
(2005) 09 RAJ CK 0049

In the Rajasthan High Court

Case No : Civil Special Appeal No. 168 of 1998

National Insurance Company Ltd.

APPELLANT

Vs

Mahendra Singh and Another

RESPONDENT

Date of Decision : 30-09-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 147(1), 147(2)

Citation : (2006) 1 RCR(Civil) 293 : (2005) 4 RLW 2863 : (2006) 1 WLC 40

Hon'ble Judges : V.K. Bali, J; R.S. Chauhan, J

Bench : Division Bench

Advocate : J.K. Singh, for the Appellant; Virendra Agrawal and Ankur Mathur, for the Respondent

Judgement

R.S. Chauhan, J.—A police constable riding as a pillion rider lost his right leg in an accident between a scooter and jeep. He had filed a claim petition before the Motor Accident Claims Tribunal, Jaipur City, (for short "the Tribunal"). However vide judgment dated 26.5.95, the learned Tribunal dismissed the claim petition. Therefore, challenging the said order, he had filed a writ petition. Vide judgment dated 6.10.98, the Hon'ble High Court partly allowed the writ petition. As both the petitioners and the Insurance Company were equally aggrieved by the judgment dated 6.10.98, therefore, cross appeals have been filed by both the parties before us. Since cross appeal arise out of the same impugned judgment, therefore both the appeals are being decided by this common judgment.

2. On 22.4.91, while Bashir was driving a scooter, the petitioner, Mahendra Singh, was riding as the pillion rider. Allegedly Bashir was driving the scooter in a rash and negligent manner. Around 7.30 PM, the said scooter met with a head on collision with a jeep. Resultantly, the petitioner had to undergo the amputation below the knee of his right leg. Subsequently, the petitioner filed a claim petition before the learned Tribunal wherein he claimed a compensation to the tune of Rs. 8,86,000/-. In its written statement, the Insurance Company contended that firstly Bashir did not have a valid licence. Secondly, although the driver of the

jeep, owner of the jeep and the Insurance Company were named in the claim petition, but no relief has been asked against them. Thirdly, most importantly they contended that the claimant was riding the scooter as a pillion passenger. Therefore, the company is not liable for paying any compensation to the claimant.

3. The learned Tribunal held that firstly the claimant has not been able to prove that the accident was caused because of the negligence and rashness by Bashir. Secondly, since the claimant was riding the scooter as a pillion rider, therefore, the Insurance Company was not liable for payment of compensation. Hence, the learned Tribunal dismissed the claim petition.

4. After discussing the oral evidence on record, the learned Single Judge concluded that ample evidence does exist to prove that accident had occurred because of the composite negligence of the jeep and the scooter drivers. He further held that it is the discretion of the claimant to claim the compensation either from the scooter driver or the jeep driver, owner and the Insurance Company. Most importantly, the learned Single Judge concluded that the use of the expression "any person" in the Insurance policy would obviously include the pillion rider. Therefore, according to the learned Single Judge the Insurance Company was liable to pay compensation. Consequently, the learned Single Judge awarded a compensation of Rs. 1,50,000/- to the petitioner and also directed that interest (a) 12% p.a. from the date of filing of the claim petition till the date of payment shall be paid to the petitioner.

5. As stated above, the judgment of the learned Single Judge has been challenged both by the claimant and Insurance Company.

6. Shri Virendra Agarwal, learned Counsel for the claimant has argued that the compensation ordered to be paid to the claimant is on the lower side. According to him, the compensation, in fact, should be Rs. 4 lakhs instead of Rs. 1.5 lakhs. In order to support his contention, he has relied upon a judgment of the Hon'ble Supreme Court in the case of Grifan v. Sarbjeet Singh and Ors. (2000 (3) T.A.C. 203 .

7. On the other hand, Shri J.K. Singhi, appearing on behalf of the Insurance Company, has vehemently argued that firstly since the claimant was riding as a pillion rider, therefore, the company is not liable for any compensation under the Motor Vehicles Act, 1939 (henceforth to be referred to as the old Motor Vehicle Act). Secondly, that even if the company was liable, then under the old Motor Vehicles Act, 1939, the liability of the company is limited by the statute. Hence the company cannot be directed to pay more than Rs. 50,000/- to the claimant. In order to substantiate his case, he relied upon the case of National Insurance Co. Ltd. Vs. Keshav Bahadur and Others, . The learned Counsel did not canvas any other point before us.

