(2012) 11 BOM CK 0061

In the Bombay High Court

Case No : First Appeal No. 534 of 1997 and First Appeal No. 549 of 1995

New India Assurance Co. Ltd. Manager, Ooty Main Road, Mettupalam, Pin Code 641 301, District Coimbator (T.N.) — APPELLANT

Vs

Smt. N. Senjilaxmi and Others
 Smt. N. Sanjilaxmi, Kum. Malarbizhi and Mahendrakumar-Both the Appellants are Minors through Next Friend-Their Mother Appellant No. 1 Vs M/s. Industrial and Commercial Corporation, United India Insurance Co. Ltd. and New India Assurance Co. Limited, Manager, Ooty Main Road, Mettupalayam, Coimbatore, Pin-641301 — RESPONDENT

Date of Decision : 29-11-2012

Acts Referred:
Motor Vehicles Act, 1988 — Section 147, 147(b)

Citation : (2013) 2 ABR 735 : (2013) ACJ 2033 : (2013) 1 ALLMR 390 : (2013) 1 MhLj 778

Hon'ble Judges : M.N. Gilani, J

Bench : Single Bench

Advocate : M.B. Joshi in First Appeal No. 534/1997 and Mr. S.D. Sirpurkar in First Appeal No. 549 of 1995, for the Appellant; S.D. Sirpurkar, Advocate for Respondents No. 1 to 3 and Mr. S.V. Thakur, Advocate for Respondents No. 4 and 5 in First Appeal No. 534/1997 and Mr. M.B. Joshi, Advocate for Respondent No. 3 in First Appeal No. 549 of 1995, for the Respondent

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Judgement

M.N. Gilani, J.—Both these appeals arise from the judgment and award dated 18.07.1995, passed by the Member, Motor Accident Claims Tribunal, Wardha in M.A.C. Case No. 35/1992 decided with M.A.C. Case No. 31/1990. On 25.12.1989, on National Highway No. 7, near village Kondhali in District Nagpur, there was collision of two vehicles i.e. truck No. MWY 6588 and TLB-2511. Truck No. MWY 6588 was driven by one Ramsagar and the other vehicle was driven by K. Natrajan. Both died on the spot. The Claim Application No. 31/1900 was filed by the heirs of Ramsagar, with which we are not concerned. The widow and two minor children left behind by deceased K. Natrajan, filed Claim Application No.

35/1992 for award of compensation of Rs. 5,00,000/-. The original non-applicant no. 1-M/s. Industrial and Commercial Corporation, Nagpur and original non-applicant no. 2-United India Insurance Co. Ltd. are the owner and insurer respectively of Truck No. MWY 6588, which was driven by Ramsagar. The original non-applicant no. 3-New India Assurance Co. Ltd. is the insurer of the other truck, owned and driven by deceased K. Natrajan.

2. The non-applicant no. 3 resisted the application on the ground that because of sole negligence of driver of truck No. MWY 6588 accident occurred. It was further averred that the risk of owner of the truck was not covered and therefore, no amount of liability can be fastened upon them.

3. The learned Tribunal formulated issues. Parties went to trial on those issues by adducing evidence. No evidence was adduced by the original non-applicant nos. 1 and 2. On the issue of negligence, the Tribunal considered the spot panchnama and held that because of composite negligence of driver of both the vehicles accident occurred and hence, apportioned the liability in the ratio of 50:50. On the point of income of the deceased, the Tribunal held that the loss of dependency was to the extent of Rs. 12,000/- per annum and by applying multiplier of 15, fixed the quantum of compensation amount at Rs. 2,00,000/-. The original non-applicant no. 3-New India Assurance Co. Ltd. was fastened with the liability to satisfy the award to the extent of 50% of the amount of compensation, whereas the original non-applicant nos. 1 and 2, were directed to satisfy the rest of the award.

4. The original claimants, dissatisfied with the quantum of compensation and mainly with the finding of contributory negligence, have preferred F.A. No. 549/1995. The original non-applicant no. 3-New India Assurance Co. Ltd., filed F.A. No. 534/1997.

5. Mr. Sirpurkar, learned Counsel appearing for the original claimants, contended that the finding recorded by the learned Tribunal on the point of composite negligence of both the vehicles is not supported by the evidence brought on record. According to him, there was negligence of the driver of truck No. MWY 6588 and therefore, the entire liability ought to have been fastened upon the original non-applicant nos. 1 and 2. It is further contended that the learned Tribunal ignored the evidence while assessing of loss of dependency and also committed an error in choosing multiplier of 15. According to him, it should have been 17.

