Serial No. 18
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

FA No. 2 of 2017

Date of Decision: 25.10.2019

Oriental Insurance Co. Ltd., **Vs.** Shri A.J. Thomas

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner(s) : Mr. I. Ahmed, Adv.

For the Respondent(s) : Mr. R. Kar, Adv.

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i) Whether approved for reporting in Law journals etc. Yes/No

ii) Whether approved for publication in press: Yes/No

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1. The brief facts of the case as noted is that the respondent herein as claimant had filed a motor accident claim case being MAC No. 46 of 2001 after meeting with an accident while he was riding his motorcycle bearing No. ML-08-1069 wherein he sustained bodily injuries on his right shoulder which is said to have caused permanent disablement and had made a claim for Rs. 16,04, 000/- against which the learned Tribunal vide order dated 31.08.2007 awarded an amount of Rs. 10,34,000/-. An appeal against the said award was filed before the then jurisdictional High Court i.e. Gauhati High Court and the said appeal was dismissed on 6th November, 2009 and the award was upheld. Subsequently, the appellant filed a review petition being Review Petition No. 9 (SH) of 2009 raising a plea of a limited liability under Personal Accident Coverage as admissible to the claimant. The then Gauhati High Court vide order dated 13th January, 2011 remanded the matter with a direction to the Tribunal to re-adjudicate the case on two points as given in Para-14 of the said judgment. Para-14 is reproduced herein below: -

"14. The entire matter is remanded to the learned Tribunal below for re-adjudication with regard to liability of the appellant petitioner Insurance Company on the basis of the payment of additional/extra premium of Rs. 100/- for personal accident coverage of the insured and also applicability of the Tariff as per contention and calculation of the learned counsel for the appellant Insurance Company. The learned Tribunal concerned may allow the parties to lead evidence, both documentary and/or oral, in this regard, if so required. The parties shall be given due notice and opportunity of hearing for effective disposal of the matter in accordance with law within a period of 3(three) months from the date of receipt of the connected records."

2. Thereafter, on remand the learned Tribunal framed the following two points for re-adjudication which were as follows

(a) what is the liability of the O.P. Insurance Co. on the basis of the payment of additional/extra premium for Rs. 100/- for Personal Accident Coverage of the insured?

(b) whether the tariff as contested by the O.P. is applicable in the present case?

The learned Tribunal then held by order dated 23rd February, 2017 that on the basis of the payment of additional/extra premium of Rs. 100/- for Personal Accident Coverage of the insured, the limit under the Indian Motor Tariff dated 1st August, 1989 cannot be applied as it is not incorporated in the policy document and the liability of the O.P. Company on the basis of payment of additional/extra premium for Personal Accident Coverage is not limited. As such, the earlier order dated 31st August, 2007 granting an amount of Rs. 10,34,000/- was re-affirmed.

3. Being aggrieved by the impugned judgment and order dated 23rd February, 2017, the present appeal has been filed by the appellant Insurance Co.

4. I have heard Mr. I. Ahmed learned counsel for the appellant and Mr. R. Kar, leaned counsel for the respondent.

5. Mr. I Ahmed, learned counsel for the appellant submits that the impugned award was passed by the learned Tribunal on the basis of claim petition under Section 163A of the Motor Vehicle Acts, 1988 which is not maintainable since Section 163A is applicable only in case of Third party but the claimant is a Second party being the owner insured of the said vehicle. He submits that there is no ambiguity in the law that the owner insured is the Second party and the Insurance Company is the First party, and that Section 147 of the MV Act, 1988 is confined to Third party risk only and is not intended to cover persons other than Third parties. He submits that the Tribunal does not have jurisdiction to entertain the application for compensation from a Second party for his own bodily injuries under Section 163A but the claim was to be considered under clause 27 of the India Motor Tariff (IMT) dated 1st August, 1989. In this regard, he refers to a table of the IMT and asserts that it is a fixed Personal Accident Coverage. Learned counsel then submits that clause 27 of the said IMT dated 1st August, 1989 has stipulated that the maximum liability of the insurer is limited to a sum insured of Rs. 2,00,000/- only per person and that as per the computation on the basis of the table provided by the IMT, the claimant is entitled to Rs. 1,33,000/- only.

