

(2017) 01 KAR CK 0032

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 20275 of 2011 connected with
Miscellaneous First Appeal No. 21043 of 2011 (MV)

K. Koushik

APPELLANT

Vs

Sandeep

RESPONDENT

Date of Decision : 27-01-2017

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, Section 163-A, Section 173(1)

Citation : (2017) 3 KantLJ 269

Hon'ble Judges : Mrs. S. Sujatha, J.

Bench : Single Bench

Advocate : Sri S.M. Kalwad, Advocate, for the Appellant; SD, for the Respondent Nos. 1 and 2; Sri N.R. Kuppelur, Advocate, for the Respondent No. 3; In M.F.A. No. 21043 of 2011; N.R. Kuppelur, Advocate, for the Appellant; S.M Kalwad, Advocate, for the Respondent No. 1; A.M. Malipatil, Advocate, for the Respondent No. 2

Final Decision : Dismissed

Judgement

Mrs. S. Sujatha, J.—The claimant as well as the Insurance Company are in appeal challenging the judgment and order dated 15-9-2010 passed by the Motor Accident Gains Tribunal, Kudligi ("Tribunal" for short) in MVC No. 1020 of 2009.

2. Briefly stated the facts are that the claimant being the son of the deceased Smt. Jayashree instituted the claim petition before the Tribunal seeking compensation for the death of his mother who died in the motor vehicle accident on 10-1-2009 while travelling in the Car bearing Registration No. KA 35/M 1431 which was duly insured with the Insurance Company. On service of notice, the Insurance Company appeared and resisted the claim. After evaluating the evidence on record, the Tribunal awarded total compensation of Rs. 3,66,000/- together with interest at the rate of 8% p.a. from the date of petition till deposit fastening the liability on the Insurance Company to satisfy the award. Aggrieved

by the same, the claimant is in appeal seeking enhancement of compensation whereas the Insurance Company is in appeal challenging the liability foisted on it.

3. Sri N.R. Kuppelur, learned Counsel appearing for the Insurance Company would contend that the Tribunal erred in fastening the liability on the Insurer sans appreciating the fact that the policy issued to the offending vehicle was "private car liability only policy" as per Ex. R. 1 in which there was no coverage to the occupants/inmates of the private car. The risk of the occupants/inmates of the private car was neither covered under the policy issued by the Insurer nor contemplated under the provisions of Section 147 of the Motor Vehicles Act, 1988 ("the Act" for short). The learned Counsel further submits that the Tribunal acted perversely in observing that the deceased is not the owner of the vehicle and is a third party and therefore, the claimant is entitled to compensation on account of the death of the deceased. Further, the Tribunal erroneously observed that the appellant has collected premium to cover the risk of the third parties and as such, the Insurer is liable to pay the compensation. The said finding of the Tribunal is contrary to the terms and conditions of the Insurance Policy and hence, the same is liable to be set aside. He further contends that the inmates/occupants/passengers of the private vehicle do not fall within the definition of the word "third party". Hence, the legal obligation arising under Section 147 of the Act cannot be extended to an injured person or death of the said occupants/passengers/inmates in a private vehicle. In support of his contentions, he has placed reliance on the following judgments:

(i) General Manager, United Insurance Company Limited v. M. Laxmi and Others 2009 ACJ 104 (SC);

(ii) United India Insurance Company Limited, Shimla v. Tilak Singh and Others (2006)4 SCC 404;

(iii) National Insurance Company Limited v. Balakrishnan and Another 2013 ACJ 199 (SC);

(iv) New India Assurance Company Limited v. Sadanand Mukhi and Others (2009)2 SCC 417.

4. Per contra, Sri S.M. Kalwad, learned Counsel appearing for the claimant would contend that the policy in question though was a "private car liability only policy", the Insurer had collected additional premium to cover the risk of the third parties at Rs. 800/-. As such, the Insurer cannot be exonerated from the liability of indemnifying the insured. The deceased was travelling as an occupant of the private car. She was not a party to the contractual obligation entered into between the insured and the Insurer. Thus, she is a third party. The additional premium being paid to cover the risk of the third parties, the Insurer is liable to satisfy the award. In support of his contentions, the learned Counsel placed reliance on the following judgments:

(i) The United India Insurance Company Limited v. Jahur Begam and Others ILR

2000 Kar. 3796 (DB);

(ii) National Insurance Company Limited v. Faqir Chand and Others 1996 ACJ 111 (J and K);

(iii) Guru Govekar v. Miss. Filomena F. Lobo and Others AIR 1988 SC 1332;

(iv) The Branch Manager, New India Assurance Company Limited v. Mahadev Pandurang Patil and Another ILR 2011 Kar. 850 (DB);

(v) The New India Assurance Company Limited v. Mohan Shankar Jadhav and Another M.F.A. No. 6851 of 2006, dated 11-4-2011.

5. Learned Counsel further contended that the quantum of compensation awarded by the Tribunal is meager and disproportionate to the nature and gravity of the injuries sustained by the claimant. The compensation awarded is not in conformity with the well-settled legal principles laid down by the Hon''ble Apex Court in the case of Rajesh and Others v. Rajbir Singh and Others (2013)9 SCC 54. Thus, he seeks for enhancement of compensation confirming the liability on the Insurance Company to satisfy the award.

6. Heard the learned Counsel for the parties and perused the material on record.

7. It is discerned that the deceased was travelling as an occupant/inmate in a private Car bearing Registration No. KA 35/M 1431 duly insured with the Insurer herein. Indisputably, the policy issued was a "private car liability only policy" by the Insurer. The said policy discloses that a sum of Rs. 800 was collected as an additional premium by the Insurer to cover the risk of third parties. Based on the same, the Tribunal fastened the liability on the Insurer to satisfy the award.

