

New India Assurance Co. Ltd vs Prabha Devi & Ors on 13 March, 2013

Author: Pinaki Chandra Ghose

Bench: Pinaki Chandra Ghose

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.477 OF 2007

|NEW INDIA ASSURANCE COMPANY LIMITED |Appellant(s) |

Versus

|PRABHA DEVI AND OTHERS |Respondent(s) |

W I T H

CIVIL APPEAL NO. 479 OF 2007

NEW INDIA ASSURANCE COMPANY LIMITED Appellant(s)

Versus

PRABHA DEVI AND OTHERS Respondent(s)

O R D E R

This order will dispose of Civil appeal No. 477 of 2007 and Civil Appeal No. 479 of 2007, as both arise from the same accident.

In view of the order that we propose to make, we shall notice the facts only from Civil appeal No. 479 of 2007.

Puran Singh, deceased had taken an insurance policy on 29th June, 1994 in respect of his vehicle bearing registration No. UP-01-1489 for the period 29.6.1994 to 28.6.1995. The relevant clause in the policy on the basis of which the Insurance Company denies its liability is as under :-

“Subject to the limits of liability as laid down in the Schedule here to the company will indemnify the insured against all sums including claimant's cost and expenses which the insured shall become legally liable to pay in respect of death to any person caused by or arising out of the use (including the loading and/or unloading) of the motor vehicle.” The other relevant condition of the policy relied upon by the insurer is as under :-

“IMT 12 Legal liability to passengers excluding liability for accidents to employee of the insured arising out of and in the course of their employment.

In consideration of an additional premium of Rs.... and notwithstanding anything to the contrary contained in Section 11-1(c) but subject otherwise to the terms exceptions conditions and limitations of this Policy the company will indemnify the insured against liability at Law for compensation (including Legal costs of any claimant) for death of or bodily injury to any person other than a person excluding under Section 11-1(b) being carried in or entering or mounting or alighting from the Motor Vehicle but such indemnity arising out of one cause.

Provided always that in the event of an accident occurring whilst the Motor Vehicle is carrying ore than the number of person mentioned in the schedule hereto as being the License carrying capacity of that vehicle in addition to the conductor if any then the insured shall repay to the company rateable proportion of the total amount which would be payable to the Company by reason of this endorsement if not more than the said number of persons were carried in the Motor Vehicle.....” On 22nd February, 1995, the insured vehicle was involved in an accident in which the owner thereof, Shri Puran Singh was travelling. The vehicle overturned and Puran Singh died as a result of the injuries caused in the accident. The legal heirs of the deceased owner of the insured Jeep filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (in short 'the Act') for compensation before the Motor Accident Claims Tribunal (in short 'the MACT'), Almora, against the appellant – Insurance Company. It was alleged that at the time of the accident, one Chandan Singh was driving the vehicle. The appellant contested the claim of the legal heirs of the deceased. In the written statement filed before the MACT, it was pleaded that the application for compensation was not maintainable inasmuch as the deceased was the owner of the vehicle and was not a passenger in the Jeep and therefore, third party claim could not be granted to the legal representatives of the deceased. The MACT allowed the claim petition and awarded compensation in the sum of Rs.3,20,000/- in favour of the claimants of the legal heirs of the deceased, by Award dated 28.9.2001.

Feeling aggrieved by the Award, the Insurance Company filed First Appeal under Section 173 of the Act in the High Court of Uttaranchal at Nainital being Appeal from Order No. 1541 of 2001. The High Court dismissed the aforesaid appeal on 28th August, 2004. The High Court noticed that in the appeal, the Insurance Company apart from taking the usual defence of violation of policy condition, had also challenged the Award on the point of quantum of compensation. It was pleaded that the Tribunal has wrongly determined the income of the deceased and therefore, granted the compensation contrary to the well settled principles for determination of compensation in Motor Accident Claim cases. The High court affirmed the finding of the MACT since the deceased owner was travelling in the jeep. The appellant cannot escape liability on the ground that he was not a passenger. Therefore, the appeal filed by the Insurance Company was dismissed.

We have heard learned counsel for the parties.