8. Having heard the learned Counsel, we have critically examined the evidence on record and analysed the impugned judgment.

9. The question whether the pillion rider would be covered under the Act policy has been examined both under the old Motor Vehicles Act, and under the new Motor Vehicles Act, 1988. Under the old Act various High Courts were of the opinion that Insurance Company is not liable to pay compensation for any injury or death of the pillion rider. This view was expressed by the Hon'ble Kerala High Court in case K. Velum v. Premlatha 1989 ACJ 833. A similar view was also expressed by the Bombay High Court in case of New India Assurance Co. Ltd. v. Babasaheb Anna Mali and Ors. 2002(1) TAC 47 (Bom.) However with introduction of Section 147(1)(b)(i) of the Motor Vehicles Act, 1988, the High Courts are firmly of the view that under the said section the Insurance Company would be liable to indemnify the owner of the vehicle which was insured by them. Therefore, presently any injury or death of pillion rider would make the insurance Company liable for payment of compensation. This view has been expressed by the High Court of Madhya Pradesh in the case of Ashok v. Smt. Narmadabai and Anr. (1999 (1) TAC 362 (MP). A similar view has also been expressed by the Hon'ble Karnataka High Court in case of Oriental Insurance Company Limited v. Minaxi AIR 2000 Kar 73 . Noticing the change in the new Motor Vehicles Act, a similar view has also been held by the Hon'ble Kerala High Court in case of United India Insurance Company Ltd. Vs. Appukuttan and Another,

10. In the present case, the accident took place on 22.4.91 by which time the Act of 1988 was already in force. Therefore, the liability of the Insurance Company has to be adjudged u/s 147 of the said Act. Section 147 deals with the requirement of policies and prescribes the limits of the liability as under :

"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; or

(b) Insures the person or classes of persons specified in the policy to the extent specified in Sub-section (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) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place.

11. A bare perusal of the above provisions would clearly reveal that the liability of the Insurance Company is now unlimited. Moreover, the words "any person" used in Section 147(1)(b)(i) of the Act would include a pillion rider. Therefore, according to the Act, the Insurance Company is liable to indemnify the insured.

12. The learned Counsel for Insurance Company has contended that the liability of the Insurance Company is a limited one. However, such is not the case in this appeal. On the date of the accident, the new Act was already in force. Under the

said Act, the liability of the Insurance Company is unlimited. Hence the contention of the learned Counsel is without merit.

13. On the factual matrix, the case of Sarbjeet Singh (supra), is similar to the case before us. In that case the injured was 45 years old when he met with the accident. Because of the accident his right leg was amputated showing the disability of 80%. While taking the over all disability to the 50%, the Hon''ble Supreme Court was pleased to enhance the compensation by Rs. 2 lakhs more, in addition to Rs. 2 lakhs already ordered by the High Court. In the present case before us, the claimant was 44 years when he met with the accident. As stated above his right leg has been amputated from below the knee. He was serving as constable in the Rajasthan Police Service. According to disability certificate, the per cent of disability is 40%. Therefore, taking a cue from the aforesaid judgment of the Hon''ble Supreme Court we are of the opinion that the compensation should be enhanced from Rs. 1.5 lakhs to Rs. 3 lakhs.

14. In the result, D.B. Special Appeal No. 168/98 filed by the Insurance Company Limited is dismissed. The D.B. Special Appeal No. 169/98 filed by the claimant is allowed and award of compensation is passed in favour of the appellant claimant against the non-claimant respondent in the following terms :

- (i) the respondents shall pay a compensation of Rs. 3,00,000/- to the claimant.
- (ii) the shall pay an interest at the rate of 12% p.a. from the date of filing of the claim petition till the date of payment.
- (iii) both the respondents shall be liable to pay the compensation, jointly and severally.