Supreme Court of India
National Insurance Co. Ltd vs Chella Bharathamma & Ors on 21 September, 2004
Author: A Pasayat
Bench: Arijit Pasayat, C.K. Thakker

CASE NO.:
Appeal (civil) 6178 of 2004

PETITIONER:
National Insurance Co. Ltd.

RESPONDENT:
Chella Bharathamma & Ors.

DATE OF JUDGMENT: 21/09/2004

BENCH:
ARIJIT PASAYAT & C.K. THAKKER

JUDGMENT:

J U D G M E N T (Arising out of SLP (C) No.13208/2003) (With C.A.6179/2004 @SLP(C) No. 13210/2003) ARIJIT PASAYAT, J.

Leave granted.

National Insurance Company limited (hereinafter referred to as the 'insurer') calls in question legality of the judgment rendered by a learned Single Judge of the Andhra Pradesh High Court holding the insurer to be liable for indemnifying the award of compensation.

Background facts in nutshell are as follows :

Three persons were traveling in an auto rickshaw which met with an accident on 9.5.1992. Two persons lost their lives while one was seriously injured. Claim petitions were filed by the legal representatives of the two deceased persons while the injured filed separate petition claiming compensation in terms of Section 166 of the Motor Vehicles Act, 1988 (in short the 'Act') The auto rickshaw in question belonged to Challa Atchayya (hereinafter referred to as the 'insured'). The insurer resisted the claim on the ground that the insured had not obtained permit to ply the vehicle and therefore in terms of the policy of the insurance the insurer had no liability. The Motor Vehicle Accident Claims Tribunal, Krishna at Vijayawada (in short the 'Tribunal') accepted the plea. It however, held that the insured was liable to pay compensation which was fixed at Rs. 1,24,000/- in the case of the death while in case injured's claim a sum of Rs. 2,000/- was directed to be paid. The judgment was challenged in appeal before the Division Bench of the High Court of Andhra Pradesh at Hyderabad questioning the correctness of the view regarding non-liability of the insurer. The High court by the impugned judgment held that the insurer was liable to indemnify the award.

In support of the appeal learned counsel for the appellant insurer submitted that the High Court has lost sight of the fact that plying the vehicle without requisite permit is a breach of a specific

condition of the policy and, therefore, the insurer had no liability. It was pointed out that Section 149 of the Act deals with the defences available to the insurer.

Reference was also made to Section 66 of the Act relating to the necessity for permits. The High Court's view that since the vehicle was subject-matter of insurance and the policy was in operation; insurer's liability is really of no consequence. The defence available to the insurer is when the policy subsists and stress of the High Court on that is really beside the point.

Per contra, learned counsel for the respondent-claimants submitted that in one case at hand two young children of the deceased were the beneficiary of the award. The widow of the deceased, during the pendency of the appeal before this Court, has also expired. In one of the cases, old parents of the deceased are the claimants. In this view of the matter, considering the small amounts awarded, this is not a fit case for interference.

Section 149(2)(a) (i) relates to a vehicle not covered by a permit to ply for hire or reward. Section 149(2) reads as follows :

" No sum shall be payable by an insurer under sub- section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment of award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:-

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:-

(i) a condition excluding the use of the vehicle

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organized racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of dis-qualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular."

Section 66 of the Act is also relevant. Same reads as follows:

"66. Necessity for permits (1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorizing him the use of the vehicle in that place in the manner in which the vehicle is being used:

Provided that a stage carriage permit shall, subject to any conditions that may be specified in the permit, authorize the use of the vehicle as a contract carriage:

Provided further that a stage carriage permit may, subject to any conditions that may be specified in the permit, authorize the use of the vehicle as a goods carriage either when carrying passengers or not:

Provided also that a goods carriage permit shall, subject to any conditions that may be specified in the permit, authorize the holder to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him.

(2) The holder of a goods carriage permit may use the vehicle, for drawing of any trailer or semi-trailer not owned by him, subject to such conditions as may be prescribed:

Provided that the holder of a permit of any articulated vehicle may use the prime-mover of that articulated vehicle for any other semi-trailer.

(3) The provisions of sub-section (1) shall not apply

(a) to any transport vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise;

(b) to any transport vehicle owned by a local authority or by a person acting under contract with a local authority and used solely for road cleansing, road watering or conservancy purposes;

(c) to any transport vehicle used solely for police, fire brigade or ambulance purposes;

(d) to any transport vehicle used solely for the conveyance of corpses and the mourners accompanying the corpses;

(e) to any transport vehicle used for towing a disable vehicle or for removing goods from a disabled vehicle to a place of safety;

(f) to any transport vehicle used for any other public purpose as may be prescribed by the State Government in this behalf;

(g) to any transport vehicle used by a person who manufactures or deals in motor vehicles or builds bodies for attachment to chassis, solely for such purposes and in accordance with such conditions as the Central Government may, by notification in the Official Gazette, specify in this behalf;

(h)omitted

(i) to any goods vehicle, the gross vehicle weight of which does not exceed 3,000 kilograms;

(j) subject to such conditions as the Central Government may, by notification in the Official Gazette, specify, to any transport vehicle purchased in one State and proceeding to a place, situated in that State or in any other State, without carrying any passenger or goods;

(k) to any transport vehicle which has been temporarily registered under section 43 while proceeding empty to any place for the purpose of registration of the vehicle;

(l) omitted.

