(2012) 05 RAJ CK 0099

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 3445 of 2008 with Stay Application No. 2143 of 2008

Jai Krishna Pareek — APPELLANT

Vs

Smt. Uma Sharma and Others — RESPONDENT

Date of Decision : 18-05-2012

Acts Referred:
Limitation Act, 1963 — Section 5
Motor Vehicles Act, 1988 — Section 95

Citation : (2013) 2 ACC 18 : (2012) 3 WLN 180

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Sandeep Mathur, for the Non-Claimant-Appellant, for the Appellant; J.P. Gupta and Mr. V.P. Mathur, for the Respondent

Judgement

Mohammad Rafiq, J.—For stated reasons, delay in filing appeal is condoned. Application under Sec. 5 of Limitation Act stands allowed. Matter is heard on merits. This appeal has been filed by non-claimant Jai Krishna Pareek for quashment of award dt. 03.08.2007 of learned Motor Accident Claims Tribunal, Ajmer, in MAC Case No. 9/2005, whereby learned Tribunal awarded compensation of Rs. 1,68,000/- to claimant in a death case, and held the insurance company liable to pay only Rs. 1,00,000/- and, for remaining amount, appellant, who was driver and owner of offending vehicle, is held liable for payment.

2. Learned counsel appearing for appellant has contended that learned Tribunal has erred in law while restricting liability of insurance company to pay compensation to the extent of Rs. 1,00,000/- only, whereas as per the judgment of Supreme Court in General Manager, United Insurance Co. Ltd. (The) vs. M. Laxmi & Ors. : MACD 2008 (SC) 418 when there is package policy as in the present case, the insurance company has to be held liable to indemnify the owner for payment of compensation jointly and severally. It is, therefore, prayed that appeal be allowed and accordingly that finding of the Tribunal be set-aside.

3. Learned counsel appearing respondents however opposed the appeal but could not controvert the ratio of judgment of Supreme Court in M. Laxmi supra.

4. I have heard learned counsel for the parties, perused the award and case law cited on the subject.

5. The Supreme Court in Amrit Lal Sood and Another Vs. Smt. Kaushalya Devi Thapar and Others, held that in a case of comprehensive insurance policy, the terms of the contract of insurance can be wider than prescribed by the statute. If under the policy insurer agreeing to indemnify the insured against all sums, which the insured shall become legally liable to pay in respect of death of or bodily injury to "any person", the words ''any person would include gratuitous passenger. In part is or the report, Supreme Court held, as under:-

Thus under Sec. II(1)(a) of the policy the insurer has agreed to indemnify the insured against all sums which the insured shall become legally liable to pay in respect of death of or bodily injury to "any person". The expression "any person" would undoubtedly include an occupant of the car who is gratuitously travelling in the car. The remaining part of clause (a) relates to cases of death or injury arising out of and in the course of employment of such person by the insured. In such cases the liability of the insurer is only to the extent necessary to meet the requirements of Section 95 of the Act. Insofar as gratuitous passengers are concerned there is no limitation in the policy as such. Hence under the terms of the policy, the insurer is liable to satisfy the award passed in favour of the claimant. We are unable to agree with the view expressed by the High Court in this case as the terms of the policy are unambiguous.

6. This issue cropped up before the Delhi High Court in Yashpal Luthra and Anr. vs. United India Insur. Co. Ltd. and Anr. arising out of Mac.App.No. 176/ 2009 decided on 9.12.2009, wherein it was noted by the High Court that tariff as well as terms and conditions of the Insurance Policy was regulated by Tariff Advisory Committee (for short, "TAC") till 31.12.2006 and thereafter by the Insurance Regulatory and Development Authority (for short, "IRDA") under the Insurance Act, 1938. TAC issued a Circular dt. 18.3.1978 to all the Insurance Companies to cover the risk of occupants in a private car under comprehensive policy w.e.f. 25.03.1977. TAC vide then subsequent Circular dt. 2.6.1986 directed all the Insurance Companies to cover the risk of a pillion rider on a two-wheeler under the comprehensive policy. Comprehensive policy was later styled as "package policy". The Delhi High Court in the aforesaid case summoned all the insurance companies, which admitted their liability to indemnify the owner for payment of compensation to the claimant in respect of the bodily injury or death in a motor accident. In fact, the IRDA issued a circular dt. 6.11.2009 to all the Chief Executive Officers of the Insurance Companies clarifying the position relating to the liability of Insurance Companies in respect of a pillion rider on a two-wheeler and occupants in a private car under the comprehensive/package policy. IRDA convened the meeting of all the Chief Executive Officers on 26.11.2009, who admitted their liability in respect of occupants in that respect and insurance

companies agreed to comply with the Circular dt. 16.11.2009 issued by the IRDA and further to withdraw the contrary plea wherever taken before the Motor Accident Claims Tribunals and accordingly to issue instructions to their respective lawyers. In those facts, it was held by the Delhi High Court in para 27 of the report, as under:-

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.

7. In M. Laxmi supra, a reference was made to the Circular dt. 2/6/1986 with regard to compensation payable to the pillion riders in case of comprehensive policy and it was held that standard form for motorcycle should cover liability to pillion passengers in case of comprehensive policy but policy in that case was an Act Policy therefore, the insurance company was held not liable.

8. On consideration of material on record, however, I am satisfied that finding of learned Tribunal confining the liability of insurance company to pay compensation only in the sum of Rs. 1,00,000/- deserves to be set-aside.

9. In the result, the appeal is allowed. The award passed by the Motor Accident Claims Tribunal, Ajmer dt. 03.08.2007 is modified in terms that finding of learned Tribunal confining liability of non-claimant-insurance company to pay compensation only in the sum of Rs. 1,00,000/- is set-aside. The United India Insurance Company Limited is directed to indemnify the owner of the vehicle for full amount of compensation as awarded by the Tribunal and to make payment of compensation jointly and severally in the light of the judgments aforesaid.

10. Compliance of the judgment be made within a period of three months from the date, certified copy thereof is produced before the insurance company. This also disposes of stay application.