Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 08/09/2026

(2008) 03 AHC CK 0097

In the Allahabad High Court

Case No : First Appeal From Order No. 2078 of 2007

National Insurance Company Ltd. APPELLANT

Vs

Kusum and Others RESPONDENT

Date of Decision : 03-03-2008

Acts Referred:
Motor Vehicles Act, 1988 — Section 147, 168

Citation : (2008) 03 AHC CK 0097

Hon'ble Judges : Amitava Lala, J and Shishir Kumar, J

Final Decision : Disposed Of

Judgement

Amitava Lala, J.—This is an appeal of the National Insurance Company Ltd. arising out of the judgment and award dated 28th April, 2007 passed by the concerned Motor Accident Claims Tribunal, Muzaffarnagar.

2. The fact remains that on 16th April, 2007 one Puneet Agrawal while travelling as pillion rider on a scooter No. U.P.1 OB/0188 driven by his friend Sri Sanjay Kumar collided with a truck bearing No. URM3145 and ultimately died. He was friend of Sri Sanjay Kumar who was driving the scooter.

3. A claim petition was filed by the claimants for a sum of Rs. 12, 10, 000/ alongwith interest etc. under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). However, compensation was awarded by the Tribunal only for a sum of Rs. 2, 19, 9000/ to be shared 50% each along with the interest both by the Insurance Companies of the vehicles i.e. scooter insured under National Insurance Company Ltd. and the truck insured under Oriental Insurance Company Ltd.

4. Being aggrieved by and/or dissatisfied with the judgment and award making 50% responsible, the Insurance Company of the scooter i.e. the National Insurance Company Ltd. has preferred this appeal. The contentions of the appellant are that it cannot be said to be party to any contributory negligence, thus, it is not liable to pay even 50% of the awarded amount. No extra premium

was paid by the insured to cover the risk of the pillion rider travelling on the scooter too.

5. However, we find that Sri Sanjay Kumar had deposed before the Tribunal. He was holding a valid licence. Name of the owner of the vehicle is Sri Mahesh Kumar. The premium has been paid to the Insurance Company to cover up the third party risk. Police has filed the charge sheet against the driver of the truck but not the scooter. Necessary application of the appellant under Section 170 of the Act was allowed.

6. In order to conceive upon the facts and circumstances of this case two parts are to be taken into account. Firstly, whether the driver of the scooter was negligent; secondly, whether the appellant/insurance company of the scooter is liable to pay compensation to the pillion rider. According to us, the appellant has to cross the hurdle at first that the scooter which was covered under their Insurance Company was not negligently driven. So far as the question of contributory negligence is concerned, the police record specially the sketch map is required to be seen by the Court before coming to conclusion. We find that such sketch map is Annexure5 to the papers in connection with the appeal. From the sketch map we visualise that there is a clear curb of the road which was facing towards bridge. The scooter was going from left side and the truck in spite of coming from the upper side of the bridge instead of taking left side clearly went straight towards the scooter and collided with it. There was no occasion to come straight to the right side of the road from the bridge leaving aside huge area on the left side of the road. The charge sheet has been made by the police against the truck driver and truck owner only. Moreover, sizes of the two vehicles are required to be considered in the case like the same. Therefore, the liability will be fixed upon appreciation of such facts.

7. So far as the second point is concerned, although become incidental in view of the aforesaid observations but there is a necessity of discussion when appellant itself raised the point that the pillion rider, being gratuitous passenger, cannot be entitled to have any compensation in view of the judgment of the Supreme Court reported in JT 2006 (4) SC 280, United India Insurance Co. Ltd. v. Tilak Singh and others.

