HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

1. CIMA No.27/2005 **Date of Decision: 27.09.2011**
2. CIMA No.28/2005
3. Cross Appeal(C) No.10/2005
4. Cross Appeal(C) No.11/2005

---

1. United India Insurance Co. Ltd.	**v.**	**Karam Chand & ors.**
2. United India Insurance Co. Ltd.	**v.**	**Shakuntla Devi & ors.**
3. United India Insurance Co. Ltd.	**v.**	**Karam Chand and ors.**
4. United India Insurance Co. Ltd.	**v.**	**Shakuntla Devi & ors.**

Coram:

Mr. Justice J.P.Singh.

Appearing counsel:

For Appellant (s) : Mr. R.P.Jamwal, Advocate.

For Respondent(s) : Mr. M.P.Gupta, Advocate.

i)	Whether to be reported in Press/Journal/Media	:	**Yes**
ii)	Whether to be reported in Digest	:	**Yes**

While travelling in a Goods Carrier bearing registration No.JK02E-5195, on 14.06.1999, Surinder Singh and Des Raj suffered injuries which led to their death when the Goods Carrier, driven rashly and negligently, by its driver, met with accident near Raghi Nallah-Khellani falling in the jurisdiction of Police Station Doda.

The parents of Surinder Singh, and the Widow and sons of Des Raj lodged Compensation Claims with the Motor Accidents Claims Tribunal, Doda.

On the basis of material on records, the Tribunal held Shakuntla Devi and her sons entitled to Rs.3,00,500/- and the

parents of Surinder Singh to Rs.1,80,300/-, along with interest @ 9% per annum from the date of filing the Claim Petitions, as compensation for death of Surinder Singh and Des Raj respectively.

Finding that the owner was carrying passengers in a Goods Carrier, the Tribunal, while absolving the Insurance Company of its liability to indemnify the owner, directed it, to pay the awarded amount to the claimants with an option to it to recover the amount so paid from owner of the vehicle.

Aggrieved by the Awards dated 23.11.2004 of the Tribunal, the United India Insurance Company Limited has appealed to this Court by its Appeals CIMA Nos. 27 and 28 of 2005. The Claimants too have filed Cross Appeals seeking enhancement in the amount of compensation awarded to them by the Tribunal.

According to the appellant's learned counsel, the direction issued by the Tribunal to the appellant to satisfy the Award and thereafter recover it from owner, was illegal and unwarranted, in that, having been absolved of its liability to indemnify the owner, the appellant could not, in law, be directed to pay compensation to the Claimants.

Referring to the provisions of Section 149 of the Motor Vehicles Act, 1988, the respondents-claimants' learned counsel submitted that having admitted the offending vehicle to have been insured with the Company, the appellant was liable

to satisfy the Award and pay the compensation awarded by the Tribunal to the claimants and the direction issued by the Tribunal to recover it later from the owner was legally permissible, warranting no interference therewith in Appeal.

The question that arises for consideration is:-

> Whether the Tribunal was justified in directing the appellant-Insurance Company to satisfy the Awards paying compensation to the Claimants allowing it option to recover it later from the owner of the offending vehicle, when the vehicle had been driven by the owner violating the terms and conditions of the Insurance Policy?

To deal with the issue, regard needs to be had to the provisions of Sections 146, 147 and 149 of the Motor Vehicles Act, 1988, which appear in Chapter XI of the Motor Vehicles Act, that deals with the INSURANCE OF MOTOR VEHICLES AGAINST THIRD PARTY RISKS. Relevant portion of these two Sections is reproduced hereunder for reference:-

> "**Section 146-Necessity for insurance against third party risk**.-(1) No person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter:
>
> [Provided that in the case of a vehicle carrying, or meant to carry, dangerous or hazardous goods, there shall also be a policy of insurance under the Public Liability Insurance Act, 1991 (6 of 1991).]
>
> Explanation.- A person driving a motor vehicle merely as a paid employee, while there is in force in relation to the use of the vehicle no such policy as is required by this sub-section, shall not be deemed to act in contravention of the sub-section unless he knows or has reason to believe that there is no such policy in force……."
>
> **"Section 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 authorized 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 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 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;

……."

"Section 149 –Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.- (1) If, after a certificate of insurance has been issued under sub-section (3) of section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 147 (being a liability covered by the terms of the policy) [or under the provisions of section 163 A] is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

……."

Perusal of Section 146 reveals that there is a statutory prohibition for using, or causing or allowing, any person to use, a motor vehicle in a public place, **unless there was in force in relation to the use of the vehicle by that person or that other person, as the case may be, A POLICY OF INSURANCE COMPLYING WITH THE REQUIREMENTS OF CHAPTER XI.**

In other words, there is prohibition for driving motor vehicles in a public place unless there was a policy of

Insurance in regard to the use thereof and such policy satisfied the requirements indicated in the provisions appearing under Chapter XI of the Act.

The intention behind enacting the Section is explicit, i.e., to cover the damage or loss that the use of a Motor Vehicle, in a public place, may result in, to the **third party.**

There is no exhaustive definition of “third party” in Section 145 of the Act and the definition appearing in Section 145 (g) is only inclusive; yet there may not be any difficulty in discerning the expression “third party”, as contemplated by the legislature, in that, the Policy of Insurance being an agreement between first and the second party, i.e., the insurer and the insured, rest all others, who suffer because of the use of Motor Vehicles, and whose risks, the legislature intended to cover by introduction of Sections 146 & 149 appearing in Chapter XI of the Act, would fall within the definition of “third party”.

The third party includes persons who suffer loss or damage, by use of Motor Vehicle, either as occupants thereof or while travelling on road, or in any other vehicle.

