(2021) 02 J&K CK 0071

In the Jammu And Kashmir High Court

Case No : M.A. No. 68 Of 2016

National Insurance Company Limited APPELLANT

Vs

Jamal Master And Others RESPONDENT

Date of Decision : 11-02-2021

Acts Referred:
Motor Vehicles Act, 1988 — Section 146, 147, 166

Citation : (2021) 02 J&K CK 0071

Hon'ble Judges : Vinod Chatterji Koul, J

Bench : Single Bench

Advocate : J.A.Kawoosa, Areeb Kawoosa, Rizwan Ul Zaman

Final Decision : Allowed

Judgement

1. National Insurance Company Limited â?" appellant herein, is aggrieved of and seeks setting-aside of Award dated 4th March 2016, given by Motor

Accident Claims Tribunal, Shopian (â??Tribunalâ? for short) on a Claim Petition, bearing File no.23, titled Jamal Master and another v. Mohd Altaf

Wani and others, on the grounds mentioned in the Appeal.

2. Heard and considered.

3. A claim petition under Section 166 of Motor Vehicles Act, as is discernible from perusal of file, was filed by claimants (respondents 1&2) before

the Tribunal, stating that on 25th March 2010, one Ishwander Singh â?" respondent no.5 herein, who was driving vehicle bearing Registration

no.JK03-5571, and coming to Shopian via Pulwama, on reaching near Drangbal, Pampore, met with an accident while said car struck with an electric

police and deceased received grave heard injuries and succumbed thereto. FIR no.54/2020 in police station Pampore was in this regard registered.

Respondents 4&5 filed their written statement in opposition to claim petition. Appellant Insurance Company also filed its objections, especially insisting

therein that offending vehicle had been insured for third party insurance cover and had not covered passengers (occupants of car) and therefore, in

absence of any contract qua coverage of occupants of car, Insurance Company was not liable to indemnify the insured (owner of vehicle).

4. The Tribunal, in view of pleadings of parties, framed following seven Issues for adjudication:

1) Whether the deceased Nizam-u-Din died at Pampore while being struck by Maruti Car no.JK03/5571 when respondent no.5 was on wheels and

driving vehicle? OPP

2) Whether respondent no.1 is its owner and respondent no.2 is possessory owner of vehicle no.JK03/5571? OPP

3) Whether respondent no.3 was driving vehicle at relevant time when accident occurred due to negligence of driver? OPP

4) In case Issues 1 and 2 are proved in affirmative, whether petitioners are entitled to any compensation, how much and from whom? OPP

5) Whether the petition is not maintainable for want of territorial jurisdiction? OPR4

6) Whether petition is not maintainable as passenger/occupant is not covered under the policy of insurance? OPR4

7) Whether petition merits dismissal as respondent driver was not holding a valid and effective D/L? OPR4

5. Claimants and appellant Insurance company adduced witnesses in support of their respective stand.

6. The Tribunal, while deciding Issue no.4 as regards third party insurance policy, held Insurance Company liable to pay compensation.

7. The case in hand revolves around the question as to whether appellant Insurance Company is liable to indemnify the insured (owner of offending

vehicle) in the event vehicle is covered under third party insurance, or say â??Act Policyâ? only. In this regard submission of learned senior counsel

for appellant Insurance Company is that no doubt Insurance Company had issued policy in respect of offending vehicle, but said policy was an

â??Act Policyâ?, covering only statutory risk under provisions of Motor Vehicles Act, 1988; the risk of passengers or inmates of vehicle was not covered. Therefore, the Tribunal could not have fastened liability on Insurance Company. He has also contended that liability was solely on owner of

offending vehicle in absence of there being any coverage of risk of occupants/ passengers of vehicle in question. In this regard learned senior counsel

appearing for appellant Insurance Company has placed reliance on judgements of the Supreme Court rendered in United India Insurance Co. Ltd

Shimla v. Tilak Singh and others, AIR 2006 SC 1576; Oriental Insurance Co. Ltd. v. Sudhakaran K.V. and others, AIR 2008 SC 2729; New India

Assurance Co. Ltd. v. Bismillah Bai and others, 2009 (5) SCC 112; Manuara Khatun and others v. Rajesh Kr. Singh and others, 2017 (4) SCC 796, to

contend that risk of a pillion rider of a motorcycle as well as inmate of a car is not covered under an Act Policy, and only if an additional premium is

paid, that the risk of such persons are covered. Therefore, he has contended that appellant insurance company may be exonerated of its liability and

the liability may be fastened solely on owner of vehicle that is the insured.

8. Detailed narration of facts and contentions would not call for reiteration. Vehicular death has been established by claimants before the Tribunal.

Offending vehicle was insured with appellant Insurance Company, but it was an â??Act Policyâ? or â??Statutory Policyâ?. It was not what is called

a â??comprehensive policyâ? as no additional premium had been paid to cover risk of occupant of vehicle. Therefore, the Tribunal was not right in

fastening liability to cover risk of occupant/passenger travelling in offending vehicle. Therefore, liability of Insurance Company does not extend to

occupant/passenger of a vehicle, unless requisite premium is paid covering his/ her risk.

