Bharti Axa General Insurance Co Ltd vs Smt Irabati & Ors on 3 April, 2025

Author: Dharmesh Sharma

Bench: Dharmesh Sharma

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*          IN THE HIGH COURT OF DELHI AT NEW DELHI
%                            Judgment reserved on: 01 April 2025
                           Judgment pronounced on: 03 April 2025

+          FAO 420/2013

           BHARTI AXA GENERAL INSURANCE
           CO LTD                                          .....Appellan
                       Through: None.
                           versus
           SMT IRABATI & ORS                            .....Respondents
                        Through:       Mr. R K Nain, Ms. Pratima N La
                                       & Mr. Chandan Prajapati, Advs.
                                       R1 to R4.
           CORAM:
           HON'BLE MR. JUSTICE DHARMESH SHARMA
                           JUDGMENT
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DHARMESH SHARMA, J.

1. No one appeared for the appellant/Insurance Company as also for respondent no.5 i.e., registered owner/insurer of the vehicle in question, when the matter was called.

2. Learned counsel appearing for the respondent nos.1 to 4/claimants has invited the attention of this Court to order dated 13.11.2013 passed by this Court whereby 50% of the amount awarded to the respondents/claimants has been ordered to be released out of the total compensation of 7,13,960/- along with interest at the rate of 12% per annum from the date of accident till the date of realization. He further pointed out that in terms of the order dated 20.03.2018, this Court had observed that the present appeal is confined to the appellant/Insurance Company seeking recovery rights against the KUMAR VATS Signing Date:04.04.2025 15:04:40 respondent no.5 who is the insured/employer/registered owner of the vehicle in question.

ANALYSIS AND DECISION

3. Having heard the learned counsel for the respondents/claimants and on perusal of the record, this Court proceeds to decide the present appeal.

4. The appellant/Insurance Company has preferred this appeal under Section 30 of the Employee's Compensation Act, 1923 ('the EC Act') assailing the impugned order dated 14.08.2013 passed by the

learned Commissioner, Employees Compensation primarily on the ground that the appellant/Insurance Company has not been granted recovery rights even though the driving license of the driver has been found to be not genuine.

5. In a nutshell, the deceased/Sh. Narender Singh S/o Sh. Gulab Chand, who was 39 years of age sustained fatal injuries while driving a truck bearing No.HR-63A-0164 on 03.10.2011 when it collided with a bus coming from the opposite side near Dariya Pur, P.S. Dehat, Bulandshehar, Uttar Pradesh. The vehicle was evidently insured with the appellant/Insurance Company which had also been paid an additional premium towards legal liability to driver /cleaner/khalasi under the Employee's Compensation Act, 1923 by the respondent no. 5/insured.

6. The learned Commissioner based on the appreciation of oral and documentary evidence held that a motor accident had indeed occurred involving the aforesaid truck resulting in the death of the deceased driver/Sh. Narender Singh; and assuming the monthly wage KUMAR VATS Signing Date:04.04.2025 15:04:40 of the deceased at the rate of 8,000/- per month besides reckoning 50% of the wages for compensation and taking relevant factor of 178.49, compensation for an amount of 7,13,960- was arrived at.

7. Insofar as the plea that the deceased was not holding a valid driving license, and thus, the insurance company is entitled to recovery rights, cannot be countenanced in law, for which reliance can be placed on the decision by the Supreme Court in the case of National Insurance Co. Ltd. v. Mastan 1 in which a question was posed: whether an insurer while defending an action initiated under the EC Act of 1923 is precluded from raising any defence as envisaged under sub-section 2 of Section 149 2 of the Motor Vehicles Act, 1988 ['the 1988 Act'], and it was held as under:-

> "20. An insurer, subject to the terms and conditions of contract of insurance, is bound to indemnify the insured under the 1923 Act as also the 1988 Act. But as noticed hereinbefore, keeping in view the nature and purport of the two statutes, the defences which can be raised by the insurer being different, the scope and ambit of 1 (2006) 2 SCC 641 2 149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third-party risks. - (1) * * * * (2) 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 or 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-
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> (a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:
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> (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 organised 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 sidecar being attached where the vehicle is a motorcycle; or KUMAR VATS Signing Date:04.04.2025 15:04:40 appeal are also different.

