

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.755 of 2012

=====

New India Assurance Company Ltd., 87, Mahatama Gandhi Marg, Mumbai
Through Manager New India Assurance Company Limited, Appeal And Appellant
Through The Deputy Manager And Duly Consitituted Attorney, Regional Office,
The New India Assurance Company Limited, 6th Floor, Bsfc Building, Fraser
Road, Patna. Appellant.

Versus

1. Indu Sinha W/O Lt. Vijay Kumar Sinha Resident Of Mahajan Toli No. 1, P.S. Ara Town, District Bhojpur.
2. Kumar Mukesh S/O Lt. Vijay Kumar Sinha Resident Of Mahajan Toli No. 1, P.S. Ara Town, District Bhojpur.
3. Kumar Piyush S/O Lt. Vijay Kumar Sinha Resident Of Mahajan Toli No. 1, P.S. Ara Town, District Bhojpur.
4. Mona Sinha D/O Lt. Vijay Kumar Sinha Resident Of Mahajan Toli No. 1, P.S. Ara Town, District Bhojpur.
5. Monal Sinha D/O Lt. Vijay Kumar Sinha Resident Of Mahajan Toli No. 1, P.S. Ara Town, District Bhojpur.
6. Priya Sinha D/O Lt. Vijay Kumar Sinha Resident Of Mahajan Toli No. 1, P.S. Ara Town, District Bhojpur.
7. Md. Rafi Alam S/O Not Mentioned In Award Resident Of S.G. 76 Bazar Varanasi, Varanasi (Owner Of Maruti Van, Regd. No. Dnb 7867).

.... Respondents.

=====

Appearance :

For the Appellant/s : Mr. Durgesh Kumar Singh, Adv.
For the Respondent/s : Mr. Aditya Prakash Sahay, Adv.
Mr. Anvraman Sinha, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT

Date: 27-11-2017

Heard learned counsel for the appellant and
learned counsel for the respondents on this miscellaneous appeal.

2. This miscellaneous appeal has been preferred against the judgment dated 11.05.2012 and award dated 25.05.2012 respectively passed by 1st Additional District and Sessions Judge-cum-Motor Accident Claim Tribunal, Bhojpur at Ara in Claim Case No.05/99, whereby the learned Tribunal allowing the claim petition in part directed the opposite party no.2-New India



Assurance Company Limited to pay the compensation to the tune of Rs.10,85,276/-, deducting Rs.50,000/- if paid, under Section 140 of the Motor Vehicles Act along with interest at the rate of 6% per annum from the date of filing the claim till its realization to the claimants.

3. The factual matrix of the case is that claimants filed Claim Case No.5/1999 under Section 166 of the Motor Vehicles Act for awarding compensation to the tune of Rs.50,00,000/- against appellant/New India Assurance Company Ltd. and one Md. Rafi Alam with the case in succinct that the deceased Vijay Kumar Sinha was Manager in the Bhojpur Rohtas Gramin Bank, Danwar Bihta Branch. On 10.10.1998 at 2 PM the said Vijay Kumar Sinha along with his cashier Neelkanth Pathak proceeded to Ara on his motorcycle bearing registration no. BR 3/9755. As soon as they arrived on the pucca road located in front of Maruti Seva Sadan one Maruti Van, bearing registration no.DNV 7867, being driven rashly and negligently by its driver and without blowing horn, dashed the aforesaid motorcycle. Resultantly the said Vijay Kumar Sinha and cashier Neelkanth Pathak became injured. Vijay Kumar Sinha succumbed to his injuries on the spot. Regarding the aforesaid accident, Ara Nawada P.S. Case No.180/98 was instituted under Section 279, 304 (a), 337, 338 and 414 of the Indian Penal Code. The deceased was



aged about 48 years and used to earn Rs.13,200/- per month as salary at the time of accident.

4. The New India Assurance Company Ltd. (hereinafter referred to as the 'Insurance Company') and the owner of the offending vehicle put their appearance before the learned Tribunal and filed their respective written statements. The claimants adduced ocular as well as documentary evidence in buttress of their case.

5. After hearing the parties and perusing the record, the learned Tribunal passed the aforesaid judgment and award as detailed in earlier paragraph.

6. Being aggrieved and dissatisfied with the aforesaid judgment and award, the Insurance Company has preferred this miscellaneous appeal.

7. It is submitted by learned counsel for the appellant that the offending vehicle was hailing to opposite party no.1 and was insured by it but the said vehicle was stolen on 05.10.1998 preceding to the date of accident. Regarding the said offence, Cant Varanasi P.S. Case No.427/98 was instituted under Section 379 of the Indian Penal Code against the unknown miscreants. During investigation of the aforesaid case, it came to light that the said Maruti Van was stolen by one Maeuddin and chargesheet was submitted against him. It is further submitted that



at the time of accident the said Maeuddin was driving the offending vehicle. As the said Maeuddin was not the driver of opposite party no.1, hence there was no relationship of employer and employee between them and opposite party no.1 is not vicariously liable for any act or omission of the said thief. Insurance Company is liable to indemnify the owner of the vehicle and not the thief but the learned Tribunal ignoring the aforesaid aspect of the case passed the impugned judgment and award, hence the same is liable to be set aside.

