

## National Insurance Co vs Prembai Patel And Others on 18 April, 2005

**Equivalent citations:** AIR 2005 SUPREME COURT 2337, 2005 AIR SCW 2254, 2005 LAB. I. C. 1865, 2005 AIR - JHAR. H. C. R. 1489, 2005 (4) SLT 34, (2005) 3 ALLMR 563 (SC), (2005) 1 CLR 684 (SC), (2005) 2 CAL WN 1107, (2005) 3 CTC 569 (SC), (2005) 3 LAB LN 83, (2005) 4 JT 399 (SC), 2005 (3) ALL MR 563, 2005 (5) SRJ 363, 2005 (1) CLR 684, 2005 (4) SCALE 185, 2005 (3) CTC 569, 2005 (6) SCC 172, (2005) 30 ALLINDCAS 515 (SC), 2005 CHANDLR(CIV&CRI) 40, 2005 SCC (L&S) 819, (2005) 4 MAD LW 677, (2005) 2 PAT LJR 261, (2005) 3 SCJ 537, (2005) 3 SUPREME 587, (2005) 2 RECCIVR 497, (2005) 4 SCALE 185, (2005) 3 JAB LJ 385, (2005) 3 ALL WC 2126, (2005) 3 CIVLJ 727, (2006) 1 CURLJ(CCR) 138, (2005) 1 WLC(SC)CVL 751, (2005) 2 ACC 361, (2005) 2 ACJ 1323, (2005) 125 COMCAS 86, (2005) 2 CIVILCOURTC 282, (2005) 2 LABLJ 1109, (2005) 2 CAL LJ 147, (2005) 2 TAC 289, (2005) 4 ANDH LT 44, (2005) 60 ALL LR 159

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**Bench:** R.C. Lahoti, G.P. Mathur, A.K. Mathur

CASE NO.:

Appeal (civil) 6476 of 1998

PETITIONER:

National Insurance Co.

RESPONDENT:

Prembai Patel and others

DATE OF JUDGMENT: 18/04/2005

BENCH:

R.C. Lahoti, G.P. Mathur & A.K. Mathur

JUDGMENT:

**J U D G M E N T** G.P. MATHUR, J.

1. The appellant insurance company has preferred this appeal, by special leave, against the judgment and order dated 9.1.1998 of High Court of Madhya Pradesh by which the appeal preferred by respondent Nos. 3 to 6 (claimants) was allowed and the appellant insurance company was directed to pay Rs.2,10,000/- along with interest @ 12% per annum from the date of filing of the claim

petition, i.e., 21.4.1994 as compensation to them on account of death of Sunder Singh in an accident.

2. The respondent No. 2, Chiman Patel, was owner of truck No. CIL 5248 and the same was got insured by him with the appellant National Insurance Company Ltd. for the period 18.1.1993 to 17.1.1994. The deceased Sunder Singh, aged about 35 years, was employed by him as a driver of the truck on a salary of Rs.1,500/- per month. The truck, while carrying a heavy load of firewood overturned on 9.11.1993, resulting in death of its driver Sunder Singh. Respondent Nos. 3 to 6, who are parents, widow and son of the deceased Sunder Singh, then filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"), claiming Rs.5,40,000/- as compensation. Their case was that the truck was more than fifteen years old, had been poorly maintained and was not in roadworthy condition. While Sunder Singh was driving the truck its arm bolt broke down and on account of heavy load it got overturned in which Sunder Singh was crushed and he died instantaneously. The claim petition was contested by the owner of the truck mainly on the ground that Sunder Singh was driving the truck after consuming liquor and the accident took place on account of his own fault. It was denied that the truck was not properly maintained or that it was not in roadworthy condition or that it was overloaded. The appellant insurance company also contested the claim petition taking various pleas.