21. Under the 1988 Act, the driver of the vehicle is liable but he would not be liable in a case arising under the 1923 Act. If the driver of the vehicle has no licence, the insurer would not be liable to indemnify the insured. In a given situation, the Accidents Claims Tribunal, having regard to its rights and liabilities vis-à-vis the third person may direct the Insurance Company to meet the liabilities of the insurer, permitting it to recover the same from the insured. The 1923 Act does not envisage such a situation. Role of reference by incorporation has limited application. A limited right to defend a claim petition arising under one statute cannot be held to be applicable in a claim petition arising under a different statute unless there exists express provision therefor. Section 143 of the 1988 Act makes the provisions of the 1923 Act applicable only in a case arising out of no fault liability, as contained in Chapter X of the 1988 Act. The provisions of Section 143, therefore, cannot be said to have any application in relation to a claim petition filed under Chapter XI thereof. A fortiori in a claim arising under Chapter XI, the provisions of the 1923 Act will have no application. A party to a lis, having regard to the different provisions of the two Acts, cannot enforce liabilities of the insurer under both the Acts. He has to elect for one."

8. In view of the aforesaid proposition of law, what is clearly discernible is that where the claimants have elected to seek compensation under the EC Act, the question of negligence of the deceased is not to be gone into and the only concerning issue for determination would be as to whether the deceased died during the course of or arising out of his employment. The defence that the deceased driver was not possessing a valid driving license cannot be claimed or raised by the insurer.

9. In summary, the vehicle in question was insured additionally for legal liability under the Employee's Compensation Act, 1923 and therefore, the appellant/Insurance Company cannot avoid the liability to pay compensation including penalty to the respondents/claimants.

KUMAR VATS Signing Date:04.04.2025 15:04:40 Reference can be invited to the decision in the case of Ved Prakash Garg v. Premi Devi 3 wherein the Supreme Court examined the issue to the effect- "whether where an employee receives a personal injury in a motor accident arising out of and in the course of his employment while working on the motor vehicle of the employer, whether the insurance company, which has insured the employer-owner of the vehicle against third-party accident claims under Motor Vehicles Act, 1988 (hereinafter referred to as 'the Motor Vehicles Act') and against claims for compensation arising out of proceedings under the Workmen's Compensation Act, 1923 (hereinafter referred to as 'the Compensation Act') in connection with such

motor accidents, is liable to meet the awards of Workmen's Commissioner imposing penalty and interest against the insured employer under Section 4-A(3) of the Compensation Act".

10. The Supreme Court held that the insurance company concerned shall be statutorily as well as contractually liable to make good the claims for compensation arising out of the employers' liability computed as per the provisions of the EC Act. It was further held that the compensation to be paid shall only be the principal amount but also the interest payable for the delayed period. It would be apposite to refer the observations made by the Supreme Court while answering the aforesaid question, which go as under:

> "14. ..... "Thus the principal amount as well as the interest made payable thereon would remain part and parcel of the legal liability of the insured to be discharged under the Compensation Act and 3 (1997) 8 SCC 1 KUMAR VATS Signing Date:04.04.2025 15:04:40 not dehors it. It, therefore, cannot be said by the insurance company that when it is statutorily and even contractually liable to reimburse the employer qua his statutory liability to pay compensation to the claimants in case of such motor accidents to his workmen, the interest on the principal amount which almost automatically gets foisted upon him once the compensation amount is not paid within one month from the date it fell due, would not be a part of the insured liability of the employer. No question of justification by the insured employer for the delay in such circumstances would arise for consideration. It is of course true that one month's period as contemplated under Section 4-A(3) may start running for the purpose of attracting interest under sub-clause
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> (a) thereof in case where provisional payment has to be made by the insured employer as per Section 4-A(2) of the Compensation Act from the date such provisional payment becomes due. But when the employer does not accept his liability as a whole under circumstances enumerated by us earlier then Section 4-A(2) would not get attracted and one month's period would start running from the date on which due compensation payable by the employer is adjudicated upon by the Commissioner and in either case the Commissioner would be justified in directing payment of interest in such contingencies not only from the date of the award but also from the date of the accident concerned. Such an order passed by the Commissioner would remain perfectly justified on the scheme of Section 4-A(3)(a) of the Compensation Act...."