6. The learned counsel submits the Insurance Company are bound by the Tariff regulations and that any breach thereof would constitute to be a breach of the Insurance Act, 1938. He next submits that on remand this Court had specified two issues for re-adjudication firstly, with regard to liability of the appellant Insurance Company on the basis of the payment of additional/extra premium of Rs. 100/- for Personal Accident Coverage and secondly, whether the Tariff and calculation made by the learned counsel for the appellant Insurance Company is applicable to the case. Learned counsel contends that the learned Tribunal did not answer the two questions as directed by this Court but only stuck to its original award dated 31st August, 2007 and re-affirmed the quantum. He then closes his submissions by praying that the impugned judgment and order dated 23rd February, 2017 be set aside for want of jurisdiction and that the real dispute was not adjudicated upon as directed.

7. Learned counsel for the appellant placed reliance on the case of ***Oriental Insurance Ltd. Vs. Jhuma Saha (SMT) & Ors. reported in (2007) 9 SCC 263, Oriental Insurance Company Ltd. Vs. Sudha Karan K.V. & Ors. (2008) 7 SCC 428 and Oriental Insurance vs. Keshav Bahadur & Ors. (2004) 2 SCC 370*** to fortify his submissions that the claim as put up by the respondent was inadmissible under Section 147 of the Motor Vehicle Act, 1988.

8. Mr. R. Kar, learned counsel for the respondent at the outset submits that the instant matter had been subjected to repeated rounds of litigation and that in an earlier occasion against the award dated 31st August, 2007 the Insurance Company's appeal being MAC No. 1 (SH) 2007 was dismissed and the judgment has also been reported in ***2010 (1) TAC 414 (Guwahati), Oriental Insurance Co. vs. A.J. Thomas.*** He submits that the review application was filed by raising a fresh plea by taking shelter under the limited liability clause under the Personal Accident Coverage which was then remanded for the adjudication on two points. Learned counsel contends that the case in hand is not a Third party claim case but a First party contractual liability claim case, which is solely governed by the Insurance policy in question (Exhibit C-4) which was valid from 2nd May, 1999 to 1st May, 2000. He submits that the appellant Insurance Company had duly received additional/extra premium to indemnify the registered and insured owner of the vehicle along with the pillion rider under the Personal Accident Coverage benefit. This coverage he submits was not mandatory, but optional at that point of time, which indicates the precaution the respondent had taken to insure against any eventuality that may arise in case of any accident caused to him or the pillion rider. He further submits that the Insurance policy is absolutely silent on any prescribed quantum of Personal Accident Coverage and the computation that the limit of coverage is Rs. 1,33,333/- or Rs. 2,00,000/-, in favour of the insured and pillion rider. He also submits that clause 27 of the amended India Motor Tariff (IMT) as adapted by the Tariff Advisory Committee (General Insurance) has never been incorporated in the said policy document. Learned counsel submits that the appellant had never raised the limited liability clause during the entire trial period of over 6 years,

and this ground was raised for the first time at the appellate stage before this Court and has been done with the sole aim to frustrate the award.

9. With regard to the two issues on which the Tribunal on remand was to address and to adjudicate upon, learned counsel submits that detailed evidence was adduced by the parties. In this context, he has highlighted the deposition of one witness namely; Shri Ajay Kumar Das a high ranking Senior Divisional Manager of City Divisional office of the Oriental Insurance Company. He submits that the said witness had categorically stated that an Insurance policy is a contract between the insured and the insurer and that both the insured and insurer cannot subsequently change the terms and conditions of the contract. He therefore submits that when there is no incorporation of the amount of liability under Personal Accident Coverage in the Insurance policy document (Exhibit C-4) the limiting and fixation of such liability cannot be possible unless the terms and conditions of the contract are changed which is not so in the instant case. He submits that the parties being bound by the contract, the appellant cannot take an illegal plea of limited liability at this stage, and that the same cannot legally be allowed even while re-adjudicating the matter.

10. Learned counsel submits that the said witness had admitted that the amended India Motor Tariff became effective from 1st July, 2002 onwards and that the Personal Accident Coverage is now mandatory and the maximum liability for a two wheeler is Rs. 1,00,000/- only and the premium charge is Rs. 50/- annually. In this regard learned counsel underlines the fact that the Insurance Policy (C4) was valid for a period from 2nd May, 1999 to 1st May, 2000 and as such would not come within the purview of India Motor Tariff. He submits that the appellant had in a camouflaged manner in the review application before this Court prayed for the application of the amended India Motor Tariff without giving any specific date/year of the amendment and that this was revealed only after the examination of the said witness that the amended clause 27 of IMT would be given effect only from 1st July, 2002. As such, he submits the appellant Insurance Company being bound by the terms of the policy as it stood and the amended IMT not being applicable, the instant appeal is liable to be dismissed and the final award dated 31st August, 2007 be

not disturbed. In support of his submissions the counsel for the respondent has placed reliance on the following judgments: -

i) ***Chimajirao Kanhojirao Shirke vs. Oriental Fire & General Insurance Co. Ltd. (2006) 6 SCC 622***

ii) ***General Insurance Council vs. State of Andhra Pradesh (2007) 12 SCC 354***

iii) ***R.D. Hattangadi vs. M/S Pest Control (India) Pvt. Ltd., (1995) 1 SCC 531***

