

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ MAC APP 133/2008

Judgment delivered on: February 29, 2008

United India Insurance Co. Ltd. Appellant.
Through: Mr. Sameer Nandwani, Adv.

versus

Alka Mangla & Ors. Respondents
Through: Ms. Manjusha Wadhwa, Adv.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | yes |
| 2. | To be referred to Reporter or not? | yes |
| 3. | Whether the judgment should be reported in the Digest? | yes |

KAILASH GAMBHIR, J. Oral:

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The present appeal arises out of the award dated 14th January 2008 of the Motor Accident Claims Tribunal whereby the Tribunal awarded a sum of Rs. 4,01,000/- along with interest @ 7.5% per annum to the claimants.

The brief conspectus of the facts are as follows:

On 23/09/2002 at about 2:15 am the appellant Smt. Alka Mangla was travelling in a Toyota Qualis car bearing registration no. DL 8CG 5463, which was being driven by her husband respondent no.1. When the said Qualis coming from the direction of ISBT reached on Ring Road near Budh Vihar Picket, Delhi, a truck bearing registration no. HR 38A 8581 was standing stationary in the middle of the road without any indication or signal, due to this, the said car smashed into the truck with a great force. As a result, the petitioner, her husband and the driver of the truck received grievous injuries.

A claim petition was filed on 29th April 2005 and an award was made on 14th January 2008. Aggrieved with the said award the present appeal is preferred by the insurance company.

Mr. Sameer Nandwani counsel for the appellant has assailed the said award and contended that the tribunal failed to appreciate that the respondent no. 1 Mrs. Alka Mangla is not a third party qua respondent nos. 2 & 3 as she is a member of the same family and was travelling in the same vehicle with her husband and therefore, cannot claim any compensation against the husband respondent.

The counsel for the appellant has relied on the judgments of the Apex Court entitled **Oriental Insurance Co. Ltd. Vs. Smt. Jhuma**

Saha & Ors.-(2007) 9 SCC 263 and **Oriental Insurance Co. Ltd. Vs. Meena Variyal & Ors. – (2007) 5 SCC 428**, in support of his contentions.

Per contra Ms. Manjusha Wadhwa counsel for respondent no. 5 refuted the contention of the counsel for the appellant and submitted that the award suffers from no infirmity. The counsel urged that the award is just and fair and requires no interference.

I have heard counsel for the parties and have perused the award.

The car was insured with the appellant. Admitting the said fact of the car being insured with it, defence was taken by the appellant that the injured was not a third party in the car qua respondent nos. 2 & 3 and the policy of insurance covered public risk to third parties and since passengers in a car are not third parties, appellant was not liable to satisfy the award. The important question of law which has come before this court is that whether the expression “any person” in Section 147 of the Motor Vehicles Act, 1988 covers the family members of the employee of the insured travelling in the car of the insured.

Whether a Gratuitous Passenger travelling in a Private car would fall within the meaning of 'third party' and covered by 'Statutory Policy' within the meaning of Section 147 of the Act is no more debatable, but in the instant case in contra distinction to this, on perusal of the policy it becomes manifest that the policy in question taken out by the insured and issued by the appellant is a 'PRIVATE CAR PACKAGE POLICY' and as notified by the Tariff Advisory Committee, with effect from 1.7.2002, the terms and conditions of a private car package policy mandates as under:-

"SECTION II -LIABILITY TO THIRD PARTIES

1. Subject to the limits of liability as laid down in the Schedule hereto the Company will indemnify the insured in the event of an accident caused by or arising out of the use of the vehicle against all sums which the insured shall become legally liable to pay in respect of:-

(i) death of or bodily injury to any person including occupants carried in the vehicle (provided such occupants are not carried for hire or reward) but except so far as it is necessary to meet the requirements of Motor Vehicles Act, the Company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured.

(ii) Damage to property other than property belonging to the insured or held in trust or in the custody or control of the insured."

The law pertaining to the "Statutory/Act Policy" cannot be same for the "Private Car Package Policy". Where the policy is a statutory

policy or an Act only policy, a gratuitous passenger in a private vehicle would not be covered for a bodily injury or death under the policy of insurance. But, nothing prevents the insurance company from issuing a wider coverage i.e. assuming a greater risk liability. As in the instant case, where the policy is a Package Policy for Private Cars, terms of the policy and the applicable conditions as notified by the Tariff Advisory Committee would have to be looked into to determine the risk liability assumed by the insurer.

At the outset it may be noted that the M.V.Act 1988 does not define the expression 'third party' except that Section 145 (g) of the Act states that it includes the Government. The object of insurance of vehicles against third party risks is to ensure that the sufferer is compensated for the loss sustained by him independent of the financial condition of the driver and owner of the vehicle involved. The provisions of the Act have to be construed in such a manner as to achieve the sacrosanct object of the enactment. Section 146 of the M.V. Act, 1988 mandates that a motor vehicle must have a policy of Insurance against third party risks. Section 147 of the M.V. Act, 1988 is reproduced as under:

“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; or

(b) insurer 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.

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 or 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.

(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:-

(a) save as provided in clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons."

A bare reading of the aforementioned provision shows that the policy of insurance has to cover liability in respect of death or bodily injury to any person including owner of the goods or his authorized representative who may be carried in a goods vehicle/carriage as defined under Section 2(14) of the Act.

Section 149 of the M.V. Act 1988 casts a duty on the insurer to satisfy judgments and awards passed against the insured in respect of third party risks notwithstanding that insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy. There is no

statutory limit of liability provided under the M.V. Act 1988 unlike the old Act of 1939.

At first blush it would be revealed to a reader that a third party must necessarily indicate a party other than those who are parties to the contract of insurance. Thus, insured and insurer are the first and second party and all others are third parties except that category of persons who may be excluded specifically by the Act or the contract of insurance. The owner, insured and third party cannot be rolled into one. In other words, the insured is not covered by the policy of insurance as third party, unless he has taken personal insurance or coverage as decided in the decision reported in **AIR 2004 SC 4767 Dhanraj V. New India Assurance Company Ltd.** by the Apex Court.

Coming back to the case at hand, the insurance policy is Private Car Package Policy, dated 10/08/2002, thus the notification dated 1.7.2002 of the Tariff Advisory Committee shall be treated as a part and parcel of the said policy. Accordingly, in view of the terms and conditions of the policy and the terms of the notification dated 1.7.2002 of the Tariff Advisory Committee, the respondent no. 1 Smt. Alka Mangla is liable to be compensated.

In view of the above discussion, the appeal is dismissed with Rs. 10,000/- costs.

February 29, 2008

KAILASH GAMBHIR, J