**(2005) 06 KAR CK 0002**

**In the Karnataka High Court**

**Case No :** M.F.A. No''s. 6637 and 7934 of 2003

New India Assurance Co. Ltd. APPELLANT

Vs

R. Anand and Another RESPONDENT

**Date of Decision :** 07-06-2005

**Acts Referred:**
Motor Vehicles Act, 1988 — Section 147, 95 (1) (b) (ii)

**Citation :** (2006) 1 KCCR 290 : (2006) 2 RCR(Civil) 208

**Hon'ble Judges :** K. Sreedhar Rao, J

**Bench :** Single Bench

**Advocate :** O. Mahesh and C.R. Ravishankar, for the Appellant; Suresh M. Latur, for the Respondent

## Judgement

K. Sreedhar Rao, J.—These two appeals arise out of the judgment and award dated 4.8.2003 passed in M.V.C. No. 3429 of 2001. M.F.A. No. 6637 of 2003 is filed by the insurer. M.F.A. No. 7934 of 2003 is filed by the claimant seeking enhancement of the compensation awarded.

2. The claimant-appellant while travelling as a pillion rider of a motor cycle, met with an accident on 16.7.2001 and sustained personal injuries. Accident occurred on account of the negligence of rider of the motor cycle. In respect of the motor cycle in question, the insurer had issued an Act policy which is marked at Exh. R1.

The Claims Tribunal has awarded a compensation of Rs. 1,41,992 payable with interest at 8 per cent per annum from the date of petition till the date of payment and directed the insurer to pay the compensation. Hence, the insurer is in appeal seeking exoneration of the liability on the ground that the statutory Act policy issued at Exh. R1 does not cover the risk of a pillion rider. Per contra, the claimant contends that the compensation awarded by the Tribunal is low and hence, seeks enhancement of the compensation.

3. Learned Counsel for the claimant-appellant relied on the rulings of this Court

in Dr. S. Jayaram Shetty Vs. The National Insurance Company Limited, ; The New India Assurance Company Limited, Bangalore Vs. Rajendra Singh and others, the Division Bench decision of Andhra Pradesh High Court in United India Insurance Company Limited Vs. Parpudi Krishnakumari and Others, , to contend that first and second party to a contract of insurance constitute the insured and the insurer. Beneficiary of the insurance and not a party to the contract of insurance is a third party.

4. The beneficiaries of the contract of insurance who constitute third party are specifically envisaged in Section 147 of the Motor Vehicles Act, 1988. In respect of goods vehicle, the owner of goods or his authorised representative travelling in the goods vehicle, the employees within the definition of workman employed in connection with the motor vehicle, driver of the vehicle irrespective of whether it is a public service vehicle or private vehicle, the conductor of a public service vehicle, carrying passengers and the passengers in the public service vehicle are to be compulsorily covered under the Act policy. The insurer is vested with the discretion to cover the risk of persons by a contract as envisaged under the tariff regulations by collecting additional premium. The insurer is given option to cover the risk of a pillion rider of the two-wheeler and passengers of a private vehicle to cover the risk by a contract on the payment of additional premium. The pedestrians and the aforesaid beneficiaries whose risk is to be covered under Act policy and beneficiaries whose risk can be optionally covered under the contract by collecting additional premium constitute third party.

5. The appellant insurer relied on the decision of the Supreme Court in M/s. Road Transport Company Vs. Bhan Singh and Another, , wherein it is held that liability of the insurer u/s 95(1)(b)(ii) would arise only in respect of passengers in a public service vehicle and not the inmates of private vehicle. The Division Bench of this Court in Ningusa v. Basavaraj M.F.A. No. 925 of 1995; decided on 17.6.2002, has held that the risk of a pillion rider is not covered under the Act policy.

6. The insurance policy marked at Exh. R1 clearly discloses that Exh. R1 is an Act policy. There is no special coverage by a contract to cover the risk of a pillion rider. In view of the decisions of the Supreme Court and the Division Bench of this Court, it is to be held that a pillion rider would not come within the meaning of a third party unless by a contract on payment of additional premium. In that view, award against the insurer by the Claims Tribunal is bad in law. Accordingly, the judgment and award passed against the insurer is set aside. The appeal, M.F.A. No. 6637 of 2003 is allowed.

Re: enhancement of compensation in M.F.A. No. 7934 of 2003:

7. The appellant-claimant has sustained compound fracture of both the bones of right leg and right knee cap is displaced. There is permanent disability of 40 per cent of the right leg. The Tribunal has assessed the total body disability at 13 per cent. The income is assessed at Rs, 2,400 per month.

 

8. On re-examination of the facts and evidence, Rs. 30,000 to be awarded for pain and agony, Rs. 20,000 for medical expenses and incidental expenses relating to treatment, Rs. 9,600 for loss of earnings during the period of treatment and Rs. 15,000 towards loss of amenities and discomfort on account of the disability. Rs. 67,392 (Rs. 312 x 12 x 18) is awarded towards loss of future income on account of the disability. The appellant is entitled to a total compensation of Rs. 1,41,992. Therefore, the compensation awarded by the Tribunal is just and reasonable and does not call for enhancement.

9. In the result, M.F.A. No. 7934 of 2003 filed by the appellant-claimant is dismissed. M.F.A. No. 6637 of 2003 filed by the insurer is allowed. The amount deposited by the appellant in M.F.A. No. 6637 of 2003 is directed to be refunded to the appellant. The compensation awarded to the appellant-claimant shall be payable by the owner.