11. However, the same was held to be not true in the case of section 4-A(3)(b), as it was held as under:

> ".....But similar consequence will not follow in case where additional amount is added to the principal amount of compensation by way of penalty to be levied on the employer under circumstances contemplated by Section 4-A(3)(b) of the Compensation Act after issuing show-cause notice to the employer concerned who

> will have reasonable opportunity to show cause why on account of some justification on his part for the delay in payment of the compensation amount he is not liable for this penalty. However, if ultimately, the Commissioner after giving reasonable opportunity to the employer to show cause takes the view that there is no justification for such delay on the part of the insured employer and because of his unjustified delay and due to his own personal fault he is held responsible for the delay, then the penalty would get imposed on him. That would add a further sum up to 50% on the principal amount by way of penalty to be made KUMAR VATS Signing Date:04.04.2025 15:04:40 good by the defaulting employer. So far as this penalty amount is concerned it cannot be said that it automatically flows from the main liability incurred by the insured employer under the Workmen's Compensation Act. To that extent such penalty amount as imposed upon the insured employer would get out of the sweep of the term "liability incurred" by the insured employer as contemplated by the proviso to Section 147(1)(b) of the Motor Vehicles Act as well as by the terms of the insurance policy found in provisos (b) and (c) to sub-section (1) of Section II thereof. On the aforesaid interpretation of these two statutory schemes, therefore, the conclusion becomes inevitable that when an employee suffers from a motor accident injury while on duty on the motor vehicle belonging to the insured employer, the claim for compensation payable under the Compensation Act along with interest thereon, if any, as imposed by the Commissioner, Sections 3 and 4-A(3)(a) of the Compensation Act will have to be made good by the insurance company jointly with the insured employer. But so far as the amount of penalty imposed on the insured employer under contingencies contemplated by Section 4-A(3)(b) is concerned as that is on account of personal fault of the insured not backed up by any justifiable cause, the insurance company cannot be made liable to reimburse that part of the penalty amount imposed on the employer. The latter because of his own fault and negligence will have to bear the entire burden of the said penalty amount with proportionate interest thereon if imposed by the Workmen's Commissioner."

12. Thus, it is well settled that where there is default on the part of the insured in not making timely payment of interim compensation to the workman/employee, the liability to pay compensation under section 4A(3)(b) of the EC Act cannot be fastened upon the shoulders of the insurer. At the same time, the Supreme Court in the cited case of Ved Prakash Garg v. Premi Devi (supra), cited with approval the decision of the Rajasthan High Court in a case titled United India Insurance Company Ltd. v. Roop Kanwar And Ors. 4, wherein it was held that if an additional premium has been paid by the employer/insurer to cover 4 2006(2) TAC 973 KUMAR VATS Signing Date:04.04.2025 15:04:40 compensation under the Workmen's Compensation Act, 1923, the liability to pay the penalty under Section 4A(3)(b) of the Act shall also be borne by the insurer.

13. In the present case, a bare perusal of the policy of insurance dated 17.10.2011 on the record ex facie shows that apart from the basic liability premium of 11,410/- and O.D. premium totalling 8,240/-, an additional premium was paid for covering legal liability (LL) to employees under the Employee's Compensation Act, 1923 @ 75/-.

14. In the light of the assertion of respondent no. 5/employer that the intimation of the accident was immediately given to the appellant/Insurance Company, the impugned order dated 14.08.2013, insofar as it imposes the liability for payment of compensation towards the penalty under Section 4A(3)(b) of the EC Act, upon the shoulders of the appellant/ Insurance Company, cannot be interfered with. Hence, no recovery rights can be claimed by the appellant/Insurance Company for the compensation payable or paid to the employee from the employer/insured i.e., respondent No. 5.

15. In view of the above, the present appeal is dismissed. The amount of compensation be released to the claimants forthwith alongwith accrued interest.

DHARMESH SHARMA, J.

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