8. On the other hand, relying on the order dated 27.07.2009 of the Division Bench of the Kerala High Court passed in Sasidharan Nair Vs. Ali @ Aliyar and others in MACA No.1454 of 2006 and the judgment dated 23.05.2016 of the Delhi High Court passed in New India Assurance Company Limited Vs. Shri Ram Murthy and others in MAC.APP 434 of 2013, it is submitted by learned counsel for the respondents that even though there is no relationship of employer and employee between the owner of the vehicle and the person committing the accident by driving the offending vehicle, the Insurance Company is liable to pay the compensation to the claimants and it may recover the same from the thief who was instrumental in the said accident.

9. It is the admitted case of the parties that the deceased died in motor vehicle accident caused by the offending



vehicle. It is also admitted case of the parties that the vehicle was not being driven by the driver of opposite party no.1, i.e. the owner of the vehicle rather by a thief as the said vehicle was stolen preceding to the date of accident. The Division Bench of the Kerala High Court in Sasidharan Nair Vs. Ali @ Aliyar (supra) following the verdict of Hon'ble Apex Court in United India Insurance Company Limited Vs. Lehra reported in 2003 (2) KLT 97 (SC) has been pleased to held that even though the vehicle was stolen and accident was caused by the thief and not by the driver and there was no relationship of employer and employee between the owner of the vehicle and the thief, the Insurance Company is liable to pay the compensation to the claimants. However, the Insurance Company may recover the same from the thief who happened to be first respondent in the said case. The Delhi High Court in New India Assurance Company Limited Vs. Shri Ram Murthy (supra) has held that in cases where the accident is caused not by the driver rather by the thief after stealing the offending vehicle, the Insurance Company shall be liable to pay the compensation to the claimants. However, the Insurance Company may recovery the same from the person who was driving the offending vehicle as and when he is traced out.

10. In Skandia Insurance Co. Ltd. V. Kokillaben Chandravadan, (1987) 2 SCC 654, Hon'ble Apex Court has been



pleased to held that unless the insured “is at fault and is guilty of a breach” the insurer cannot escape from the obligation to indemnify.

Pertinently, the Hon’ble Court observed follows:

“It needs to be emphasized that it is not the contract of insurance which is being interpreted. It is the statutory provision defining the conditions of exemption which is being interpreted. These must therefore be interpreted in the spirit in which the same have been enacted accompanied by an anxiety to ensure that the protection is not nullified by the backward looking interpretation which serves to defeat the provision rather than to fulfill its life-aim. To do otherwise would amount to nullifying the benevolent provision by reading it with a non-benevolent eye and with a mind not tuned to the purpose and philosophy of the legislation without being informed of the true goals sought to be achieved. What the legislature has given, the Court cannot deprive of by way of an exercise in interpretation when the view which renders the provision potent is equally plausible as the one which renders the provision impotent. In fact it appears that the former view is more plausible apart from the fact that it is more desirable. When the option is between opting for a view which will relieve the distress and misery of the victims of accidents or their dependents on the one hand and the equally plausible view which will reduce the profitability of the insurer in regard to the occupational hazard undertaken by him by way of business activity, there is hardly any choice.”



11. Hon'ble Apex Court in National Insurance Co. Ltd. v. Abhaysing Pratapsing Waghela (2008) 9 SCC 133 has been pleased to observe as follows:

“18. No doubt, a contract of insurance is to be governed by the terms thereof, but a distinction must be borne in mind between a contract of insurance which has been entered into for the purpose of giving effect to the object and purport of the statute and one which provides for reimbursement of the liability of the owner of the vehicle strictly in terms thereof. In that limited sense, a contract of insurance entered into for the purpose of covering a third-party risk would not be purely contractual. We may place on record that an ordinary contract of insurance does not have a statutory flavour. The Act merely imposes an obligation on the part of the insurance company to reimburse the claimant both in terms of the Act as also the contract. So far as the liability of the insurance company which comes within the purview of Sections 146 and 147 is concerned, the same subserves a constitutional goal, namely, social justice. A contract of insurance covering the third-party risk must, therefore, be viewed differently vis-à-vis a contract of insurance qua contract”.