11. I have heard learned counsel for the parties, this instant matter is before this Court after prolonged rounds of litigations and it is the fourth time that it is being adjudicated by this Court. The motor vehicle accident had occurred as far back as on 15th March, 2000 and the claim petition before the Tribunal was filed on 2nd May, 2001. Though, on other points the matter had been adjudicated, the instant appeal is confined to the directions as contained in Para-14 of judgment dated 13th January, 2011 passed in Review Petition No. 9 (SH) of 2009 in MAC Appeal No. 1 (SH) of 2007. The points so framed for re-adjudication as already submitted by the counsel, is with regard to the liability of the appellant Insurance Company for Personal Accident Coverage of the insured on the basis of the payment of additional/extra premium, and the applicability of the tariff as per the computation and calculation of the appellant Insurance Company.

12. On the said remand the learned Tribunal had taken up the matter and had framed two points for re-adjudication. Documents in the form of two sets of India Motor Tariff were filed and the evidence of one witness namely; Shri Ajay Kumar Das, Senior Divisional Manager of City Divisional office, Oriental Insurance Company, Assam was recorded. The claimant had also filed five annexures which were numbered and exhibited. The learned Tribunal after examining both documents and the evidence as tendered, by order dated 23rd February, 2017 was pleased to come to findings that the amended IMT cannot be made applicable to the case as the accident had occurred in 15th March, 2000 and also that the benefit under a Personal Accident Cover policy should be extended to all kinds of injuries and further held that the contentions raised by the appellant Insurance company had never been raised in the written statement and that the Insurance company had failed to deny its liability. With regard of quantum of compensation, the Tribunal

held that as the limit under IMT dated 1st August, 1989 is not applicable nor incorporated in the Insurance policy (Exhibit C-4), the quantum as awarded was not interfered with. Para 22 of the impugned judgment is quoted herein below:-

> ***"22. The next question to be considered is quantum of compensation to be awarded in view of this Tribunal having held in issue (a) and (b) that the limit under IMT dated 01.08.1989 cannot be applied as it is not incorporated in the Policy Ext C-4 and the liability of the O.P Insurance Co. on the basis of the payment of additional/extra premium of Rs. 100/- for personal accident coverage of the insured in which this Tribunal found that the limit is not applicable. As the case has been sent back for re-adjudication only with regard to liability of the appellant petitioner insurance company on the basis of the payment of additional/extra premium of Rs. 100/- for personal accident coverage of the insured and also applicability of the Tariff as per contention and calculation of the learned counsel for the appellant insurance company, this Tribunal shall have to confined itself only to these two points for re-adjudication in terms of the direction of the Hon'ble High Court's Judgment and Order dated 13.01.2011 and cannot traverse beyond these issues and directions given. It is only if this Tribunal had arrived at a different finding and held that the limits as given in the Tariff is applicable and liability of OP/Insurance is limited, then only, this Tribunal can reassess the compensation to be awarded to the claimant but since this Tribunal has held that the limit under IMT dated 01.08.1989 cannot be applied as it is not incorporated in the Policy Ext C-4 and the liability of the O.P Insurance Co. on the basis of the payment of additional/extra premium of Rs. 100/- for personal accident coverage of the insured is not limited, the award of this Tribunal vide Judgment and Order dated 31.08.2007 shall be stand as there is no more scope for this Tribunal to disturb the award of Rs.10,34,000/- (Rupees Ten Lakh and thirty four thousand only) awarded under various heads vide Judgment and Order dated 31.08.2007. The said amount of Rs.10,34,000/- (Rupees Ten Lakh and thirty four thousand only) shall carry an interest at a rate of 9% from the date of filing of this claim till date of payment thereof which is to be paid by the OP/ M/S Oriental Insurance Co. Ltd within 30 days from the receipt of this Judgment and Order failing which penal interest @ 12% shall accrue."***