Mr. Vishnu Mehra, learned counsel for the appellant in Civil Appeal No. 479 of 2007 has submitted that the MACT as well as the High Court have erred in granting any compensation to the legal representatives in view of Section 147 of the Act. He submits that in similar circumstances, this Court in the case of Dhanraj versus New India Assurance Company Limited and another reported in (2004) 8 SCC 553 has clearly held that the liability of the Insurance Policy is only for the purpose of indemnifying the insured against the liabilities incurred towards a third party or in respect of damages to property. Therefore, since the deceased himself was the insurer as well as the owner of the vehicle, no amount of compensation could have been awarded to the claimants.

We have perused the judgment of this Court in the case of Dhanraj Supra. In that case, the appellant who was the insurer was travelling in the insured vehicle, which met with an accident. In the accident, the appellant as well as the other passengers received injuries. A number of claim petitions came to be filed. The appellant who was the insurer also filed a claim petition. The MACT held the driver of the Jeep responsible for the accident. In all the claim petitions filed by the other passengers, MACT directed that the appellant (the owner) as well as the driver and the Insurance Company were liable to pay compensation. Furthermore, in the claim petition filed by the appellant, the MACT directed the driver and the Insurance Company to pay compensation to the appellant. The aforesaid finding of the MACT was upheld by the High Court in the appeal filed by the Insurance Company. The Insurance Company was, in appeal before this Court challenging the judgment of the High Court awarding compensation to the owner of the insured vehicle. Taking into consideration the provision contained in Section 147 of the Act, this Court observed as follows :-

“8. Thus, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an 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. Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the

vehicle.

9. In the case of Oriental Insurance Co. Ltd. versus Sunita Rathi it has been held that the liability of an insurance company is only for the purpose of indemnifying the insured against liabilities incurred towards a third person or in respect of damages to property. Thus, where the insured i.e. an owner of the vehicle has no liability to a third party the insurance company has no liability also.

10. In this case, it has not been shown that the policy covered any risk for injury to the owner himself. We are unable to accept the contention that the premium of Rs.4989 paid under the heading "Own damage", the words "premium on vehicle and non-

electrical accessories" appear. It is thus clear that this premium is towards damage to the vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim provided a personal accident insurance has been taken out. In this case there is no such insurance." In view of the aforesaid ratio of law, the claim made by the respondents could not have been allowed. Consequently, Civil Appeal No. 479 of 2007 is allowed. The impugned Award as well as the impugned judgment of the High Court are set aside.

In this appeal the respondents had claimed interest on Rs.3,20,000/- i.e. the amount awarded. The High court, by the impugned order, granted 6% interest from the date of filing of the claim petition till payment.

In view of the order passed in Civil Appeal No. 479 of 2007, no orders are required to be passed in this appeal as it is rendered infructuous. The appeal is disposed of accordingly.

.....J. (SURINDER SINGH NIJJAR)J. (PINAKI CHANDRA GHOSE)
New Delhi, March 13, 2013 ITEM NO.102 COURT NO.10 SECTION X S U P R E M E C O U R T O F
I N D I A RECORD OF PROCEEDINGS CIVIL APPEAL NO(s). 477 OF 2007 NEW INDIA
ASSURANCE COMPANY LIMITED Appellant (s) VERSUS PRABHA DEVI AND OTHERS
Respondent(s) WITH Civil Appeal NO. 479 of 2007 NEW INDIA ASSURANCE COMPANY
LIMITED VERSUS PRABHA DEVI AND OTHERS Date: 13/03/2013 These Appeals were called on
for hearing today.

CORAM :

HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR HON'BLE MR JUSTICE
PINAKI CHANDRA GHOSE For Appellant(s) Mr. Vishnu Mehra, Adv.

Ms. Sakshi Mittal, Adv.

Mr. B.K.Satija, Adv.

For Respondent(s) Mr. R.V. Kameshwaran, Adv.

Mr. Y. Lakesh, Adv.

UPON hearing counsel the Court made the following O R D E R Civil Appeal No. 479 of 2007 is allowed in terms of the signed order.

Civil Appeal No. 477 of 2007 is disposed of in terms of the signed order.

(Sukhbir Paul Kaur)
Court Master

(Indu Bala Kapur)
Court Master

(Signed order is placed on the file)