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(2015) 09 RAJ CK 0085

In the Rajasthan High Court

Case No : Civil Misc. Appeal Nos. 29, 33, 34, 35, 36, 37, 38, 39, 40, 379/2003, 517, 375, 387, 435, 436 and 691/2000

National Insurance Co. Ltd. and Others APPELLANT

Vs

Dhanna and Others RESPONDENT

Date of Decision : 18-09-2015

Acts Referred:
Motor Vehicles Act, 1988 — Section 147, 147(1), 46, 95(1)

Citation : (2015) 09 RAJ CK 0085

Hon'ble Judges : Vineet Kothari, J.

Bench : Single Bench

Advocate : Jagdish Vyas, for the Appellant; B.K. Vyas, for the Respondent

Final Decision : Allowed

Judgement

Vineet Kothari, J.—The appellant/non-claimant, National Insurance Co. Ltd., Insurer of the offending vehicle has preferred the present misc. appeals, assailing the judgment and award dated 22.03.2000 of learned Judge, M.A.C.T., Rajsamand, fastening the liability upon the National Insurance Company Ltd. in terms of Hon''ble Supreme Court judgment in the case of New India Assurance Company Vs. Shri Satpal Singh and Others, , which later on came to be overruled by the Hon''ble Apex Court itself in the case of New India Assurance Co. Ltd. Vs. Asha Rani and Others, , and the claimants have also preferred misc. appeals for enhancement of the compensation on account of unfortunate death of their relatives in the accident in question.

2. The relevant findings of the learned Tribunal in the impugned judgment and award about the accident and on Issue No. 3 fastening the liability to satisfy the award on the non-claimant, National Insurance Co. Ltd., are quoted herein below for ready reference:--

The relevant findings on Issue No. 3 of the learned Tribunal reads as infra:--

"The result is that under the new Act an insurance policy covering third party risk is not required to exclude gratuitous passengers in a vehicle, no matter that the vehicle is of only type or class. Hence, the decisions rendered under the old Act vis-?-vis gratuitous passengers are of no avail while considering the liability of the insurance company in respect of any accident which occurred or would occur after the new Act came into force."

3. It is an admitted position that the decision of the Hon''ble Supreme Court in the case of Satpal Singh (supra) has been overruled by the Hon''ble Apex Court in the case of New India Assurance Co. Ltd. v. Asha Rani & Ors. (supra). The para 9 of the aforesaid judgment is quoted herein below for ready reference:--

"9. In Satpal''s case (supra), the Court assumed that the provisions of Section 95(1) of Motor Vehicles Act, 1939 are identical with Section 147(1) of the Motor Vehicles Act, 1988 as it stood prior to its amendment. But a careful scrutiny of the provisions would make it clear that prior to the amendment of 1994 it was necessary for the insurer to insure against he owner of the goods or his authorised representative being carried in a goods vehicle. On an erroneous impression this Court came to the conclusion that the insurer would be liable to pay compensation in respect of the death or bodily injury caused to either the owner of the goods or his authorised representative when being carried in a goods vehicle the accident occurred. If the Motor Vehicles Amended Act of 1994 is examined, particularly Section 46 of Act 6 of 1991 by which expression ''injury to any person'' in the original Act stood substituted by the expression ''injury to any person including the owner of the goods or his authorised representative carried in the vehicle'' the conclusion is irresistible that prior to the aforesaid Amendment Act of 1994, even if widest interpretation is given to the expression ''to any person'' it will not cover either the owner of the goods or his authorised representative being carried in the vehicle. The objects and reasons of clause 46 also states that it seeks to amend Section 147 to include owner of the goods or his authorised representative carried in the vehicle for the purposes of liability under the Insurance Policy. It is no doubt true that sometimes the legislature amends the law by way of amplification of an inherent position which is there in the statute, but a plaint meaning being given to the words used in the statute, as it stood prior to its amendment of 1994, and as it stands subsequent to its amendment in 1994 and bearing in mind the objects and reasons engrafted in the amended provisions referred to earlier, it is difficult for us to construe that the expression ''including owner of the goods or his authorised representative carried in the vehicle which was added to the pre-existed expression ''injury to any person'' is either clarificatory or amplification of the pre-existing statute. On the other hand it clearly demonstrates that the legislature wanted to bring within the sweep of Section 147 and making it compulsory for the insurer to insure even in case of a goods vehicle, the owner of the goods or his authorised representative being carried in a goods vehicle when that vehicle met with an accident and the owner of the goods or his representative either dies or suffers bodily injury. The judgment of this Court in Satpal''s case therefore must be held to have not been correctly decided and the impugned judgment of the Tribunal

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as well as that of the High Court accordingly are set aside and these appeals are allowed. It is held that the insurer will not be liable for paying compensation to the owner of goods or his authorised representative on being carried in a goods vehicle when that vehicle meets with an accident and the owner of goods or his representative dies or suffers any bodily injury."