(m) to any transport vehicle which, owing to flood, earthquake or any other natural calamity, obstruction on road, or unforeseen circumstances, is required to be diverted through any other route, whether within or outside the State, with a view to enabling it to reach its destination;

(n) to any transport vehicle used for such purposes as the Central or State Government may, by order, specify;

(o) to any transport vehicle which is subject to a hire-purchase, lease or hypothecation agreement and which owing to the default of the owner has been taken possession of by or on behalf of, the person with whom the owner has entered into such agreement, to enable such motor vehicle to reach its destination; or

(p) to any transport vehicle while proceeding empty to any place for purpose of repair.

(4) Subject to the provisions of sub-section (3), sub-section (1) shall, if the State Government by rule made under section 96 so prescribes, apply to any motor vehicle adapted to carry more than nine persons excluding the driver."

In New India Assurance Co. Ltd. v. Asha Rani and Ors. (2003 (2) SCC 223) it was observed as follows:

"We may consider the matter from another angle. Section 149(2) of the 1988 Act enables the insurers to raise defences against the claim of the claimants. In terms of clause (c) of sub-section (2) of section 149 of the Act one of the defences which is available to the insurer is that the vehicle in question has been used for a purpose not allowed by the permit under which the vehicle was used. Such a statutory defence available to the insurer would be obliterated in view of the decision of this court in Satpal Singh's case (2000 (1) SCC 237)."

Similarly, in National Insurance Co. Ltd., Chandigarh v. Nicolletta Rohtagi and Ors. (2002 (7) SCC 456), the scope of Section 149 (2) of the Act was elaborated. It was, inter alia, observed as follows:

"To answer the question, it is necessary to find out on what grounds the insurer is entitled to defend/contest against a claim by an injured or dependants of the victims of a motor vehicle accident. Under Section 96(2) of the 1939 Act which corresponds to Section 149(2) of the 1988 Act, an insurance company has no right to be a party to an action by the injured person or dependants of the deceased against the insured. However, the said provision gives the insurer the right to be made a party to the case and to defend it. It is, therefore, obvious that the said right is a creature of the statute and its content depends on the provisions of the statute. After the insurer has been made a party to a case or claim, the question arises, what are the defences available to it under the statute ? The language employed in enacting sub- section (2) of Section 149 appears to be plain and simple and there is no ambiguity in it. It shows that when an insurer is impleaded and has been given notice of the case, he is entitled to defend the action on grounds enumerated in the sub-section, namely, sub-section (2) of Section 149 of the 1988 Act, and no other ground is available to him. The insurer is not allowed to contest the claim of the injured or heirs of the deceased on other ground which is available to an insured or breach of any other conditions of the policy which do not find place in sub-section (2) of Section 149 of the 1988 Act. If an insurer is permitted to contest the claim on other grounds it would mean adding more grounds of contest to the insurer than what the statute has specifically provided for.

Sub-section (7) of Section 149 of the 1988 Act clearly indicates in what manner sub-section (2) of Section 149 has to be interpreted. Sub-section (7) of Section 149 provides that no insurer to whom the notice referred to in sub-section (2) or sub-section (3) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment or award as is referred to in sub- section (1) or in such judgment as is referred to in sub-section (3) otherwise than in the manner provided for in sub-section (2) or in the corresponding law of the reciprocating country, as the case may be. The expression "manner" employed in sub-section (7) of Section 149 is very relevant which means an insurer can avoid its liability only in accordance with what has been provided for in sub-section (2) of Section 149. It, therefore, shows that the insurer can avoid its liability only on the statutory defences expressly provided in sub-section (2) of Section 149 of the 1988 Act. We are, therefore, of the view that an insurer cannot avoid its liability on any other grounds except those mentioned in sub-section (2) of Section 149 of the 1988 Act."

As was observed in the said case the statutory defences which are available to the insurer to contest the claim are confined to those provided in sub-section (2) of Section 149.

High Court was of the view that since there was no permit, the question of violation of any condition thereof does not arise. The view is clearly fallacious. A person without permit to ply a vehicle cannot be placed at a better pedestal vis-`-vis one who has a permit, but has violated any condition thereof. Plying of a vehicle without a permit is an infraction. Therefore, in terms of Section 149(2) defence is available to the insurer on that aspect. The acceptability of the stand is a matter of adjudication. The question of policy being operative had no relevance for the issue regarding liability of insurer. High Court was, therefore, not justified in holding the insurer liable.

The residual question is what would be the appropriate direction. Considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases the insurer has been given the option and liberty to recover the amount from the insured. For the purpose of recovering the amount paid from the owner, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle i.e. the insured. In the instant case considering the quantum involved we leave it to the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured. The appeals are disposed of with the above observation. There will be no order as to costs.