
(2003) 07 AHC CK 0074
In the Allahabad High Court
Case No : F.A.F.O. No. 1934 of 2003

New India Assurance Co. Ltd.

APPELLANT

Vs

Tirath Raj and Another

RESPONDENT

Date of Decision : 24-07-2003

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2), 173

Citation : (2004) 2 ACC 490 : (2005) ACJ 1272

Hon'ble Judges : S.P. Srivastava, J;K.N. Ojha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K.N. Ojha, J.—Heard learned counsel for the insurer appellant.

2. The appellant feels aggrieved by the award of Motor Accidents Claims Tribunal determining an amount of Rs. 1,60,000 (rupees one lakh sixty thousand) to which the injured Tirath Raj was found entitled on account of injury caused to him in an accident involving the offending motor vehicle, a truck bearing registration No. MKD 9250 which was insured with the present appellant covering the risk.

3. The claim petition has been filed by the victim Tirath Raj with the allegation that on 13.9.1997 he was driving truck No. MP 15-D 3637. He was on the way to Indore. When he reached within the territory of Police Station, Bhaurasa Urnia, District Dewas, truck No. MKD 9250 came rashly and negligently from the opposite direction and dashed it as a result of which the driver Tirath sustained injuries. His left leg was damaged and right leg was crushed in pieces. His medical treatment was going on in Indore and ultimately in Swarup Rani Nehru Hospital at Allahabad where Chief Medical Officer certified that 50 per cent disability had occurred to the victim.

4. The Tribunal held that the income of the victim was Rs. 1,500 per month and he was aged about 36 years at the time of accident and the amount of

compensation was assessed after deducting 50 per cent of the income considering the disability. Thus, compensation of Rs. 1,20,000 was awarded for continuous loss in income and Rs. 40,000 towards medical expenses.

5. A perusal of the record shows that the injuries were caused by the offending truck No. MKD 9250 which was later on seized by the police of Police Station, Bhaurasa Urnia, District Devas. The accident had taken place on 13.9.1997 at 1 a.m. within the territorial jurisdiction of the same police station. The truck was seized and on the same day its office memo was prepared. In the first information report there is specific mention of the number of truck. The victim has specifically stated the number of truck. There appears no ground to falsely involve the motor vehicle No. MKD 9250.

6. The learned counsel for the appellant has urged that the amount of compensation determined is highly excessive. So far as the aforesaid aspect is concerned, it may be observed that no award of money can possibly compensate a man and renew a shattered human frame. The general principle governing the assessment of damages in case of bodily injuries to the effect that the award to the injured party should be such a sum of money as will put him in the same position as he would have been if he had not sustained injuries, cannot be said to be attracted, where the assessment of damages has to be made for the pain and suffering undergone and for the impairment which results from the injuries and in such cases while fixing the damages, the judge can do no more than endeavour to arrive at a fair estimate taking into account all the relevant considerations.

7. It should not be lost sight of that a bodily injury is to be treated as a deprivation which entitles a claimant to damages and the amount of damages has to vary according to the gravity of the injury. Further the deprivation by injuries may bring with it different consequences such as loss of earnings or earning capacity, expenses to pay others for what otherwise he or she would do for himself/herself and diminution in full pleasure of living. While considering the deprivation the court should have regard to the gravity and degree of deprivation and the duration of deprivation and further the degree of awareness of the deprivation. In awarding damages in personal injury cases, compensation should be substantial in nature and it should not be merely token damages.

8. In cases of disablement, by virtue of any loss of limb or any permanent defect/ disability, the compensation goes to the injured persons. Therefore, compensation awarded may be higher than even cases of death where the compensation goes to the dependants or to the estate of the deceased.

9. The victim in this case is Tirath Raj who is driver of the truck. He has suffered injuries 50 per cent in his leg. The doctor has reported that in fact his right leg was damaged into pieces. If such condition has become it will be very difficult for him to drive the vehicle. The Chief Medical Officer has reported 50 per cent disability and considering this fact, calculation of compensation has been made at

Rs. 1,60,000 including amount of Rs. 40,000 for medical expenses. Thus, the amount of compensation is neither excessive nor unjust.

10. Learned counsel for the appellant further submits that the photocopy of the driving licence which was produced by the owner was so dim that its genuineness could not be verified. The Tribunal has held that photocopy cannot be taken to be disproved. Even if there is finding that the driving licence is fake, utmost it is breach of condition for which the insurance company will be entitled to recover it from the insured.

11. So far as the statutory liability of the insurer appellant contemplated under the provisions of Motor Vehicles Act in the matter relating to the payment of just compensation determined by the Motor Accidents Claims Tribunal is concerned, the mere fact that there was violation of the terms and conditions subject to which the insurance policy had been issued, cannot have the effect of exonerating the insurer from the statutory liability cast upon him in this regard to pay the amount to the third party victim.

12. It may be noticed that in its decision in the case of United India Insurance Company Ltd. Vs. Lehu and Others, the Supreme Court has clearly observed that where the owner has satisfied himself that driver has a licence and is driving competently there would be no breach of Section 149(2)(a)(ii) of the Motor Vehicles Act. Further it was indicated that the insurance company would not then be absolved of liability. If it ultimately turns out that the licence was fake, the insurance company would continue to remain liable unless they prove that the owner-insured was aware or had notice that the licence was fake and still permitted that person to drive. More importantly even in such a case the insurance company would remain liable to the innocent third party, but it may be able to recover from the insured.

13. It was further observed that in a case where without the knowledge of the insured, if by driver's acts or omission others meddle with the vehicle and cause an accident, the insurer would be liable to indemnify the insured. The insurer in such a case cannot take the defence of a breach of the condition in the certificate of insurance.

14. In this connection it may also be noticed that as clarified by this court in the case of National Insurance Co. Ltd. Vs. Smt. Asha Devi and Others, the status of the insurer in law so far as the statutory liability sought to be fastened upon him under the Act is concerned, cannot be more than that of a guarantor and he acts as a security for the third party with respect to its realising damages for the injuries suffered but a right to get any amount paid in excess refunded to it by the insured stands secured. The ultimate burden always remains cast or fastened on the insured-owner of the motor vehicle.

15. In such a situation, it is always open to the insurer to get the amount, paid in excess, refunded to it from owner-insured in appropriate proceedings initiated before Motor Accidents Claims Tribunal in which proceedings such a dispute can

be decided between the insurer and the insured after affording an opportunity of hearing to the insured in accordance with law.

16. It will, therefore, be open to the insurer appellant to initiate an appropriate proceeding for the refund of the amount paid by it to the claimants and establish the breach of the terms and conditions subject to which the insurance policy had been issued.

17. The dismissal of this appeal will not come in the way of the insurer appellant initiating such proceedings.

18. Thus taking into consideration the totality of the facts and circumstances as brought on record, no justifiable ground has been made out for any interference by this court in the impugned award.

19. This appeal is totally devoid of merits, which deserves to be and is hereby dismissed in limine.

As prayed, the amount of Rs. 25,000 deposited in this court by the insurer appellant u/s 173 of Motor Vehicles Act be remitted to the Motor Accidents Claims Tribunal concerned so that it may be disbursed to the claimant.