
(2022) 07 BOM CK 0074
In the Bombay High Court
Case No : First Appeal No. 784 Of 2007

Dhiraj And Others

APPELLANT

Vs

Usha And Others

RESPONDENT

Date of Decision : 26-07-2022

Acts Referred:

Motor Vehicles Act, 1988 — Section 166
Code Of Criminal Procedure, 1973 — Section 161, 162

Citation : (2022) 07 BOM CK 0074

Hon'ble Judges : M.S. Jawalkar, J

Bench : Single Bench

Advocate : Amol Mardikar, Ratansingh, M. Anilkumar, Yash Kullarwar, C.A. Anthony

Final Decision : Disposed Of

Judgement

M.S. Jawalkar, J

1. Heard learned Counsel for the appellants and learned Counsel for the respondent Nos.1, 3 and 4.

2. Present appeal is filed by the appellant challenging the judgment and award passed by the Chairman, Motor Accident Claims Tribunal, Nagpur in Claim Petition No. 449/1995 dated 29th June 2007. By this judgment compensation were directed to pay by the appellant in favour of claimant i.e. respondent Nos. 1 to 3.

3. Facts in brief are as under :

Claimant - respondent No. 1 to 3 filed claim under Section 166 of the Motor Vehicle Act, claiming compensation of Rs.11,27,000/-, in respect of death of one Kishor Damodhar Bingewar. Accident took place on 17/03/1995 at about 2.00 p.m. near village Gangalwadi on Barad - Kinni road.

4. It is contention of the appellant that the deceased was a pillion rider on a

motor cycle bearing registration MH - 34/C-1735 which was registered in the name of the present appellant No.1. Due to rash and negligent driving of the appellant no.2, who was driving the vehicle, the vehicle skidded, as a result of which grievous injuries were caused to the deceased who died after shifting to the hospital. It is further contention of the appellant no.2 that he was not riding the vehicle and he was pillion rider and deceased himself was riding the vehicle at the relevant time. As such, act of rash and negligent driving cannot be attributed to him.

5. It was the contention of Insurance Company that policy does not cover third party/person's liability and it is act policy and as such Insurance Company is not liable to pay any compensation.

6. It is the contention of the appellant that the First Information Report was registered against the appellant. The statement of appellant No.2 came to be recorded and they were charge sheeted. Learned JMFC acquitted appellant No.2. It is also contended that it was established before Criminal Court that appellant No. 2 was not driving the vehicle and deceased Kishor was driving the vehicle. Tribunal may arrive at different finding, however, weightage has to be given for the finding recorded by the Criminal Court. The learned Tribunal has not given any consideration to these finding and considered only the statement which was recorded by the Police under Section 162 of Code of Criminal Procedure passed the order. The learned Tribunal directed appellants to pay the compensation, without considering this fact that policy was comprehensive one in nature and it covers liability of third party including that of the gratuitous persons liability.

7. It is further submitted that the learned Tribunal drawn erroneous finding on the basis of statement before the Police that appellant No.2 was riding the vehicle specifically when there is finding of Criminal Court that deceased was riding the vehicle. In view thereof, there is no question of any rash and negligent driving by appellant No.2. The police statements are inadmissible in evidence is not considered by the Tribunal as held in Parvat Singh and others Vs. State of Madhya Pradesh (2020) 4 SCC 33 reads as thus:

However, as per the settled proposition of law a statement recorded under Section 161 Cr.P.C. is inadmissible in evidence and cannot be relied upon or used to convict the accused. As per the settled proposition of law, the statement recorded under Section 161 Cr.P.C. can be used only to prove the contradictions and/or omissions. Therefore, as such, the High Court has erred in relying upon the statement of PW8 recorded under Section 161 Cr.P.C. while observing that the appellants were having the lathis.

8. It is further contention of the claimant that Claims Tribunal had failed to appreciate that the policy was comprehensive one and therefore, Insurance Company was liable to compensate for third party. However, believing on the statement made by the Insurance Company, the learned Tribunal erroneously held that Insurance Company is not liable to pay any compensation .

9. As against this learned Counsel Shri C.A. Anthony for National Insurance Company – respondent No.4 submitted that there was no premium paid against pillion rider or driver of the vehicle. In view thereof, the policy does not cover the damages to pillion rider or a driver of the vehicle. He relied on the judgment cited before the Tribunal i.e. II(2006) ACC 1 (SC) United India Insurance Company vs. Tilak Singh and others and Asharani's case reported in (2003) 2 SCC 223, wherein, it is laid down that the passenger in a private vehicle or on two wheeler is not third party and under the Act, it is not necessary to cover the risk of death of such passenger.