13. This Court on the issues so framed has examined in detail the impugned award which has reiterated the quantum of compensation so

allowed to the claimant respondent. The findings of the Tribunal have been questioned by the appellant on the grounds that the India Motor Tariff are binding on the Insurance Company while settling compensation claims particularly in case of personal accident benefit on payment of extra premium, and that the Tribunal had erred in law in passing the impugned order. The award had also been assailed on the ground that the provisions of Section 165 and 147 of the Motor Vehicle Act, 1988 had not been adhered to. The appellant Insurance Company it seems with regard to Section 147 and other connection Sections is seeking to re-argue the matter when in fact, the remand order had specifically limited the adjudication into a narrow compass. The aspect of applicability of Section 147 had already been dealt with in the earlier round of litigation in MAC appeal No. 1 (SH) of 2007 reported in ***Oriental Insurance Co. vs. A.J. Thomas*** (supra) wherein it has been held that the appellant Insurance Company is liable to compensate the owner driver of an accident vehicle for death or bodily injury though not a Third party within the meaning of Section 147. Para 9 of the said judgment which is relevant is quoted herein below: -

> ***"I have also gone through the judgment rendered by the Apex Court in Jhuma Saha's case (supra) as cited by the learned Counsel for the respondent. This is a case where a deceased was the owner of an insured vehicle and he met with an accident while driving himself and sustained injury and succumbed to the same. The insured owner- driver did not pay additional premium to cover the insured risk of death or bodily injury of the owner of the vehicle and it was therefore held that Section 147 (b) of the Motor Vehicles Act which in no uncertain terms covers a risk of third party only would be attracted. The implication of the aforesaid judgment is that the owner-driver of the accident vehicle would be indemnified by the insurer only and if only, the additional premium has been paid by the insurer. I find the principle laid down in the Jhuma's case (supra) can be applied to the present case."***

The judgments relied upon by the counsel for the appellant on this point i.e. on Section 147 have been examined but however, the same are of no assistance to the case of the appellant.

14. The learned Tribunal below had firstly dealt with clause 27 of the India Motor Tariff which prescribed the rate of award of compensation and has dwelt at length with the circumstances of the non-incorporation of any quantum of PA coverage, though additional premium had been paid and had

also considered the evidence tendered by Shri Ajay Kumar Das who deposed for the appellant Insurance Company, to arrive at the conclusion that the claimant was entitled to the compensation so awarded.

15. I have carefully examined the impugned order and the materials on record in the backdrop of the two issues which were to be re-adjudicated on remand by the Tribunal. It is a fact, that the Insurance Policy (Exhibit C-4) was valid from 2nd May, 1999 to 1st May, 2000, and that the appellant Insurance Company had duly received and accepted the additional/extra premium, to indemnify the registered and insured owner of the vehicle along with a pillion rider under the Personal Accident Coverage benefit. Exhibit C-4 is absolutely silent on the quantum of PA coverage for the owner and pillion rider, and Clause 27 of the amended IMT as adapted by the Traffic Advisory Committee (General Insurance) is also not incorporated anywhere in Exhibit-C-4. It is also to be noted that it is only after amendment of the IMT with effect from 1st July, 2002 that the said liability is limited to Rs. 1,00,000/- and that the same is now incorporated as a condition in all Insurance policy certificates, but not before 1st July, 2002. As such, the simple conclusion is that the amended IMT which came into effect from 1st July, 2002 cannot be said to be applicable to the instant case which had occurred on 15th March, 2000. This conclusion is corroborated by the deposition of Shri Ajay Kumar Das who has stated in cross-examination that, the amount of liability under PA coverage is nowhere mentioned in Exhibit C-4 for the owner and the pillion rider, though additional premium was realized for PA. The witness had further corroborated, that for the Insurance company it was mandatory to put the amount of liability on the policy document in specific terms when the premium was collected, and also that the insurance policy is a contract between the Insured and the Insurer and both the parties to the contract cannot subsequently change the terms and conditions.

16. With regard to the applicability of the IMT dated 1st August, 1989 it has been observed by the Tribunal that the appellant Insurance Company is unsure as to which IMT will be applicable, the 1st July, 2002 IMT or 1st August, 1989 IMT. Even if it is taken that the IMT dated 1st August, 1989 be applicable, the same does not find place in Exhibit C-4 to warrant its

application. Further, clause 27 of the IMT dated 1st August, 1989 provides for only four types of injuries, for which four separate scales have been prescribed for compensation to the owner. I am in agreement with the finding of the Tribunal that there is no negative covenant in the policy Exhibit C-4 that no compensation will be paid in respect of other bodily injuries as it has to be kept in mind that the MV Act 1988 is to be construed to advance its beneficial purpose.

