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(2008) 02 DEL CK 0174

In the Delhi High Court

Case No : MAC 183 of 2006

National Insurance Co. APPELLANT

Vs

Mohd. Qaiyum and Others RESPONDENT

Date of Decision : 28-02-2008

Acts Referred:
Motor Vehicles Act, 1988 — Section 142, 147, 147(1), 149(2)

Citation : (2008) 02 DEL CK 0174

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : L.K. Tyagi, for the Appellant; J.S. Kanwar, for Respondents 1 and 2, Anjani Kumar, for the Respondent

Judgement

Kailash Gambhir, J.—The present appeal arises out of the award dated 19.01.2006 vide which the tribunal awarded compensation to the tune of Rs. 2,40,000/- along with interest @ 7% per annum.

2. The brief facts of the case inter-alia are that on 14.1.2003 the deceased was going to Turkman Gate from Kanchanpuri by the vehicle bearing registration No. HR 38-E-8546, when the said vehicle reached near Sauchalya 4, Tourist Camp, JLN Marg, Darya Ganj, the driver of the said vehicle who was driving the vehicle rashly and negligently all of a sudden applied brake due to that the vehicle got disbalanced and the deceased fell down on the road and received injuries. The deceased was rushed to LNJP Hospital where he was declared dead.

3. A short controversy arises in the present appeal as to whether the appellant insurance company has no liability whatsoever to pay the compensation amount as admittedly the offending vehicle was carrying a gratuitous passenger. The contention of the counsel for the appellant is that carrying gratuitous passenger in said commercial vehicle was clearly in violation of the terms and conditions of the policy as well as against the statutory provisions as contemplated u/s 149(2) of the Motor Vehicles Act. In support of his arguments counsel for the appellant has placed reliance on the judgment of the Apex Court in National Insurance Co.

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Ltd. Vs. Bommithi Subbhayamma and Others, .

4. Per contra, Mr. J.S. Kanwar, counsel for the respondent has placed reliance on the judgment of the Apex Court in New India Assurance Co. Ltd. Vs. Asha Rani and Others, to contend that in such like cases the insurance company can be given the recovery rights to ultimately claim the compensation amount from the owner of the offending vehicle.

5. I have heard learned Counsel for the parties and have perused the record.

6. The Apex Court in Bommithi Sabbhayenna''s case (supra) has also discussed the decision in Asha Rani''s case (supra) and opined that the insurance company has no liability to pay the compensation amount due to the said breach on the part of the insured whose commercial vehicle carried the gratuitous passenger and the claimants are only entitled to claim the compensation from the tortfeasor i.e. owner of the offending vehicle.

7. Relevant paras of Bommithi Sabbhayenna''s case (supra) is reproduced as under:

8. The question again came up for consideration before a 3-Judge Bench of this Court, of which we are members, in National Insurance Co. Ltd. v. Baljit Kaur and Ors., wherein upon considering the effect of amendment carried out in Section 147 of the Motor Vehicles Act, 1988 by Motor Vehicles (Amendment) Act, 1994, it was opined:

By reason of the 1994 Amendment what was added is "including the owner of the goods or his authorised representative carried in the vehicle". The liability of the owner of the vehicle to insure it compulsorily, thus, by reason of the aforementioned amendment included only the owner of the goods or his authorised representative carried in the vehicle besides the third parties. The intention of the Parliament, Therefore, could not have been that the words ''any person'' occurring in Section 147 would cover all persons who were traveling in a goods carriage in any capacity whatsoever. If such was the intention there was no necessity of the Parliament to carry out an amendment inasmuch as expression ''any person'' contained in Sub-clause (i) of Clause (b) of Sub-section (1) of Section 147 would have included the owner of the goods or his authorised representative besides the passengers who are gratuitous or otherwise.

The observations made in this connection by the Court in Asha Rani case (supra) to which one of us, Sinha, J, was a party, however, bear repetition :

26. In view of the changes in the relevant provisions in the 1988 Act vis-a-vis the 1939 Act, we are of the opinion that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e. "a third party". Keeping in view the provisions of the 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger traveling in a goods vehicle, the insurers would not be liable therefore.

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In Asha Rani (supra) it has been noticed that Sub-clause (i) of Clause (b) of Sub-section (1) of Section 147 of the 1988 Act speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. Furthermore, an owner of a passenger-carrying vehicle must pay premium for covering the risks of the passengers traveling in the vehicle. The premium in view of the 1994 Amendment would only cover a third party as also the owner of the goods for his authorised representative and not any passenger carried in a goods vehicle whether for hire or reward or otherwise.

It is, Therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to persons other than the owner of the goods or his authorized representative remains the same. Although the owner of the goods or his authorized representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor any premium was paid to the extent of the benefit of insurance to such category of people.

9. The same view was reiterated in National Insurance Co. Ltd. Vs. Challa Bharathamma and Others, ; Sri Pramod Kumar Agrawal and Another Vs. Smt. Mushtari Begum and Others, and also in National Insurance Co. Ltd. Vs. V. Chinnamma and Others, .

10. In view of the aforementioned authoritative pronouncements of this Court, the impugned judgment of the High Court cannot be sustained which is set aside accordingly. This Appeal is allowed. We, however, make it clear that claimants-respondents will be entitled to recover the amount of compensation granted in their favor by the Motor Vehicle Accidents Claims Tribunal from the owner of the vehicle. No costs.

8. The issue involved in the present appeal is no more rest integra as the Apex Court has taken a view that Section 142 of the Motor Vehicles Act does not envisage coverage of risk of gratuitous passenger and Therefore, to carry a gratuitous passenger is clearly in violation of terms and conditions of the policy on the part of the owner, and consequently no liability to pay the compensation can be fastened on the insurance company. In such like cases even the recovery rights cannot be given as the insurance company is completely absolved from any liability to pay the compensation amount.

9. In the light of the aforesaid discussion, the present appeal is allowed. The impugned award dated 19.1.2006, whereby the Tribunal has given directions to the appellant insurance company to first pay the compensation amount and then to recover the same from the insured is set aside. The appellant insurance company shall have no liability to even pay the compensation amount at the first

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instance as directed by the Tribunal. However, respondents claimants shall be at liberty to claim the award amount from the owner of the offending vehicle by initiating appropriate execution proceedings against the insured owner of the offending vehicle.

10. The amount deposited by the appellant in terms of the direction of this Court vide order dated 13.3.2006 be released in favor of the appellant.

11. With these directions, the appeal stands disposed of.

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