6. Mr. Joshi, learned Counsel appearing for the appellant original non-applicant no. 3, contended that the policy which is placed on record at Exh. 20, does not cover the risk of the owner. In support of his contention, he relied upon decisions in the cases of (I) Tamil Nadu State Transport Corporation, Tanjore, rep. by its MD Vs. Natarajan and Others, (II) Dhanraj Vs. New India Assurance Co. Ltd. and Another, and (III) Oriental Insurance Co. Ltd. Vs. Smt. Jhuma Saha and Others, .

7. Mr. Thakur, learned Counsel appearing for the original non-applicant no. 2,

contended that finding reached by the Tribunal on the issue of composite negligence of drivers of both the vehicles is unassailable since there is no evidence to take view contrary to one taken by the tribunal. On the point of loss of dependency, his contention is that the evidence falls too short to grant any more amount than what has been awarded by the learned Tribunal.

8. Points which arise for consideration are: (i) whether the finding reached by the learned Tribunal on the issue of composite negligence is supported by the evidence on record?, (ii) whether the amount of compensation fixed by the Tribunal having regard to the income and age of the deceased needs any correction?, and (iii) whether the original non-applicant no. 3-New India Assurance Co. Ltd. is not liable to satisfy award to any extent for the reason that the policy issued by them did not cover the risk of the owner of the vehicle?

9. Except the evidence in the nature of First Information Report Exh. 38 and spot panchnama Exh. 39, there is no other evidence on the point to prove manner in which the accident occurred, and vis-a-vis the negligence of the drivers of the vehicles. However, admittedly, it was the case of head on collision, which resulted in drivers of both the vehicles sustaining fatal injuries. The front side of both the vehicles were damaged considerably. By applying the principles of res-ipsa-loquitur, the learned Tribunal in para 16 of the judgment held that it was the case of composite negligence. After observing that cabins of both the trucks were damaged, the learned Tribunal thought it fit to attribute degree of negligence equally to the drivers of both the ill-fated vehicles. In the absence of evidence to the contrary, the finding reached by the learned Tribunal cannot be interfered with.

10. Evidence was led to the effect that the deceased was contributing Rs. 5000/- towards household expenses. The learned Tribunal was of the view that the claim made by the dependents of the deceased is very much on higher side and then proceeded to assess the loss of dependency at Rs. 1,000/- per month. The broad factor, which appears to have been ignored by the learned Tribunal, is that besides the deceased driving the vehicle was owner of the vehicle. This itself is sufficient to hold that his monthly earning was in no circumstance could be less than Rs. 3000 to Rs. 5000. That means, he must be contributing at Rs. 2000/- towards his family expenses. As regards choices of multiplier, having regard to the age of the deceased i.e. 34 years, proper multiplier has to be 16. In that view of the matter, the compensation, to which the claimants are entitled to, will have to be recalculated in the manner stated below:

Thus, the total amount of compensation to which the claimants are entitled to comes to Rs. 4,00,000/-. Considering the liability in the ratio of 50:50 fastened upon the original non-applicant nos. 1 and 2 on one hand and original non-applicant no. 3 on the other hand, the original non-applicant no. 1-M/s Industrial and Commercial Corporation, Nagpur and United India Insurance Co. Ltd.-non-applicant no. 2 shall be jointly and severally liable to pay Rs. 2,00,000/-. This will be inclusive of no fault liability amount, if any, already paid to the claimants. The enhanced amount of compensation i.e. Rs. 1,00,000/- minus no fault liability, if already paid, shall carry interest at the rate of @ 7.5% per annum from the date of filing of the application till its realization.