17. It is also noted that these contentions were never raised in the earlier rounds of litigation for a long period of 6 years from 2001 to 2007 and it had been raised only by means of a review application before this court without clarifying as to what IMT would be applicable for computation of the compensation. Para 7 of the order passed in the Review application which is quoted herein below reflects that before this Court the counsel for the appellant Insurance Company had given a chart quantifying the liability as per clause 27 but however it can be seen that the same is of the IMT dated 1st July, 2002 which would not be applicable in the instant case.

"7. Mr. Dutta, learned counsel, while contending that against payment of additional premium of Rs. 100/-, the opposite party claimant would be entitled to personal accident benefit of Rs. 1,33,333/- only and under no circumstances, it would exceed Rs. 2,00,000/-, refers to Clause 27 of the amended India Motor Tariff as adapted by the Tariff Advisory Committee (General Insurance). The said clause 27 is quoted hereunder for ready reference:

Description of benefits		*% of Capital sum insured*	*Premium Per year/Per Person for Capital Sum Insured for Rs. 10,000/-*		
			For Pvt. Car Rs.	*Motor Scooter Rs.*	*Vehicle Commercial Rs.*
i)	*Death only*	*100%*	*5*	*7.5*	*6*
ii)	*Loss of Two limbs or sight of two eyes or one limb and sight of one eye*	*100%*	*5*	*7.5*	*6*
iii)	*Loss of one Limb or sight of one eye*	*50%*	*5*	*7.5*	*6*
iv)	*Permanent Total Disablement from injuries other than named above*	*100%*	*5*	*7.5*	*6*

Based on the aforesaid Tariff, the learned counsel makes the following calculation:

> ***<u>"Clause 27, Sheet No. 25</u>***
>
> ***Personal Accident Cover under Motor Tariff Policies under India Motor Tariff. Admittedly, claimant respondent paid Rs. 100/- as Personal Accident Benefit.***
>
> ***<u>As per chart</u>: If a person pays Rs. 7.5 paise, coverage per insured per year is Rs. 10,000/-***
>
> ***Respondent paid Rs. 100/- as premium. Therefore, his entitlement of claim will be Rs. 7.5/100 X10,000/- = Rs. 1,33,333/-."***

` ***Thus, according to him, the opposite party claimant would be entitled to personal accident claim of Rs. 1,33,333/- only."***

18. The contention therefore of the applicability of the IMT dated 1st August, 1989 and 1st July, 2002 is not accepted by this Court, more so, for the reason that this condition does not find place in Exhibit C-4 and also further coupled with the fact that this ground was never taken in the pleadings or in the earlier occasions. In this regard the ruling relied upon by the counsel for the respondent that is the case of ***Chimajirao Kanhojirao Shirke vs. Oriental Fire & General Insurance Co. Ltd. (2006) 6 SCC 622*** (supra) is found to be relevant and Para 10 of the said judgment is quoted herein below :-

> ***"10. In view of the aforesaid conclusion, we have no hesitation to hold that the High Court committed an error in setting aside the finding given by the trial court, specially in view of the said specific plea taken in the written statement. The High Court felt that since it is a legal matter, it could be adjudicated notwithstanding a different stand in its pleading. This approach was not proper. Once a stand in fact is taken, that fact could not be controverted by any legal proposition. In the present case, the Insurance Company has not led any evidence to dissolve the stand taken in the written statement that it was done by mistake nor was there any application to amend such pleadings. In view of this, the High Court was not correct to decide the issue through legal inferences dehors of and without adverting to the glaring facts on the record. Accordingly, we set aside the judgment of the High Court and confirm that of the trial court. The present appeal is accordingly allowed, costs on the parties.***

19. With regard to the quantum in view of the fact that this Court has upheld the finding that the limit under IMT cannot be applied, the award of

the Tribunal dated 23rd February, 2017 is upheld and the appeal stands dismissed. As allowed by the Tribunal, the compensation amount of Rs. 10,34,000/- shall be paid to the claimant respondent by the appellant Insurance company together with the interest at the rate of 9% from the date of filing the claim till the date of payment thereof within 30 days from the date of this order, with penal interest to accrue thereafter at the rate of 12% on failure to pay the same expeditiously within 30 days as ordered.

JUDGE

Meghalaya
25.10.2019
"V. Lyndem PS"