A CHIMAJIRAO KANHOJIRAO SHIRKE AND ANR.

*v.*

ORIENTAL FIRE AND GENERAL INSURANCE CO. LTD.

JULY 26, 2000

B [A.P. MISRA AND RUMA PAL, JJ.]

*Insurance:*

C *Motor Insurance Policy—Deceased owner of a truck died in an accident involving his truck—Truck insured with the insurance company for Rs. 10 Lakhs covering risks for unlimited personal injury and property—Parents of the deceased filed a suit for recovery of Rs. 6,03,000 against the insurance company—In its written statement insurance company denied liability on the ground of the words unlimited personal injury having been typed by mistake—* D *Trial Court decreed the suit—High Court allowed the appeal observing that the word unlimited was with respect to the death and injury to the third party and insurer only—On appeal, Held : The stand of the insurance company before the trial court that the word unlimited got typed by mistake is contrary to its plea that it qualifies for the third party only—As the submissions in the written statement were in writing, subsequent plea cannot succeed—* E *Respondent had not taken any stand to dissolve its said plea taken in the written statement—High Court erred in deciding the issue through legal inferences without adverting to the facts on record.*

**One M had got his goods truck insured with the respondent company** F **for Rs. 10 Lakhs under a comprehensive policy covering risks for unlimited personal injury and property. The said truck had also been insured to the tune of Rs. 1,27,000 for damage to the property. The said M died in an accident while driving the said truck on which the appellants i.e. parents of the deceased filed a suit for recovery of Rs. 6,03,000 against the respondent company. In its written statement before the trial court, the defendant/respondent company** G **pleaded that the words unlimited personal injury and property had been typed by mistake/oversight. The trial court decreed the suit holding that payment of Rs. 134 as additional premium was for unlimited personal injury to the life of the insured as well as to the property to the tune of Rs. 10 Lakhs. Appeal preferred by the respondent insurance company was allowed by the High Court. The High Court was of the view that the amount of Rs. 134 had** H

**been paid for covering the risk in excess of statutory liability in regard to third party risks and not the personal injury or death of the insured. Hence this appeal.**

**The respondent company contended that the words "unlimited personal" qualifies unlimited for the death and injury of a third party and would not cover the insured person personally.**

**Allowing the appeal, the Court**

**HELD: 1. The stand taken by the insurance company in its written statement that the typing of wording "unlimited personal injury" against the additional premium of Rs. 134 is due to oversight/mistake is contrary to the submissions made by the Ld. Counsel for the respondent. It has not been the case of the insurance company that notwithstanding the word used therein, namely, "unlimited personal injury" in terms of the policy it would be limited to the liability of the third party. On the contrary, faced with the submission that such words would make the insurer liable even to the insured personally, the said plea and submissions were made in the trial court.**

**[668-G-H; 669-A; 700-E-F]**

**2. 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 insurance company had not led any evidence to dissolve the stand taken in the written statement that it was done by mistake nor there was 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. [700-F, G, H; 701-A]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1044 of 1992.

From the Judgment and Order dated 19.6.89 of the Bombay High Court in F.A. No. 284 of 1988.

S.B. Bhasme, A.S. Bhasme and Manoj Kr. Mishra for the Appellants.

Jitendra Sharma and Pramanand Gaur for the Respondents.

The following Judgment of the Court was delivered :

The short question raised in this appeal is whether the words "unlimied personal injury and property damage" upto Rs. 10 lakhs for which premium

A of Rs. 134 was paid as recorded in the insurance policy itself covers the death and bodily injury of the "insured or not. According to the statement on behalf of the appellants, who are the claimants before us, the language used therein clearly indicates that the insured would also be covered under it, while submission on behalf of the insurance company is, this only co-relates to the damage of the property and has no co-relation with the personal injury or death of the insured.

The short facts are that the appellant filed a suit for recovery of Rs, 6,03,000 from the defendant-respondent, insurance company. The appellants are the parents of the deceased Mahendra Shirke, who died in the accident on 8th January, 1980. The said deceased obtained loan from Maharashtra Finance Corporation and Bank of Baroda under "Educated Unemployment Scheme" for purchasing goods truck in the year 1977. He obtained the said loan under the condition that, he will drive personally the said truck. According to the appellants" case, the deceased Mahendra insured his truck with the respondents to the tune of Rs. 10 lakhs, which is a comprehensive insurance covering risks for unlimited personal injury and property. ' The said truck was also insured as per the policy to the tune of Rs. 1,27,000 for the damage to the property. It is not in dispute that on the date of the accident the said truck was covered with the said insurance policy. In fact; the question which we have to decide is the interpretation, of the policy itself.