9. It may not be out of place to mention here that contract of insurance of a motor vehicle is governed by provisions of Insurance Act. The terms of

policy as also quantum of premium payable for insuring vehicle in question depends not only upon carrying capacity of vehicle but also on purpose for

which same was being used and the extent of risk covered thereby. By taking an â??act policyâ?, owner of a vehicle fulfils his statutory obligation as

contained in Section 147 of the Motor Vehicles Act. The liability of insurer is either statutory or contractual. If it is contractual, its liability extends to

the risk covered by policy of insurance. If additional risks are sought to be covered, additional premium has to be paid. If contention of learned counsel for respondents is to be accepted, then to a large extent, the provisions of the Insurance Act become otiose. By reason of such an interpretation

insurer would be liable to cover risk of not only a third party but also others who would not otherwise come within purview thereof. It is one thing to

say that life is uncertain and the same is required to be covered, but it is another thing to say that we must read a statute so as to grant relief to a

person not contemplated by the Act. It is not for the court, unless a statute is found to be unconstitutional, to consider rationality thereof. Even the

provisions of the Act read with the provisions of the Insurance Act appear to be wholly rational. [See: New India Assurance Company Limited v.

Sadanand Mukhi and others (2009) 2 SCC 417]

10. Only because driving of a motor vehicle may cause accident involving loss of life and property not only of a third party but also owner of vehicle

and insured vehicle itself, different provisions have been made in the Insurance Act as also the Act laying down different types of insurance policies.

The amount of premium required to be paid for each of the policy is governed by the Insurance Act. A statutory regulatory authority fixes the norms

and guidelines.

11. In Dhanraj v. New India Assurance Co. Ltd & anr. (2004) 8 SCC 553, the Supreme Court observed as under:

â??8.Thus, an insurance policy covers the liability incurred by insured in respect of death of or bodily injury to any person (including an owner of the

goods or his authorized 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. Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle.

â?¦

10. In this case, it has not been shown that the policy covered any risk for injury to the owner himself. We are unable to accept the contention that the

premium of Rs.4,989/- paid under the heading â??Own damageâ? is for covering liability towards personal injury. Under the heading â??Own

damageâ?, the words â??premium on vehicle and non-electrical accessoriesâ? appear. It is thus clear that this premium is towards damage to the

vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim provided a personal accident insurance has been taken out.

In this case, there is no such insurance.â??

12. Even otherwise, insurance company cannot be held liable to pay compensation to claimants in view of decision of the Supreme Court in Oriental

Insurance Company Limited v. Sudhakaran K.V. & Ors. (2008) 7 SCC 428, in which the Supreme Court opined:

â??11. This Court in a catena of decisions has categorically held that a gratuitous passenger in a goods carriage would not be covered by a contract

of insurance entered into by and between the insurer and the owner of the vehicle in terms of Section 147 of the Act. [See New India Assurance Co.

Ltd. v. Asha Rani (2003) 2 SCC 223]

12. A Division Bench of this Court in United India Insurance Co. Ltd., Shimla v. Tilak Singh and Ors. extended the said principle to all other

categories of vehicles also, stating as under:

In our view, although the observations made in Asha Rani case were in connection with carrying passengers in a goods vehicle, the same would apply

with equal force to gratuitous passengers in any other vehicle also.

Thus, we must uphold the contention of the appellant Insurance Company that it owed no liability towards the injuries suffered by the deceased

Rajinder Singh who was a pillion rider, as the insurance policy was a statutory policy, and hence it did not cover the risk of death of or bodily injury to

a gratuitous passenger.â??

13. It was held:

â??14. The provisions of the Act and, in particular, Section 147 of the Act were enacted for the purpose of enforcing the principles of social justice.

It, however, must be kept confined to a third-party risk. A contract of insurance which is not statutory in nature should be construed like any other

contract.

15. We have noticed the terms of the contract of insurance. It was entered into for the purpose of covering the third-party risk and not the risk of the

owner or a pillion rider. An exception in the contract of insurance has been made, i.e., by covering the risk of the driver of the vehicle. The deceased

was, indisputably, not the driver of the vehicle. 16.The contract of insurance did not cover the owner of the vehicle, certainly not the pillion rider. The

deceased was travelling as a passenger, stricto sensu may not be as a gratuitous passenger as in a given case she may not be a member of the family,

a friend or other relative. In the sense of the term which is used in common parlance, she might not be even a passenger.

In view of the terms of the contract of insurance, however, she would not be covered thereby.â??