11. New India Assurance Co. Ltd.-appellant in F.A. No. 534/1997 raised the issue of not covering the risk of the owner of the offending vehicle insured with them. Exh. 20 is the insurance policy. It was a comprehensive policy. However, no additional premium was paid towards the risk of the owner and/or driver of the vehicle. Although, the learned Tribunal took cognizance of this defence, which is evident from para 11 of the judgment, unfortunately, this is not dealt with in the reasoning part of the judgment and award and no finding was reached about the liability of the New India Assurance Co. Ltd.-insurer qua the claimants-dependents of owner-cum-driver of truck TLB-2511. The issue of liability of the insurer in case where no additional premium is paid for covering the risk of owner of the vehicle, although policy purchased is of comprehensive in nature, is covered by the decision of the Apex Court in M/s. Tamil Nadu State Transport Corporation, Tanjore, Rep. by its M.D. vs. Natarajan and others (supra), relied upon by the learned counsel. The facts of that case were that there was head on collision between the two vehicles and the liability in the ratio 50:50 was apportioned. Since the driver of the Tamil Nadu State Transport Corporation himself was found negligent to the extent of 50% for causing accident, it was held that Corporation could not be held liable under Motor Vehicles Act and therefore, the judgment impugned fastening 50% of liability on Corporation was set aside.

12. In Dhanraj vs. New India Assurance Co. Ltd. and another (supra), it was held that even in case of comprehensive policy, the liability of insurance company does not arise unless the policy was purchased to cover risk for insurer-the owner himself. The term "own damage" was explained by observing that it tends to cover liability towards damage to vehicle and not to injury to person of owner. It was further held that owner of a vehicle can only claim provided a personal accident insurance is taken out. In the instant case, it is evident from the policy at Exh. 20 that although it was a comprehensive policy, no additional premium was paid towards the risk for injury to the owner of the vehicle.

13. The facts in the case of Oriental Insurance Co. Ltd. vs. Jhuma Saha and others (supra) were that in a motor vehicle accident there was a death of owner-cum-driver. Additional premium covering driver/conductor was paid but not in respect of risk of the owner of the vehicle. Relying upon the decision in case of Dhanraj vs. New India Assurance Co. Ltd. and another (supra) Their Lordships observed in para 11, 12 & 13 as under :

Para: 11: Liability of the insurer-Company is to the extent of indemnification of the insured against the respondent or a injured persona, a third person or in respect of damages of property. Thus, if the insured cannot be fastened with any liability under the provisions of Motor Vehicles Act, the question of the insurer being liable to indemnify insured, therefore, does not arise.

Para: 12: In Dhanraj Vs. New India Assurance Co. Ltd. and Another, , it is stated as follows:

8. Thus, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an 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. Section 147 does not require an Insurance Company to assume risk for death or bodily injury to the owner of the vehicle.

10. In this case, it has not been shown that the policy covered any risk for injury to the owner himself. We are unable to accept the contention that the premium of Rs. 4,989/- paid under the heading "Own damage" is for covering liability towards person injury. Under the heading "Own damage", the words "premium on vehicle and non-electrical accessories" appear. It is thus clear that this premium is towards damage to the vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim provided a personal accident insurance has been taken out. In this case there is no such insurance.

Para: 13: The additional premium was not paid in respect of the entire risk of death or bodily injury of the owner of the vehicle. If that be so, Section 147 (b) of the Motor Vehicles Act which in no uncertain terms covers a risk of a third party only would be attracted in the present case.

14. The legal position, explained above, squarely applies to the facts of the present case. In that view of the matter, the New India Assurance Co. Ltd., in the capacity of insurer of vehicle No. TLB 2511, shall not be liable to contribute to the amount of compensation to any extent. In the result, appeal No. 534/1997 shall succeed.

15. Appeal No. 534/1997 is allowed.

The judgment and award impugned directing appellant-New India Assurance Co. Ltd. in M.A.C. No. 35/1992 to discharge the award to the extent of Rs. 1,00,000/- is set aside.

The amount deposited by the appellant, be refunded to the appellant.

There shall be no order as to costs throughout.

Appeal No. 549/1995 is allowed partly.

The claimants shall be entitled to recover an additional amount of compensation of Rs. 1,00,000/- from the original non-applicant nos. 1 and 2-respondent nos. 1 and 2 herein respectively with interest @ 7.5% per annum from the date of filing of the application till its realization. This shall be inclusive of no fault liability amount.

On deposit of the amount as ordered above, the Tribunal shall invest 70% of the amount in a fixed deposit in any Nationalized Bank in the name of claimant no. 1, initially for a period of 3 to 5 years, with an arrangement that she shall receive the interest monthly or quarterly accrued thereon and on maturity she shall have liberty to withdraw entire sum without reference or order of this Court. The rest of the amount deposited, be paid to the claimant No. 1 by way of a cross cheque. Parties are left to bear their own costs.