On these facts, the trial court decreed the suit in favour of the appellants for the aforesaid amount alongwith interest @ 12% per annum. The Trial Court while considering issues No. 1 and 9 after considering the submissions of both the parties concludes that the payment of Rs. 134 as premium was for the unlimited personal injury to the life of the insured as well as to the property to the tune of Rs. 10 lakhs and finally recorded its finding to the following effect :

> "Moreover, there is no iota of evidence to prove that the contents as against premium at Rs. 134 as unlimited personal injury and damages to be Rs, 10 lakhs has been wrongly or mistakenly shown in that policy,"

This finding is recorded in view of the stand taken by the insurance company before the Trial Court, namely, the recording of the words "unlimited personal injury' was wrongly recorded therein. In support of this, reference is made by learned counsel for the appellants to the written statement filled

by the insurance company, which is to the following effect :

> "The noting of 'Unlimited personal injury is redundant; the premium is accepted either to cover property damage or personal injury. It is due to oversight/mistake, the wording "Unlimited personal injury' is typed against the additional premium of Rs. 134...."

Being aggrieved by the order of the Trial Court, the insurance company filed an appeal before the High Court and by means of the impugned order the High Court set aside the judgment of the Trial Court and allowed the appeal.

The High Court holds that insurance company is not liable to pay any compensation to the plaintiffs (appellants herein) on account of death of insured Mahendra under the terms of the said policy. This conclusion is drawn in view of the following findings:-

> "Therefore, ultimately what we have to see in this case is the object of the payment of Rs. 134 paid by the late Mahendra and accepted by the insurance company. As we read between the lines of the decisions referred to, we are of the view that the amount has been paid for covering the risk in excess of statutory liability in regard to the third party risks and not the personal injury or death of the insured."

Learned senior counsel for the insurance company, Mr. Jitendra Sharma has referred to us to Sections 94, 95 and Sections I and II of the Insurance Policy to show that under the Motor Vehicles Act, 1939, it was obligatory for a person running the commercial truck to have insured by virtue of Section 94 and Section 94 and Section 95 refers to the requirements of the policy and the limits of liability. By virtue of that, the insurance company insures a person to the extent specified in sub-section (2) against any liability which may be incurred by the insured in respect of death or bodily injury to any person or damage to any property of third party, which includes death and bodily injury to any passenger of a public service vehicle. In other words, in a third party insurance the insured is indemnified against any loss which may occasion on account of any accident of the vehicle which he insures, but it does not cover the insured for claiming any amount from the insurance company. In this background, he referred to the Insurance Policy itself to show that the words 'unlimited personal injury and property damages' upto 10 lakhs referred in it relates to the insured liability for which he would be

A indemnified but only in respect of a third party, that is to say, the word 'personal' would qualify the injury or death of a third party and not to the insured. Scrutinizing the schedule of the Insurance Policy, he has referred to the premiums paid by the insured. The first entry is of Rs. 911, which according to him includes the third party, but it would be up to the extent of statutory liability, the next is insurers estimated value, the third is additional tonnage, B the fourth is under our consideration. Similarly, the fifth is for strike and riot and the last is for workmen legal liability for which the premiums are paid. It is in this context with reference to the aforesaid Sections of the Act and under the policy it is submitted that the word 'unlimited personal' qualifies unlimited for death and injury of a third party and would not cover the insured person C personally. The submission, *prima facie,* seems to be plausible but the question for our consideration is, whether on the facts and the circumstances of this case such an interpretation could be given to the insurance policy. In this connection we may refer to what is the stand of the insurance company in its pleadings and submissions.

D In the written statement filed by the insurance company, relevant portion of which we have already quoted above, the stand taken therein is that it is due to oversight mistake that the wording 'unlimited personal injury' is typed against the additional premium of Rs. 134.

E This stand is contrary to the submissions made by the learned counsel for the respondent. It has not been the case of the insurance company that notwithstanding the word used therein, namely, 'unlimited personal injury' it would in terms of the policy would be limited to the liability of a third party. On the contrary, faced with the submission that such words would make the insurer liable even to the insured personally, the said plea and submission F was made in the Trial Court. Once the submission and the stand is that the writing is on account of oversight and mistake, the aforesaid submission made before us cannot be sustained.

In view of the aforesaid conclusion, we have no hesitation to hold that G 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 H led any evidence to dissolve the stand taken in the written statement that it

was done by mistake nor there was any application to amend such pleadings. In view of this, the High Court was not correct to decide the issue through legal inferences dehorse 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 cost on the parties.

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We have no hesitation, in case the appellants make an application to the Executing Court, the Court will consider it expeditiously.

R.C.K. Appeal allowed.