10. It is submitted that thus, it is up to the Insurance Company to decide as to whether it wants to give cover in respect of death of pillion rider. As pillion rider is not third party under the present policy it cannot be said that premium in respect of pillion rider was accepted by the Insurance Company. Relying on these judgments Tribunal held that Insurance Company cannot be held liable to indemnify the owner. It is also held by Tribunal that the respondent No.3 – Sharad has admitted that he was not holding valid and effective licence to drive the two wheeler vehicle at the relevant time, thus, there was breach of condition of policy also. As such, Insurance Company cannot be directed to pay first in this case.

11. After hearing both the parties at length, only point arise for my consideration is that whether policy is comprehensive and whether Insurance Company is liable to pay compensation on account of death of pillion rider. This issue was discussed and concluded by the Apex Court in National Insurance Company Limited vs.. Balkrishna and another (supra). In this judgment the Apex court discussed all judgments on this issue including Tilak singh (supra) and Asharani (Supra) which was relied on by the Tribunal. The Hon'ble Apex Court also considered Insurance Regulatory and Development Authority (for short 'IRDA'), circular issued by IRDA and also had instruction issued by Tariff Advisory Committee. The Apex Court in paragraph No.19 and 20 of the judgment elaborately discussed this issue which reads as under :

19. It is extremely important to note here that till 31st December, 2006 the Tariff Advisory Committee and, thereafter, from 1st January, 2007, IRDA functioned as the statutory regulatory authorities and they are entitled to fix the tariff as well as the terms and conditions of the policies by all insurance companies. The High Court had issued notice to the Tariff Advisory Committee and the IRDA to explain the factual position as regards the liability of the insurance companies in respect of an occupant in a private car under the "comprehensive/ package policy". Before the High Court, the Competent Authority of IRDA had stated that on 2nd June, 1986, the Tariff Advisory Committee had issued instructions to all the insurance companies to cover the pillion rider of a scooter/motorcycle under the "comprehensive policy" and the said position continues to be in vogue till date. It had also admitted that the "comprehensive policy" is presently called a "package policy". It is the admitted position, as the decision would show, the earlier

circulars dated 18th March, 1978 and 2nd June, 1986 continue to be valid and effective and all insurance companies are bound to pay the compensation in respect of the liability towards an occupant in a car under the "comprehensive/package policy" irrespective of the terms and conditions contained in the policy. The competent authority of the IRDA was also examined before the High Court who stated that the circulars dated 18th March, 1978 and 2nd June, 1986 of the Tariff Advisory Committee were incorporated in the Indian Motor Tariff effective from 1st July, 2002 and they continue to be operative and binding on the insurance companies. Because of the aforesaid factual position, the circulars dated 16th November 2009 and 3rd December, 2009, that have been reproduced hereinabove, were issued.

20. It is also worthy to note that the High Court, after referring to individual circulars issued by various insurance companies, eventually stated thus:-

"In view of the aforesaid, it is clear that the comprehensive/package policy of a two wheeler covers a pillion rider and comprehensive/package policy of a private car covers the occupants and where the vehicle is covered under a comprehensive/package policy, there is no need for Motor Accident Claims Tribunal to go into the question whether the Insurance Company is liable to compensate for the death or injury of a pillion rider on a two-wheeler or the occupants in a private car. In fact, in view of the TAC's directives and those of the IRDA, such a plea was not permissible and ought not to have been raised as, for instance, it was done in the present case."

12. Admittedly, policy is "comprehensive policy" in the present matter. However, it is vehemently contended that it does not cover liability of pillion rider as there is no premium accepted to cover risk of driver or pillion rider. As explained by the authorities and also by the Hon'ble Apex Court, the comprehensive policy itself means a package policy and it covers liability of pillion rider as well as occupant in the four wheeler. In view of this clear position, I have no hesitation to hold that Insurance Company is liable to pay compensation for death of Kishor. So far as breach of policy is concerned, the Insurance Company may first pay and recover the same from the insured. As such, I pass the following order :

ORDER

- (i) The appeal is allowed with proportionate costs.
- (ii) The judgment and award passed by the Chairman, Motor Accident Claims Tribunal, Nagpur in Claim Petition No. 449/1995 dated 29th June 2007, is hereby modified to the extent of liability to pay compensation.
- (iii) Non applicant No. 1 to 3 in original claim i.e. Claim Petition No. 449/1995, are liable jointly and severally to pay the compensation to the claimants along with interest within a period of four weeks as awarded by the Motor Accident Claims Tribunal, Nagpur.
- (iv) The Insurance Company is at liberty to pay first and recover the said amount

from the non-applicant no. 1 & 3 by taking appropriate steps as per law.
Appeal stands disposed of accordingly.