4. Later on, in a recent decision, the Hon''ble Supreme Court in the case of National Insurance Company Ltd. Vs. Savitri Devi and Others etc., even held that Insurance Company cannot be asked to first pay such amount of compensation and then recover the same from the owner of the vehicle. The relevant para(s) 8, 12 and 13 of the aforesaid decision are quoted herein below for ready reference:--

"8. After having gone through the award of the Claims Tribunal and the judgment and order passed by the learned Single Judge of the High Court, we are not able to understand as to how it has been found that the appellant Insurance Company can still be held liable to pay the amount of compensation as there has been a categorical finding by both the courts recording that the vehicle in question was insured only as "goods carrying vehicle". The custom of carrying barat in the village on the said truck will not be sufficient to hold the appellant Insurance Company liable to pay the amount of compensation. Admittedly, the appellant Insurance Company would not know unless the accident takes place as to for what purpose the vehicle in question was being used. The terms and conditions of the insurance policy are very clear and categorical and it creates a specific bar on carrying of any passengers, except the employees other than the driver, not exceeding six (6) in number, who should also come under the purview of the Workmen''s Compensation Act.

12. In the light of the aforesaid judgments, we have no doubt in our minds that the impugned judgment and order of the learned Single Judge dated 28.7.2005 cannot be sustained. The same is hereby set aside and quashed. No liability can be fastened on the appellant Insurance Company. The appeals of the appellant Insurance Company are allowed to this extent.

13. However, it is clarified that if any amount has already been paid by the insurance company, it shall not be permissible for it to recover the amount from the claimants. It is also clarified that the claimants, in any case, would be entitled to recover the balance amount of the compensation awarded to them vide impugned judgment and order of the learned Single Judge dated 28.7.2005 from the estate of the deceased owner. The appeals are allowed to this extent. The award and the finding of the learned Single Judge fastening the liability on the appellant Insurance Company is set aside. The parties to bear their own costs."

5. In view of aforesaid settled legal position, as far as Issue No. 3 which has been decided by the learned Tribunal against the appellant/non-claimant, National Insurance Company Ltd. fastening the liability to satisfy the award,

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cannot be sustained and the misc. appeals of the appellant, National Insurance Co. Ltd. are liable to be allowed, the same are accordingly allowed. However, the amount of compensation, if already paid by the Insurer is already disbursed to the claimants by now, the same shall be recoverable from the owner of the vehicle, Truck No. GJ-02-T-7591, namely, Sh. Bholabhai S/o. Sh. Gaber Bhai or his estate. If the amount so deposited by the appellant/non-claimant, National Insurance Company Ltd., is not disbursed so far to the claimants, the same shall not be disbursed to the claimants and the the amount shall be refunded back to the National Insurance Company Ltd. with accumulated interest, if any, in accordance with law. The claimants, however, will at liberty to recover the amount of compensation from the aforesaid owner of the offending vehicle.

6. Now coming to the appeals of the claimants for enhancement of the misc. appeals filed by the claimants, the same are dealt with separately herein below:--

7. S.B.C.M.A. No. 517/2000 - Smt. Durga Devi & Ors. v. Santosh Kumar & Ors. (Motor Accident Claim Case No. 320/1998):-- The relevant findings of the learned Tribunal in the said case are quoted herein below for ready reference:--

8. Considering the submissions made by the learned counsels made at the Bar, the multiplier of 10 applied by the learned Tribunal appears to be on lower side as per Second schedule looking to the age of the deceased, who at the relevant point of time in 1992, was 50 years of age and, therefore, multiplier of 11 should have been applied and, therefore, it is considered to be a fit case to award a lump sum amount of enhancement of Rs. 25,000/- in addition to what has already been awarded by the learned Tribunal. The judgment and award passed by the learned Tribunal dated 22.03.2000 shall stand modified accordingly. The said enhanced sum of Rs. 25,000/- (Rupees Twenty Five Thousand only) be paid to the claimants by the owner of the offence vehicle and the same shall also bear the interest @ 9% per annum from the date of filing of the claim petition till the date of payment. The Misc. Appeal No. 517/2000 is, accordingly, allowed. No costs.