3. The Motor Accident Claims Tribunal, Bilaspur, after appreciating the evidence on record, held that the deceased Sunder Singh was himself responsible for the accident and accordingly dismissed the claim petition. Feeling aggrieved, the claimants preferred an appeal before the High Court under Section 173 of the Act. The High Court held that it was fully established that the accident took place due to the fact that the arm bolt of the truck broke down and not on account of any negligence on the part of the driver of the truck. Taking into consideration the age of the deceased and the salary which he was drawing, an amount of Rs.2,10,000/- was awarded as compensation. The claimants were also held entitled to interest on the aforesaid amount @ 12% per annum from the date of filing of the claim petition. It was further held that the insurance company was liable to satisfy the whole award and consequently a direction was issued to the appellant to pay the entire amount of compensation awarded to the claimants.

4. The judgment of the High Court has been challenged by the appellant insurance company only on one ground, namely, that having regard to the insurance policy taken by the owner of the vehicle and provisions of Sections 147 and 149 of the Act, its liability is restricted to that, which is provided under The Workmen's Compensation Act, 1923 (hereinafter referred to as "the Workmen's Act") and it is not liable to satisfy the entire award made in favour of the claimants. Learned counsel for the appellant has submitted that the owner, while getting his vehicle insured, had paid only that much amount of premium as was required to cover the liability under the Workmen's Act. He had not paid such premium so as to cover the entire amount of liability qua an employee and, therefore, the liability of the appellant would be a restricted one and it would not be to satisfy the entire award made in favour of the claimants.

5. Learned counsel for the respondents has, on the other hand, submitted that the truck was comprehensively insured and, therefore, the insurance company is liable to satisfy the entire award made in favour of the claimants and the view taken by the High Court is perfectly correct.

6. A person, who has sustained injury or where death has resulted from an accident all or any of the legal representatives of the deceased can claim compensation by moving an application under Section 166 of the Act by filing a claim petition before the Motor Accident Claims Tribunal. Section 3 of the Workmen's Compensation Act lays down that if personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of Chapter II of the said Act. Section 167 of the Motor Vehicles Act, 1988 lays down that notwithstanding anything contained in the Workmen's Compensation Act, 1923 where the death of, or bodily injury to, any person gives rise to a claim for compensation under the Act and also under the Workmen's Act, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both. The claim petition had been filed by respondents 3 to 6 claiming compensation for the death of Sunder Singh, who was an employee of respondent No. 2, in an accident arising out of and in the course of his employment. Therefore, they could claim compensation under either of the Acts. But they chose the forum provided under the Motor Vehicles Act. In a petition under the Workmen's Act the injured or the legal heirs of the deceased workmen have not to establish negligence as a pre-condition for award of compensation. But the claim petition before the Motor Accident Claim Tribunal is an action in tort and the injured or the legal representatives of the deceased have to establish by preponderance of evidence that there was no negligence on the part of the injured or deceased and they were not responsible for the accident. The exception to this general rule is given in Section 140 of the Act where the legislature has specifically made provisions for payment of compensation on the principle of no fault liability.

7. The High Court, after a careful analysis of the evidence on record, has held that the deceased Sunder Singh was not responsible for the accident. The accident occurred on account of breaking of the arm bolt of the truck and the owner of the vehicle had not taken adequate care in maintaining the vehicle and in keeping the same in roadworthy condition. This finding has not been assailed before us, nor is there any reason to take a contrary view.

8. The main question which requires consideration in this appeal is, whether the appellant insurance company is liable to pay the entire amount of compensation awarded to the claimants or its liability is restricted to that which is prescribed under the Workmen's Act. In this connection learned counsel for the appellant has drawn our attention to the insurance policy, which had been taken by the owner for the concerned vehicle, and, especially to the following endorsements made therein: -

1. Policy No.320801/31/ A POLICY FOR ACT 92-93/21/01753 LIABILITY

2. PREMIUM (Act Liability) Rs.1245/-

3. Limitation as to use : For Act only Cover At the end of the policy the following is written: -

"IMPORTANT NOTICE The Insured is not indemnified if the Vehicle is used or driven otherwise than in accordance with this Schedule. Any payment made by the

Company by reason of wider terms appearing in the Certificate in order to comply with the Motor Vehicle Act, 1988 is recoverable from the insured. See the clause headed AVOIDANCE OF CERTAIN TERMS AND RIGHT OF RECOVERY in the policy.