12. In Selvarajamani Vs. New India Assurance Company Limited 2004 (2) TN MAC 21 (DB), the division bench of the High Court of Madras has observed as:

“6. When a vehicle is stolen, it cannot always be said that the owner had



been negligent. The ingenuity of the person who committed theft cannot always be foreseen. If as a prudent owner, the owner of the vehicle had taken the normal precaution of locking the car while parking it in a public place, the owner cannot be held responsible for the theft of the vehicle. The person who steals the motor vehicle cannot, on the basis of any principle, be described as an agent of the owner, or employee of the owner, for the purposes of casting liability on the owner. The concepts of agency or employment or contract are wholly inapposite in a case of theft. Theft is taking away of the property without the consent expressed or implied of the owner, and with intent to appropriate the property for oneself. None of the established legal principles can be stretched so as to constitute a thief who stole the motor vehicle, a representative of the owner for the purpose of making the owner liable.

7.Even in case where the vehicle has been stolen, and there is no negligence on the part of the owner, the owner, and consequently the insurer is liable to pay the amount provided for as no fault liability under the applicable statutory provision in force at the time of the accident.

13. In National Insurance Company Limited Vs.

Rohit Sharma 2013 Law Suit (P&H) 769 High Court of Punjab and

Haryana has held as under:

“....It is also apparent that there was no violation of the conditions of the policy of insurance and the theft of the vehicle by Sukhwinder Singh-



respondent no.2 was also beyond the control of the owner. The vehicle was duly insured at the time of the accident. The owner himself becomes sufferer due to the theft. The aim and object of getting the vehicle insured is to the liability by the Insurance Company in such exigencies if the vehicle is insured for theft. Thus, the argument that the owner was responsible for the liability, if any, on account of the accident of the vehicle, which was stolen, is of no consequence.”

14. In the case at hand it is admitted case of the parties that the vehicle has been stolen from the possession of the insured during his absence. He had taken steps to report the theft to the police and after the investigation of case chargesheet against the thief has been submitted. Before the police could trace it out, the vehicle has already been put to use on a public road in the course of which accident took place causing death of, third party. In the facts and circumstances of the case, it cannot be said that the person at the wheels of the offending vehicle had the authority of its owner (insured) to take it out on public road. While the owner cannot be held liable in this peculiar fact-situation, the insurer at the same time cannot avoid its liability under the insurance policy to pay the compensation to the third party. The object of the law will have to be enforced and the insurer is bound to pay. At the same point of time, however, it must be observed that the person at



the wheel of the offending vehicle at the relevant point of time (who in all likelihood would be the person who had committed the theft) remains the principal tort-feasor inasmuch as negligent driving on his part has been proved to be the cause for the fatal accident. Since such person did not have the authority of the owner of the offending vehicle to use the motor vehicle, the liability to compensate would not shift on the principle of vicarious responsibility on to the owner. In other words, it is the person driving the vehicle at the time of accident who remains solely responsible to compensate. For want of privity of contract, obviously, such person (thief) cannot take the benefit of the indemnity clause under the insurance contract.

15. In the facts and circumstances of the case, the appellant Insurance Company is directed to pay compensation amount and interest as directed by the learned Tribunal thereon to the claimants. However, it may recover the amount paid by it from the aforesaid thief.

16. In the case under hand, the thief who had caused the accident by driving the offending vehicle rashly and negligently is known and the chargesheet against him has been submitted, but the said thief has not been made party in the claim petition. As the thief has not been made party in the claim petition, it will be cumbersome process for the Insurance Company to



recover the same from the said thief by filing suit and contesting the same at the cost of money and time etc. To avoid such cumbersome step to be taken by the Insurance Company for recovery of the compensation amount paid by it, the Legislator has made a provision under Section 174 of the Motor Vehicles Act, which is quoted hereunder:

174. Recovery of money from insurer as arrear of land revenue.- Where any amount is due from any person under an award, the Claims Tribunal may, on an application made to it by the person entitled to the amount, issue a certificate for the amount to the Collector and the Collector shall proceed to recover the same in the same manner as an arrear of land revenue.

17. From the aforesaid provision, it is manifest that the Insurance Company is not required to file any suit for recovery of the compensation amount rather to file a petition under the aforesaid Section along with the order of the Tribunal/Appellate Authority before the Tribunal for recovery of the compensation amount paid by it. But, as in the case under hand, the thief has not been made party in the claim petition, no such petition can be filed by the Insurance Company for recovery of the amount of compensation to be paid by it.

18. In view of the facts and circumstances of the



case, the aforesaid judgment and award passed by the learned Tribunal is set aside only regarding ultimate liability of payment of compensation and interest thereon and the matter is remitted back to the learned Tribunal with a direction to the claimants to make the thief of the offending vehicle as party in the claim petition. The Insurance Company is directed to deposit the award amount along with the interest as directed by the Tribunal before the learned Tribunal within two months from this date. The claimants would be at liberty to withdraw the said amount only after impleading the thief as party in the claim petition. The statutory amount deposited in the Court be sent down to the learned Tribunal for its adjustment towards compensation

19. In the light of the observations and directions made hereinabove, this appeal stands disposed of.

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	07.12.2017
Transmission Date	07.12.2017

