
(2002) 02 BOM CK 0034
In the Bombay High Court
Case No : First Appeal No. 109 of 2001

New India Assurance Co. Ltd.

APPELLANT

Vs

Sukhdev Shinde and Others

RESPONDENT

Date of Decision : 04-02-2002

Acts Referred:

Motor Vehicles Act, 1988 — Section 140

Citation : (2002) ACJ 1972 : (2002) 4 MhLj 843

Hon'ble Judges : B.B. Vagyan, J

Bench : Single Bench

Advocate : V.N. Upadhye, for the Appellant; Mane, holding for V.D. Salunke, for the Respondent

Final Decision : Allowed

Judgement

B.B. Vagyan, J.—Heard learned Advocate Shri V. N. Upadhye for the appellant and learned Advocate Mrs. Mane holding for learned Advocate Shri V. D. Salunke for the respondent Nos. 1 to 6. Respondent No. 6 is served but is absent.

2. Admit.

With the consent of the learned counsel for the parties, the appeal is taken up for final hearing forthwith.

3. This First Appeal by the Insurance Company is directed against the order dt. 22-6-2000 passed by Ex-Officio Member, Motor Accident Claims Tribunal, Beed. In brief the facts giving rise to this First Appeal are as under :

The accident took place on 16-1-1998. Deceased Babasaheb @ Maruti Sukhdev Shinde was pillion rider. Sitaram s/o Vishwanath Salunke was driving motor cycle bearing No. MH-23-A-5336. It appears that Driver lost the control over the motor cycle and accident occurred. Both of them fell on the ground. Deceased Babasaheb sustained multiple injuries. Hence, the respondent Nos. 1 to 6 who are original claimants in M.A.C. Petition No. 227/1998 filed claim petition u/s 140

of M.V. Act. The appellant, who is original respondent No. 2, in claim petition, resisted the claim preferred by the heirs of the deceased mainly on the ground that the Sitaram had no valid driving licence and that deceased was a pillion rider of which risk was not covered and no premium was paid to the insurer. The Tribunal passed the impugned order u/s 140 of M.V. Act and, consequently, the owner of the vehicle and the Insurance Company are directed to pay Rs. 50,000/- to the claimants.

4. Feeling aggrieved by the impugned order, the Insurance Company has preferred this First Appeal. Learned Advocate Shri V. N. Upadhye submits that the impugned order passed by the Tribunal is ex facie bad in law. According to him, there was ample record placed before the Tribunal indicating that the driver of the motor cycle had only learner's licence. According to learned Advocate Shri V.N. Upadhye, the learner's licence is not a valid licence and, therefore, the Tribunal should not have fastened monetary liability on the insurance company. He further submits that the deceased was the pillion rider and not a third party of which risk is covered and no premium was paid by the insured. Learned Advocate Shri Upadhye submits that even under no fault enquiry, insurance company cannot be saddled with the amount of compensation when risk to third party is not covered being pillion rider. In order to support his submissions, he relied upon (1) New India Assurance Co. Ltd. v. Mandar Madhav Tambe and Ors., 1996(1) Mh.L.J. (SC) 935 (2) New India Assurance Co. Ltd. v. Gajanan Rambhau Mohite and Anr., 1997(1) Mh.L.J. 502 New India Assurance Co. Ltd., Pune v. Smt. Savitribai Tukaram Londhe and Ors., 1997(1) Mh.L.J. 315 and (4) New India Assurance Company Ltd. Vs. Babasaheb Anna Mali and Others, .

5. Learned Advocate Smt. Mane for the claimant has half-heartedly supported the impugned order.

6. I gave anxious consideration to the rival submissions made at the Bar. Admittedly the deceased was a pillion rider. This is clear from the record itself. In the claim petition it was contended by the claimants that deceased was a pillion rider. The expression "third party" does not cover the pillion rider of the motor vehicle. The risk of pillion rider third party is not covered under the policy of Insurance and, therefore, even under No fault liability the insurance company cannot be saddled with the amount of compensation to be paid to the heirs of the deceased. The Division Bench of this court has held in case of New India Assurance Co. Ltd. v. Babasaheb Anna Mali and others that a pillion rider on a motor cycle, which is covered under third party insurance policy, is not a third party and, therefore, insurer cannot be saddled with no fault liability in respect of the pillion rider.

7. This court has taken a view in New India Assurance Co. Ltd. v. Smt, Savitribai Tukaram Londhe and others, referred supra, that if, on face of insurance policy, the insurance company is not liable then, even u/s 92-A of the M.V. Act, 1939, insurance company cannot be fastened with the liability. Similar view is taken in New India Assurance Co. Ltd. v. Gajanan Rambhau Mohite and Amr., cited supra.

8. The Supreme Court has held in *New India Assurance Co. Ltd. v. Mandar Madhav Tambe and Ors.*, referred supra, that learners driving licence is not an valid licence.

9. Even though the Insurance Company has raised legal defences in the written statement, the Tribunal has not properly considered the legal defences raised in the written statement and the relevant law on this point. Under the circumstance, impugned order passed by the Tribunal imposing monetary liability on the insurance company cannot be sustained in law.

10. In the result, the First Appeal is allowed with no order as to costs. The impugned order directing the appellant insurance company to pay Rs. 50,000/- to the claimants u/s 140 of M. V. Act, 1988, is quashed and set aside. The amount deposited by the insurance company be refunded to the appellant Insurance Company.