NOTE: - This Schedule, the attached Policy and the Endorsements mentioned here above shall be read together and any word or expression to which a specific meaning has been attached in any part of this Policy or the Schedule shall bear the same meaning wherever it may appear."

9. The learned counsel for the appellant has submitted that the owner of the truck had got his vehicle insured by paying only that much amount of premium which, so far as his employees were concerned, covered the liability to the extent it is provided under the Workmen's Act. It has been submitted that the words "a policy for Act Liability" or "Act Liability" clearly indicate that the liability of the insurance company was not an unlimited one but that which was mandatorily required under the Act so as to cover the liability under the Workmen's Act and no further. Learned counsel has further submitted that in order to cover unlimited liability the owner has to pay higher amount of premium and in such a case the words "a policy for Act Liability" or "Act Liability" are not written. The insurance policy being in the nature of a contract, the parties are bound by it and, therefore, the appellant cannot be saddled with any extra liability to pay the entire amount of compensation, which has been awarded to the claimants.

10. The learned counsel for the respondents has, on the other hand, submitted that having regard to the provisions of Sections 147 and 149 of the Act, the owner having got his vehicle insured, the insurance company is liable to satisfy the entire award made in favour of the claimants and there is no provision in law under which its liability may be restricted or curtailed.

11. The contentions raised turn on the interpretation of sub- Sections (1) of Sections 147 and 149 of the Act and the same are being reproduced below: -

"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 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) engage in driving the vehicle, or

(b) if it is a public service vehicle engaged as a 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 ..... (omitted as not relevant)

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) 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."

12. The heading of Chapter XI of the Act is Insurance Of Motor Vehicles Against Third Party Risks and it contains Sections 145 to

164. Section 146(1) of the Act provides that 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 Chapter XI. Clause (b) of sub-section (1) of Section 147 provides that a policy of insurance must be a policy which insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) against any liability which may be incurred by him in respect of death of or bodily injury to any person or passenger or damage to any property of a third party caused by or arising out of the use of the vehicle in public place. Sub-clauses (i) and (ii) of clause

(b) are comprehensive in the sense that they cover both 'any person' or 'passenger'. An employee of owner of the vehicle like a driver or a conductor may also come within the purview of the words 'any person' occurring in sub-clause (i). However, the proviso (i) to clause

(b) of sub-Section (1) of Section 147 says that a policy shall not be required to cover liability in respect of 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 Act if the employee is such as described in sub-clauses (a) or (b) or (c). The effect of this proviso is that if an insurance policy covers the liability under the Workmen's Act in respect of death of or bodily injury to any such employee as is described in sub-clauses (a) or (b) or (c) of proviso (i) to Section 147(1)(b), it will be a valid policy and would comply with the requirements of Chapter XI of the Act. Section 149 of the Act imposes a duty upon the insurer (insurance company) to satisfy judgments and awards against persons insured in respect of third party risks. The expression "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)" occurring in sub-section (1) of Section 149 is important. It clearly shows that any such liability, which is mandatorily required to be covered by a policy under clause (b) of Section 147(1), has to be satisfied by the insurance company. The effect of this provision is that an insurance policy, which covers only the liability arising under the Workmen's Act in respect of death of or bodily injury to any such employee as described in sub-clauses (a) or (b) or (c) to proviso (i) to Section 147(1)(b) of the Act is perfectly valid and permissible under the Act. Therefore, where any such policy has been taken by the owner of the vehicle, the liability of the insurance company will be confined to that arising under the Workmen's Act.

13. The insurance policy being in the nature of a contract, it is permissible for an owner to take such a policy whereunder the entire liability in respect of the death of or bodily injury to any such employee as is described in sub-clauses (a) or (b) or (c) of proviso (i) to Section 147(1)(b) may be fastened upon the insurance company and insurance company may become liable to satisfy the entire award. However, for this purpose the owner must take a policy of that particular kind for which he may be required to pay additional premium and the policy must clearly show that the liability of the insurance company in case of death of or bodily injury to the aforesaid kind of employees is not restricted to that provided under the Workmen's Act and is either more or unlimited depending upon the quantum of premium paid and the terms of the policy.

