd) is extracted hereunder:

“Section 2[(dd) "employee" means a person, who is--

(i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 (24 of 1989), not permanently employed in any administrative district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II; or

- (ii) (a) a master, seaman or other members of the crew of a ship,*
- (b) a captain or other member of the crew of an aircraft,*
- (c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,*

(d) a person recruited for work abroad by a company, and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India; or

(iii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to any employee who has been injured shall, where the employee is dead, include a reference to his dependants or any of them;]”

10. It is evident from the insurance policy that the two wheeler in question was neither a public service vehicle nor a goods carriage vehicle. Hence, the deceased did not fall under the category of engaged in driving a vehicle, conductor in a public service vehicle or being carried in a goods vehicle. It is, however, to be seen whether the deceased was engaged in any other capacity in connection with the motor vehicle. Thus, the risk having not been covered under the policy, the Insurance Company was not liable to pay the compensation at all under the policy of insurance. The other question whether the

employer who was also the owner of the two wheeler no.DL-4S-AE-8473 would be liable to pay the compensation in respect of the fatal injuries suffered by deceased Tarun Sharma who was employed as a Field Assistant shall be gone into by the Motor Accident Claims Tribunal.

11. The impugned order is consequently set aside. It is held that the Insurance Company has no liability to pay the compensation under the policy of insurance.
12. For determining the liability, if any, of the employer Naresh Grover, Respondent no.2 herein, the matter is remanded back to the Claims Tribunal for its decision in accordance with law.
13. The parties are directed to appear before the Claims Tribunal on 29.05.2015.
14. The parties shall be at liberty to lead further evidence, if any, on the question of liability and the quantum of compensation.
15. The Claims Tribunal shall make an endeavour to decide the claim petition at an early date.

16. The appeal is disposed of in above terms.
17. Pending applications, if any, also stand disposed of.
18. Statutory amount, if any, deposited shall be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

APRIL 28, 2015
vk/pst