
(2013) 05 RAJ CK 0149

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 185 of 2012

M/s. Assam Bombay Carrier

APPELLANT

Vs

Smt. Geeta Devi and Others

RESPONDENT

Date of Decision : 07-05-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 147, 147(1), 147(1)(b)(i), 173

Citation : (2014) ACJ 1312 : (2013) 3 CDR 1583 : (2013) 3 RLW 2281

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Vipul Singhvi, for the Appellant; Roshan Lal, for the respondent Nos. 1 to 5 and Mr. Sunil A. Vyas, for the respondent No. 6, for the Respondent

Final Decision : Allowed

Judgement

Arun Bhansali, J.—These appeals u/s 173 of the Motor Vehicles Act, 1988 ("the Act") have been preferred by the appellant-owner against the interim award dated 22.12.2011 passed by the Motor Accident Claims Tribunal, Parbatsar ("the Tribunal") u/s 140 of the Act, whereby the Tribunal on coming to the conclusion that the accident had not occurred at a "public place" exonerated the insurance company and held the appellant-owner and driver Khurshid Khan liable to pay the compensation on the principle of no fault. The brief facts of the case are that on 20.3.2011, one Roopa Ram had gone to his relative Mewa Ram's house to greet him on Holi when at around 2:45 p.m., a Truck Tractor No. RJ-05-GA-5761, which was plying on the mega highway road from Manglana, the driver of the same lost control and the uncontrolled vehicle struck, the said Mewa Ram and Roopa Ram by entering the house of Mewa Ram by colliding with and breaking the gate of the chowk of the house which resulted in the instantaneous death of both Roopa Ram and Mewa Ram and another relative Bhola Ram received injuries.

2. Two claim applications being Civil Misc. Case No. 40/2011 (Smt. Geeta Devi & Ors. v. M/s. Assam Bombay Carrier & Ors. was filed by the legal representatives

of Mewa Ram and Civil Misc. Case No. 41/2011 (Smt. Jhuma Devi & Ors. v. M/s. Assam Bombay Carrier & Ors. was filed by the legal representatives of Roopa Ram seeking compensation for untimely death of Mewa Ram and Roopa Ram respectively against the driver, owner and insurance company of the truck trailer.

3. Alongwith the claim petitions, applications u/s 140 of the Act for award of compensation on the principle of no fault were also filed.

4. While deciding the said applications u/s 140 of the Act, the Tribunal vide impugned order dated 22.12.2011 in both the cases came to the conclusion that the claimants were entitled for compensation of Rs. 50,000/- and on the issue relating to liability to pay, it held that though the vehicle, at the time of accident, was insured with the respondent insurance company but as per provisions of Section 147(1)(b)(i), the insurance company is liable only in a case where the accident arises out of the use of the vehicle in a public place and as per the averments of the claimants the accident has taken place inside the house of Mewa Ram, the accident had not occurred at public place and therefore, the insurance company was not liable.

5. It was contended by learned counsel for the appellant that the order impugned passed by the Tribunal is ex-facie against the express provisions of the Act and the law laid down by various courts and as such, the order impugned deserves to be quashed and set-aside.

6. Learned counsel relied on the explanation to Section 147(1) of the Act and submitted that as at the relevant time, the trailer was plying on the mega highway; was being driven rashly and negligently by the driver and as the act or omission which led to the accident occurred in a public place, the insurance company was liable and the Tribunal fail in error in exonerating the insurance company.

7. It was further submitted that a private place used with permission or without permission would amount to a public place and reliance was placed on the Full Bench judgment of Madras High Court in United India Insurance Co. Ltd. Vs. Parvathi Devi and Others,

8. Opposing the contentions raised by learned counsel for the appellant, the learned counsel for the insurance company submitted that house of Mewa Ram cannot be termed as a public place so as to impose liability on the insurance company and the Tribunal has rightly exonerated the insurance company from payment of compensation u/s 140 of the Act.

9. Learned counsel appearing for the claimants supported the contentions of learned counsel for the appellant.

10. I have considered the rival submissions made by the learned counsel at the Bar.

11. It would be appropriate to notice the averments made in the claim petition

by the claimants regarding the brief description of the accident, which reads as under:-

12. A bare reading of the above would reveal that it was the specific case of the claimants that the trailer was plying on the mega highway road from Manglana, which was being driven at a very fast speed, rashly and negligently by its driver, who lost control and the trailer broke the gate of chowk of Mewa Ram's house and crushed Mewa Ram and Roopa Ram, who died on the spot and another relative Bhola Ram received injuries.