The persons travelling in a Goods Vehicle, would therefore fall within the definition of “third party” in terms of the provisions appearing in Section 146 of the Act.

To achieve the intended object of ensuring compensation to “third party” for the loss or damage caused to it or its property, **Section 149 requires the insurer to satisfy**

judgments and awards against persons in respect of third party risks *notwithstanding insurer's right to avoid or cancel the Insurance Policy, inter alia, because of the breach of specified conditions of Policy*.

Thus considered, the position that emerges from the perusal of above quoted three Sections appearing in Chapter XI of the Motor Vehicles Act, is that once a Motor Vehicle was found to have been insured against third party risks, the insurer is under a statutory obligation to satisfy judgments and Awards against the insured in respect of third party risks.

In this view of the matter, the direction issued by the Tribunal requiring the appellant-Insurance Company to satisfy the Awards and thereafter recover the amount paid to the Claimants in terms of the Awards from the insured, is not found to suffer from any error of law, as projected by the learned counsel for the appellant.

I am supported in taking this view by *National Insurance Company Limited versus Swaran Singh & others*, reported as (2004) 3 SCC, 297 where while dealing with the similar issue, their Lordships of Hon'ble Supreme Court of India, observed and held as follows:

> "Proviso appended to sub-section (4) of Section 149 is referable only to sub-section (2) of Section 149 of the Act. It is an independent provision and must be read in the context of Section 96 (4) of the Motor Vehicles Act, 1939. Furthermore, it is one thing to say that the insurer will be entitled to avoid its liability owing to breach of terms of a contract of insurance but it is another thing to say that the vehicle is not insured at all. If the submission of the learned counsel for the petitioner is accepted, the same would render the proviso to sub-section (4)

> as well as sub-section (5) of Section 149 of the Act otiose; nor can any effective meaning be attributed to the liability clause of the insurance company contained in sub-section (1) of Section 149. The decision in *Kamla case* has to be read in the aforementioned contest……..”
>
> “ It is, therefore, evident from the discussions made hereinbefore that the liability of the insurance company to satisfy the decree at the first instance and to recover the awarded amount from the owner or driver thereof has been holding the field for a long time”
>
> “ Apart from the reasons stated hereinbefore, the doctrine of stare decisis persuades us not to deviate from the said principle.”
>
> “ It is well-settled rule of law and should not ordinarily be deviated from.(See *Bengal Immunity Co. Ltd. v. State of Bihar*, SCR at pp.630-32, *Keshav Mills Co. Ltd. v. C*IT, SCR at pp.921-22, *Union of India v. Raghubir Singh*, SCR at pp.323,327,334, *Gannon Dunkerley and Co. v. State of Rajasthan*, *Belgaum Gardeners Coop. Production Supply and Sale Society Ltd. v. State of Karnataka* and *Hanumantappa Krishnappa Mantur v. State of Karnataka*.)”
>
> “ We may, however, hasten to add that theTribunal and the court must, however, exercise their jurisdiction to issue such a direction upon consideration of the facts and circumstances of each case and in the event such a direction has been issued, despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has committed a breach of contract of insurance as envisaged under sub-clause (ii) of clause (a) of sub-section (2) of Section 149 of the Act, the insurance company shall be entitled to realise the awarded amount from the owner or driver of the vehicle, as the case may be, in execution of the same award having regard to the provisions of sections 165 and 168 of the Act. However, in the event, having regard to the limited scope if inquiry in the proceedings before the Tribunal it had not been able to do so, the insurance company may initiate a separate action therefor against the owner or the driver of the vehicle or both, as the case may be. Those exceptional cases may arise when the evidence becomes available to or comes to the notice of the insurer at a subsequent stage or for one reason or the other, the insurer was not given an opportunity to defend at all. Such a course of action may also be resorted to when a fraud or collusion between the victim and the owner of the vehicle is detected or comes to the knowledge of the insurer at a later stage….”

The view taken by the three Judge Bench of the Hon’ble Supreme Court, additionally pressing in service the doctrine of *stare decisis,* that the insurer is liable to satisfy judgments and

awards pertaining to the claims of third party, has been consistently followed in latter judgments of the Court which, *inter alia*, include *National Insurance Company Limited v. Laxmi Narayan Dhut,* reported as (2007) 3 SCC 700 and *Kusum Lata v. Satvir,* reported as 2011 AIR SCW 1593.

Having answered the above question, it now needs to be determined as to whether the amount awarded to the claimants warrants any increase therein as claimed by the Claimants through their Cross Appeals.

While awarding compensation to the claimants in Claim Petition No.239/Claim, the Tribunal has assessed the monthly dependence of the claimants at Rs.2000/- taking the monthly income of the deceased at Rs.3000/-. The compensation payable to the claimants has been assessed adopting 12 as the multiplier as against 15 as indicated in Second Schedule appended to Section 163-A of the Motor Vehicles Act. The compensation awarded by the Tribunal to the Claimants, on the basis of the material placed on records by them, cannot be faulted and there is no scope for its enhancement because the amount awarded to the claimants, is found just and reasonable. This is so, because if the awarded amount was kept in a Fixed Deposit, it would yield, by way of monthly interest, almost the same amount, that the claimants had been getting before the death of their bread winner.

No case for enhancement of compensation has, therefore, been made out.

Amount awarded in Claim Petition No.120/Claim to the Claimants, i.e., the parents of the deceased, too, for the same reasons may not warrant any increase as the compensation awarded, on the strength of the evidence produced in the case is found just and reasonable.

For all what has been said above, there is no merit in the Insurance Company's Appeals and the Cross Appeals filed by the Claimants.

The Appeals and the Cross Appeals are, therefore, dismissed without any order as to the costs.

(J.P.Singh)
Judge

Jammu:
27.09.2011
Vinod.