8. According to us, "gratuitous passenger" is a passenger who occupies the place on grace. It is distinct and different from the passenger who, under normal circumstances, could be said to be passenger of a vehicle. A vehicle is to be seen from various outlooks. Its make is to be noticed. Its availability of accommodation is to be noticed. Its purpose is to be noticed. Then only insurance coverage will ''be noticed. An insurance coverage is depending upon make, accommodation and use of the vehicle. The insurance policy is dependent upon all such things for the purpose of fixing a tariff. However, relevant part of Section 147 of the Act is to be seen for all practical purposes :

"147. Requirements of policies and limits of liability (C) In order to comply with

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/national-insurance-company-ltd-…

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) insures 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 a 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;

9. in New India Assurance Co. v. Satpal Singh, (2000) 1 SCC 237:2000 SCC (Cri) 130, it was held that any person includes gratuitous passenger. However, in 2003 SCC(Cri) 493, New India Assurance Co. Ltd. v. Asha Rani and others, it was held that an owner of the passengercarrying vehicle must pay premium for covering the risks of the passengers. 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. But if the ratio of Satpai Singh''(supra) is taken to its logical conclusion, no additional premium is required to be paid to cover the enhanced liability. However, in Tilak Singh (supra) the Supreme Court extended the scope of Asha Rani (supra) from goods vehicle to transport vehicle. In doing so, the Supreme Court has discarded the coverage of a pillion rider. As a result whereof several appeals are being filed by the different insurance companies. Therefore, it requires necessary clarification. The Supreme Court has considered this issue in absence of appropriate insurance coverage. Therefore, it is to be seen whether a pillion rider, as a matter of course, can be called as gratuitous passenger or not. In paragraph 2 of Tilak Singh (supra) the Supreme Court held that for covering liability of pillion passengers endorsement of IMT 70 (As used therein possibly full form would be ''India Motor Tariff/s'') pertaining to accident to unnamed hirer/driver/pillion passenger, is required on the insurance policy, which may be obtained by payment of additional premium. Therefore, cardinal principle is depending upon the word "unnamed" meaning thereby who''s journey is not contemplated. Such observation by no means includes use of the family members or the friends or the persons who are not to be treated as such because one cannot logically expect that a scooter, motor cycle, car or vehicle of such nature will be used by insured without them. Had it been so, the Insurance Companies could not have fixed tariff on the basis of make, accommodation or use of a vehicle. Additional premium has to be in exclusion thereof. Gratuitous passenger is an exception to the regular passenger but not vice versa. We shall be cautious about extension of scope of "gratuitous passenger" otherwise one day will come when regular passenger will become exception and the entire scheme of social and/or beneficial piece of legislation will be frustrated. We have to remember that still today we are living in a developing country having huge population. Mind set of developed country may lead us to commit mistake. Therefore, each case is to be decided on its factual background to maintain the discipline of law in this regard. Hence, if the law is properly analysed with the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/national-insurance-company-ltd-…

guidance of the Supreme Court judgment it will be construed that the unnamed person as such will be construed as gratuitous passenger for which an additional premium is required to be paid to cover up the claim.

10. Moreover, Section 147 of the Act disjoints ''third party'' from the scope and ambit of ''any person'' by the word "or". Therefore, from the plain reading it appears that third party means other than the vehicle or in exclusion thereof in which the deceased or injured travelled. Hence, in this case, the deceased pillion rider is third party from the point of view of the truck. On the other hand as per the India Motor Tariff/s with effect from 30th June, 2002 liability to third parties means "death of or bodily injury to any person including occupants carried in the vehicle (provided such occupants are not carried for hire or reward)............................"

Hence, by no means entitlement of the claim of the claimants can be jeopardized. It is only to be seen whether the claimants will get 100% compensation from the insurer of the truck or 50% from the insurer of the truck and rest from the a insurer of the scooter.

11. Therefore, the appeal is remitted back to the tribunal for consideration of the limited question of liability as expeditiously as possible giving adequate opportunity of hearing to all and without giving unnecessary adjournments,

12. Passing of this order will no way exempt the liability of the other Insurance Company of the truck in paying the rest of amount which was directed to be paid to the claimants pursuant to the order of the Tribunal.

13. Appeal is, accordingly, disposed of at the stage of admission without imposing any costs.

14. The appellant Insurance Company prayed that the statutory deposit of Rs. 25, 000/ made before this Court for preferring this appeal shall be remitted back to the concerned Motor Accidents Claims Tribunal as expeditiously as possible in order to admit with the amount or compensation to be paid to the claimant herein, such prayer is allowed.

Hon''ble Shishir Kumar, J.

I agree.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/national-insurance-company-ltd-…