8. Now the point that arises for consideration in these appeals is:

"Whether the occupant/inmate of a private car is a third party and the risk of the said third party whether is covered under the Insurance Policy at Ex. R. 1?"

9. To answer this point, it is axiomatic to refer to the judgments holding the field on this issue. The learned Counsel for the claimant has placed much emphasis on the judgment of Jahur Begaum''s case *supra*, to contend that the Insurer is liable to make the payment quantified by the Tribunal. The said judgment was rendered by the Division Bench of this Court placing reliance on the judgment of New India Assurance Company v. Satpal Singh and Others AIR 2000 SC 235. The view expressed in Satpal Singh''s case has been specifically over ruled in the subsequent judgment of the Hon''ble Apex Court in New India Assurance Company Limited v. Asha Rani (2003)2 SCC 223 and it is held that the judgment in Satpal Singh''s case (*supra*) had been incorrectly decided and that the Insurer will not be liable to pay compensation in terms of Section 147 of the 1988 Act. Thus, the said judgment will not be of any assistance to the claimant.

10. In the case of Faqir Chand *supra*, it was held that the expression "third party" not being defined in Section 147, a contract of Insurance having two

parties to it, the Insurer the insured, only these contracting parties of the contract of insurance and they, therefore, can be called as the first party and the second party. Any party, therefore which is not a contracting party to Insurance policy will automatically be referred to and called as a third party. This judgment was rendered by the Hon''ble High Court of Jammu and Kashmir on 25-4-1994. Subsequent to that, there is sea change in the law relating to the expression "third party" as enumerated in Chapter XI of the Act, more specifically the judgment of the Hon''ble Apex Court in the case of Asha Rani supra. Yet another judgment of the Hon''ble Apex Court referred to by the claimant in the case of Guru Govekar supra, was rendered on 6-5-1988 by the Bench of two Hon''ble Judges in the context of Sections 92-A, 94,95 and 96 of the MV Act, 1939, whereas in Asha Rani's case, the judgment is rendered by the Bench of three Hon''ble Judges particularly, considering the provisions of the New Act of 1988. In such circumstances, these judgments also would not be of any help to the claimant.

11. In the case of Mahadev Pandurang Patil supra, the Division Bench of this Court has categorically held that the occupants/passengers/inmates of a private vehicle do not fall within the definition of the words "third party". The reason is Section 147 of the Act does not require a policy to cover the risk to passengers who are not carried for hire or reward. Therefore, the legal obligation arising under Section 147 of the Act cannot be extended to an injury or death of the owner of the vehicle, passengers in such private vehicle. The Hon''ble Apex Court in the case of National Insurance Company Limited v. Balakrishnan and Another, 2013 ACJ 199 (SC) has held that third party risk of an occupant of a private car is not covered under an Act policy. In the case of Lakshmi supra, the Hon''ble Apex Court placing reliance on Asha Rani's case and Tilak Singh's case observed that Circular of Tariff Advisory Committee which states that standard form for motorcycle should cover liability to pillion passengers is applicable only in case of comprehensive policy. In the case of Act policy, the Insurer owed no liability and it did not cover the risk of the occupant i.e., the pillion rider.

12. In Sadanand Mukhi's case, the Hon''ble Apex Court has held that by taking an "Act Policy" owner of a vehicle fulfils his statutory obligation as contained in Section 147 of the Act. If it is contractual, liability of Insurer extends to the risk covered by the Policy of Insurance. For additional risk to be covered, additional premium has to be paid. Thus, it is held that Act provides for two types of Insurance; one is statutory and the other contractual in nature.

13. In view of the judgments referred to above, it is manifestly clear that the occupant/inmate of a private car is not a third party. The additional premium paid at Rs. 800/- to cover the risk of the third parties cannot be held to cover the risk of inmates/occupants. It is not a case of additional premium being collected to cover the risk of inmates along with third parties. It is only in a contractual liability, the risk of the inmates/occupants of the private car are covered. As such, the arguments advanced at the hands of the learned Counsel for the

claimant requires to be negated and accordingly the impugned judgment and order is modified absolving the Insurance Company from the liability and fastening the liability on the registered owner of the vehicle/respondent 2 herein.

14. As regards the quantum of compensation, the claim petition was filed by the son of the deceased under Section 163-A of the Act. Section 163-A of the Act is based on the prestructured formula. The compensation requires to be awarded based on the Second Schedule read with Section 163-A of the Act. The Second Schedule to the Act contemplates a sum of Rs. 2,000/- towards funeral expenses, Rs. 5,000/- towards loss of consortium and Rs. 2,500 towards loss of estate. If the same is considered, the compensation now awarded by the Tribunal towards the loss of dependency of Rs. 3,36,000/- totalling amount to Rs. 3,66,000/- cannot be considered as inadequate. No ground made out by the claimant for enhancement of compensation. Hence, the following:

ORDER

(i) M.F.A. No. 21043 of 2011 is allowed.

(ii) M.F.A. No. 20275 of 2011 is dismissed.

(iii) The claimant shall be entitled to total compensation of Rs. 3,66,000/- with interest at the rate of 8% p.a. from the date of petition till the date of deposit.

(iv) Registered owner of the vehicle bearing Registration No. KA-35/M-1431 shall be liable to pay the compensation amount.

(v) The liability foisted on the Insurance Company is set aside.

(vi) The amount deposited by the Insurer shall be refunded to the Insurance Company.