14. The Supreme Court in National Insurance Co. Ltd. Vs. Balakrishnan and another, 2013 ACJ 199, analysed Section 147 of the Act and on

considering the case of Tilak Singh case (supra) and other decisions, such as Sudhakaran K.V. as well as Sadanand Mukhi, referred to above, has

held that it is quite vivid that the Bench had made a distinction between the â??Act Policyâ?? and â??comprehensive policy/ packageâ??. The Supreme

Court concurred with the said distinction and said that crux of the matter was what would be liability of insurer if policy was a

â??comprehensive/package policyâ?. The Supreme Court said that it was conscious of the fact that the matter was referred to a larger Bench, but,

as was evident, the Bench also observed that it would depend upon the view of Tariff Advisory Committee pertaining to enforcement of its decision to

cover the liability of an occupant in a vehicle in a â??comprehensive/package policyâ?, regard being had to the contract of insurance. Pursuant to the

said observations there is distinction between an â??Act Policyâ? and a â??Comprehensive Policyâ? or â??Package Policyâ?. At paragraph 21 it

has observed as under:

â??21. In view of the aforesaid factual position, there is no scintilla of doubt that a â??comprehensive/package policyâ? would cover the liability of

the insurer for payment of compensation for the occupant in a car. There is no cavil that an â??Act Policyâ? stands on a different footing from a

â??Comprehensive/Package Policyâ?. As the circulars have made the position very clear and the IRDA, which is presently the statutory authority,

has commanded the insurance companies stating that a â??Comprehensive/ Package Policyâ? covers the liability, there cannot be any dispute in that

regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the â??Act Policyâ?? which admittedly cannot cover a

third-party risk of an occupant in a car. But, if the policy is a â??Comprehensive/ Package Policyâ??, the liability would be covered. These aspects

were not noticed in the case of Bhagyalakshmi (2009) 7 SCC 148 and, therefore, the matter was referred to a larger Bench. We are disposed to think

that there is no necessity to refer the present matter to a larger Bench as the IRDA, which is presently the statutory authority, has clarified the

position by issuing circulars which have been reproduced in the judgment by Delhi High Court and we have also reproduced the same.â??

15. The Supreme Court remanded the matter to the Tribunal to give a finding as to whether it was an â??Act Policyâ? or a â??Comprehensive

Policyâ??.

16. It may be mentioned here that â??statutory insuranceâ?? does not cover injuries suffered by occupants of vehicle who are not carried for hire or

reward and insurer cannot be held liable under the Act. The occupants / passengers / inmates of a private vehicle do not fall within definition of the

word â??third partyâ?. Therefore, legal obligation arising under Section 147 of the Motor Vehicles Act, cannot be extended to an injury or death of

owner of vehicles, passengers in such private vehicle or a pillion rider in the case of a two-wheeler. Gratuitous passengers who are not carried for hire

or reward in a vehicle other than a public service vehicle, cannot be construed as third parties.

17. It is trite law that if risk of an occupant of a car, inmate of a vehicle or passenger in a private car, is to be covered, additional premium has to be

paid. If no additional premium is paid, their risk is not covered. The statutory liability under Section 146 and 147 of the Act has to be read with the

terms of the insurance policy issued under Section 146 of the Act. But that does not prevent an insurer from entering into a contract of insurance

covering a risk wider than minimum requirement of the statute, covering risk to gratuitous passengers as well. A third-party policy does not cover

liability to gratuitous passengers who are not carried for hire or reward. If a liability other than the limited liability provided for under the Act is to be

enhanced under an insurance policy, additional premium is required to be paid. The liability is restricted to the liability arising out of the statutory

requirements under Section 146 only.

18. The Supreme Court has, thus, clearly held and reaffirmed that gratuitous passenger in a vehicle would not be entitled to seek compensation under

the policy unless specific premium is paid in this behalf.

19. In view of authoritative pronouncements of the Apex Court, holding that an

occupant /inmate /passenger in a private car, is not a third party, the

finding recorded by the Tribunal, in the present case, that insurance policy issued covers the risk of such persons and therefore the insurance company

is liable to pay compensation, is illegal and contrary to the law declared by the Apex Court. In fact, perusal of the insurance policy, which is in the

Tribunal Record, reveals that no additional premium has been received by the insurance company to cover the risk of such persons, viz. gratuitous

passengers. It is clear from terminology used in the policy which fact is not in dispute.

20. In the facts of present case, I am satisfied, as insured has not paid additional premium and insurance company has not collected any additional

premium, the risk of occupants of offending vehicle was not covered. Therefore, liability foisted on the insurance company cannot be sustained and

accordingly, impugned Award is liable to be set-aside.

21. For the reasons discussed above, the Appeal is allowed and appellant Insurance Company is exonerated of liability to pay compensation and to this

extent, impugned Award dated 4th March 2016, given by Motor Accident Claims Tribunal, Shopian on a Claim Petition, bearing File no.23, titled Jamal

Master and another v. Mohd Altaf Wani and others, is set-aside. And as a corollary thereof, owner of offending vehicle is held liable to satisfy the

Award.

22. Record of the Tribunal along with copy of this judgement be sent down.