9. S.B.C.M.A. No. 375/2000 - Jagga & Ors. v. Santosh Kumar & Ors. (Motor Accident Claim Case No. 276/1998):-- The relevant findings of the learned Tribunal in the said case are quoted herein below for ready reference:--

10. Considering the submissions made by the learned counsel for the claimants, it is not a fit case for enhancement and, therefore, the present Misc. Appeal No. 375/2000 - Jagga & Ors. v. Santosh Kumar & Ors. deserves to be dismissed, since at the time of accident the deceased, namely, Rameshwar @ Ramesh, was 40 years of age but the claimants are only his father, Jagga (who at the time of filing the claim petition was 70 years) and the mother of the deceased, namely, Smt. Pemli, was 55 years of age and the daughter of the deceased (who was 2 years of age at the time of accident, who never approached this Court after attaining majority by now. The other claim petition was also filed, but the wife of the deceased was not impleaded as party. Therefore, no latest information is on

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record as to whether any claimants are still available to be given the enhanced amount of compensation on account of death of Sh. Rameshwar @ Ramesh. The compensation awarded by the learned Tribunal was otherwise reasonable and adequate and, therefore, the same does not all for any enhancement at this stage. Accordingly, the Misc. Appeal No. 375/2000 is dismissed. The daughter of deceased will be at liberty to file fresh appeal even now, giving the current status of the legal representatives of deceased and this dismissal of appeal will not be a res-judicata for her.

11. S.B.C.M.A. No. 387/2000 - Khema & Anr. v. Santosh Kumar & Ors. (Motor Accident Claim Case No. 277/1998):-- The relevant findings of the learned Tribunal in the said case are quoted herein below for ready reference:--

12. Considering the submissions made by the learned counsel for the claimants it is not a fit case for enhancement and, therefore, the present Misc. Appeal No. 377/2000 - Khema & Anr. v. Santosh Kumar & Ors. deserves to be dismissed. The deceased child, namely, Heera was only 10 years of age and the compensation awarded by the learned Tribunal to tune of Rs. 75,000/- appears to be just and fair looking to the date of accident, which is of the year 1992, therefore, the same does not call for any enhancement at this stage, particularly when current status of old aged parents is not before this Court. Accordingly, the Misc. Appeal No. 377/2000, is dismissed.

13. S.B.C.M.A. No. 435/2000 - Lala & Anr. v. Santosh Kumar & Ors. (Motor Accident Claim Case No. 289/1998):-- The relevant findings of the learned Tribunal in the said case are quoted herein below for ready reference:--

14. Considering the submissions made by the learned counsel for the claimants, it is not a fit case for enhancement and, therefore, the present Misc. Appeal No. 435/2000 - Lala & Anr. v. Santosh Kumar & Ors. deserves to be dismissed. The deceased child, namely, Kana, was only 10 years of age and the compensation awarded by the learned Tribunal to tune of Rs. 75,000/- appears to be just and fair looking to the date of accident, which is of the year 1992, therefore, the same does not call for any enhancement at this stage. Accordingly, the Misc. Appeal No. 435/2000, is dismissed.

15. S.B.C.M.A. No. 436/2000 - Ratna & Ors. v. Santosh Kumar & Ors. (Motor Accident Claim Case No. 286/1998):-- The relevant findings of the learned Tribunal in the said case are quoted herein below for ready reference:--

16. Deceased, Bhagwana, was 35 years of age at the time of accident and was earning Rs. 2000/- per month by doing labour work per month. After the death of mother of the deceased, there remained two dependents, namely, Bhera (12 years old) and Ms. Chatri (10 years old), both are the son and daughter the deceased who may be major by now and settled in their lives. Considering the submissions made by the learned counsels made at the Bar, it is considered to be a fit case to award a lump sum amount of enhancement of Rs. 25,000/- in addition to what has already been awarded by the learned Tribunal. The

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judgment and award passed by the learned Tribunal dated 22.03.2000 shall stand modified accordingly. The said enhanced sum of Rs. 25,000/- (Rupees Twenty Five Thousand only) be paid to both the claimants in equal share by the owner of the offending vehicle and the same shall also bear the interest @ 9% per annum from the date of filing of the claim petition till the date of payment. The Misc. Appeal No. 436/2000 is, accordingly, allowed. No costs.

17. S.B.C.M.A. No. 691/2000 - Bhera & Anr. v. Santosh Kumar & Ors. (Motor Accident Claim Case No. 284/1998):-- The relevant findings of the learned Tribunal in the said case are quoted herein below for ready reference:--

18. The deceased child, namely, Deeta @ Dalla was 17 years of age. Considering the submissions made by the learned counsels made at the Bar, it is considered to be a fit case to award a lump sum amount of enhancement of Rs. 25,000/- in addition to what has already been awarded by the learned Tribunal. The judgment and award passed by the learned Tribunal dated 22.03.2000 shall stand modified accordingly. The said enhanced sum of Rs. 25,000/- (Rupees Twenty Five Thousand only) be paid to both the claimants in equal share by the owner of the offending vehicle and the same shall also bear the interest @ 9% per annum from the date of filing of the claim petition till the date of payment. The Misc. Appeal No. 691/2000 is, accordingly, allowed. No costs.

A copy of this order be sent to the concerned parties and the concerned Tribunal forthwith.

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