13. From the said averments, it is clear that the offending vehicle at the relevant time was plying on the mega highway and as the driver lost control, the same went off the road and collided with the house of Mewa Ram abutting the mega highway and went right inside the house and crushed Mewa Ram and Roopa Ram, who were sitting there.

14. The Tribunal while deciding the application observed thus:-

15. It would be relevant to notice the relevant provisions of the Act "Public place" has been defined u/s 2(34) of the Act, which reads thus:-

Section 2(34): "public place" means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage;

16. The above definition provides that road, street, way or "other place" to which the public have a right of excess would mean public place. The said provision does not qualify that a right of excess to the other place should be controlled, uncontrolled or regulated and therefore, the fact that a person is present at the other place and met with an accident involving a motor vehicle, the same would necessarily be a public place.

17. Further Section 147 of the Act, which deals with requirements of policies and limits of liability, in so far as relevant to the aspect of public place reads thus:-

Section 147. Requirements of policies and limits of liability.-(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-

(a)-is issued by a person who is an authorised insurer; and

(b)-insurers the person or classes of persons specified in the policy to the extent specified in subsection (2)-

(i)-against any liability which may be incurred by him in respect of the death of or bodily [injury to any person, including owner of the goods or his authorised representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii)-...

Provided that a policy shall not be required-

(i)-...

(ii)-...

Explanation.-For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

18. The explanation of Section 147(1)(b)(i) quoted above clearly extends the sweep of the term "public place" and provides that the death of any person shall be deemed to have been caused by or to have arisen out of, the use of a motor vehicle in a public place notwithstanding that the person who is dead was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

19. The said provision as noticed above extends the sweep of public place so as to include within it a place which even if not a public place as such, but if the accident occurs on account of any act or omission, which act or omission occurred in a public place, the place where the accident occurred even if a private place would be treated as a public place.

20. Admittedly, in the present case, the offending vehicle was plying on the mega highway which is a public place and the act or omission of driving the vehicle at an excessive speed, rashly and negligently also occurred at the said mega highway which led to the driver losing control on the vehicle and it went down the highway and collided with the house of Mewa Ram and went right inside and killed Mewa Ram and Roopa Ram. As such, in view of the definition of public place as provided in Section 2(34) and more importantly in view of the explanation to Section 147(1)(b)(i) of the Act, it can safely be said that the said accident occurred at a public place and the finding recorded by the Tribunal in ignorance of the explanation and merely relying on Section 147(1)(b)(i) of the Act was clearly erroneous and the same, therefore, deserves to be quashed and set-aside.

21. It may also be noticed that in the present scenario the network of highways whether National or State and Mega Highways are ever increasing and on the said highways on account of quality of the roads and in view of the availability of highly sophisticated and efficient passenger and goods vehicles, the speed of the vehicles is ever increasing. The said highways are dotted with residential houses, road side restaurants, motels, malls, hotels, convenience shops etc. and are frequented by large number of people at any given point of time. If the said places are treated as private places and held to be outside the sweep of public place and consequently from Section 147 of the Act, which provides for

requirements of policies and limits of liability, the sufferers of accidents arising out of the vehicles plying on these highways would be left high and dry only on account of the distinction that the accident occurred on account of a vehicle which was plying on a highway. Such interpretation would be clearly against the object and spirit of the Act. As held by a series of judgments of Hon''ble Supreme Court, the provisions of the Act have to be read and interpreted to advance the object of the Act. Chapters XI and XII of the Act, which deals with insurance of Motor Vehicles against third party risks and Claims Tribunals respectively are essentially meant to safeguard and protect the third parties and provide expeditious relief in case of accidents. In view of the above discussion, the appeals are allowed. The award dated 22.12.2011 passed by the Tribunal is modified to the extent that besides appellant-owner and driver, the respondent New India Assurance Company would also be liable for payment of compensation as awarded by the said award. The amount awarded be paid to the claimants by the insurance company within a period of one month from the date of this judgment. No costs.