14. The aforesaid interpretation of the relevant provisions applicable to the case in hand is in consonance with the view expressed by a Constitution Bench in *New India Assurance Co. Ltd. vs. C.M. Jaya and others* (2002) 2 SCC 278, where, while interpreting the provisions of Section 95(2) of Motor Vehicles Act, 1939, the Court held as under in para 10 of the report: -

".....The liability could be statutory or contractual. A statutory liability cannot be more than what is required under the statute itself. However, there is nothing in Section 95 of the Act prohibiting the parties from contracting to create unlimited or higher liability to cover wider risk. In such an event, the insurer is

bound by the terms of the contract as specified in the policy in regard to unlimited or higher liability as the case may be. In the absence of such a term or clause in the policy, pursuant to the contract of insurance, a limited statutory liability cannot be expanded to make it unlimited or higher. If it is so done, it amounts to rewriting the statute or the contract of insurance which is not permissible."

The Bench also referred to earlier decisions rendered in *New India Assurance Co. Ltd. vs. Shanti Bai* (1995) 2 SCC 539 and *Amrit Lal Sood vs. Kaushalya Devi Thapar* (1998) 3 SCC 744, and observed that in case of an insurance policy not taking any higher liability by accepting a higher premium, the liability of the insurance company is neither unlimited nor higher than the statutory liability fixed under Section 95(2) of the Motor Vehicles Act, 1939. It was further observed that it is open to the insured to make payment of additional higher premium and get higher risk covered in respect of third party also. But in the absence of any such clause in the insurance policy, the liability of the insurer cannot be unlimited in respect of third party and it is limited only to the statutory liability.

15. Though the aforesaid decision has been rendered on Section 95(2) of the Motor Vehicles Act, 1939 but the principle underlying therein will be fully applicable here also. It is thus clear that in case the owner of the vehicle wants the liability of the insurance company in respect of death of or bodily injury to any such employee as is described in clauses (a) or (b) or (c) of proviso (i) to Section 147(1)(b) should not be restricted to that under the Workmen's Act but should be more or unlimited, he must take such a policy by making payment of extra premium and the policy should also contain a clause to that effect. However, where the policy mentions "a policy for Act Liability" or "Act Liability", the liability of the insurance company qua the employees as aforesaid would not be unlimited but would be limited to that arising under the Workmen's Act.

16. The High Court, in the impugned judgment, has held that if the legal representatives of the deceased employee approach the Motor Accident Claims Tribunal for payment of compensation to them by moving a petition under Section 166 of the Act, the liability of the insurance company is not limited to the extent provided under the Workmen's Act and on its basis directed the appellant insurance company to pay the entire amount of compensation to the claimants. As shown above, the insurance policy taken by the owner contained a clause that it was a policy for "Act Liability" only. This being the nature of policy the liability of the appellant would be restricted to that arising under the Workmen's Act. The judgment of the High Court, therefore, needs to be modified accordingly.

17. The judgment of the High Court insofar as it relates to quantum of compensation and interest, which is to be paid to the claimants (respondent Nos. 3 to 6 herein) is affirmed. The liability of the appellant insurance company to satisfy the award would be restricted to that arising under the Workmen's Act. The respondent Nos. 1 and 2 (owners of the vehicle) would be liable to satisfy the remaining portion of the award.

18. The record shows that no stay order was passed in favour of the appellant. In case the appellant insurance company has deposited the entire amount awarded by the High Court with the Motor Accident Claims Tribunal or has paid the said amount to the claimants, it will be open to it to recover the amount, which exceeds its liability under the Workmen's Act, from the owner of the

vehicle in accordance with law.

19. The appeal is disposed of with the aforesaid modifications. No costs.