(2012) 01 AHC CK 0758

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 20092 of 2000

New India Assurance Company Limited — APPELLANT

Vs

IVTH Additional District Judge/Motor Accidents Claims Tribunal, Azamgarh and Another — RESPONDENT

Date of Decision : 30-01-2012

Acts Referred:
Motor Vehicles Act, 1988 — Section 110, 125, 146, 147, 147(2)

Citation : (2012) 4 ADJ 513

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Advocate : Arvind Kumar, for the Appellant; Rahul Sripat and C.S.C, for the Respondent

Final Decision : Allowed

Judgement

Hon''ble Prakash Krishna, J.—Questioning the maintainability of claim petition filed by Ram Sahai, (respondent No. 2 herein) who is owner of Vehicle No. UP-50/(MB) 9351 in respect of damages caused to it in a road accident insured with the petitioner before the Motor Accidents Claims Tribunal (hereinafter referred to as "the Tribunal"), the present writ petition has been filed. The background facts may be noticed in brief:

2. Ram Sahai filed Motor Accident Claim Petition No. 176 of 1995 which is pending before Motor Accidents Claims Tribunal on the allegations that he is owner of the said vehicle which met with a road accident near Fattanpur, Azamgarh to save a buffalo which all of sudden came in the middle of the road, is entitled to recover compensation for damages caused to the vehicle in question. The said claim petition is being contested by the petitioner herein by raising various pleas.

3. On the basis of pleadings of the parties, as many as four issues have been framed. Issue No. 3 relates to the jurisdiction of the Motor Accidents Claims

Tribunal to entertain the petition for damages caused to the vehicle in question, at the instance of the owner of the vehicle. The said issue was decided as a preliminary issue and it has been held by the impugned order dated 16th February, 2000 that the Tribunal has jurisdiction to try the case.

4. Learned counsel for the petitioner submits that in view of Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as ''the Act''), the Tribunal has no jurisdiction to entertain claim petition by an owner of the vehicle with regard to recovery of damages to such vehicle.

5. In reply, learned counsel for the respondents supports the impugned order and submits that the word ''injury'' used in Section 165 of the Act should be interpreted widely to include damage to insured vehicle of the owner also.

6. Considered the respective submissions of the learned counsel for the parties and perused the record.

7. It is apposite to consider certain provisions of the Act. Sections 165 and 167 as contained in Chapter-XII of the Act provide for establishment of Claims Tribunal and the application for compensation. State Government has been authorized u/s 165 of the Act to constitute one or more Motor Accidents Claims Tribunals by notification in the Official Gazette for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or "damages to any property of a third party so arising", or both.

8. An application for compensation arising out of motor accident may be made by the person who has sustained the injury; or by the owner of the property; or where death has resulted from the accident, by all or any of the legal representatives of the deceased; or by any agent duly authorized by the person injured or all or any of the legal representatives of the deceased as the case may be.

9. Submission of the learned counsel for the petitioner is that a conjoint reading of the aforesaid provisions alongwith the provisions as contained in Chapter-XI, would make it clear that a Tribunal has got limited jurisdiction to the extent specified u/s 165 of the Act. The Motor Vehicles Act was enacted to meet the social obligation in regard to a third party as a result whereof taking a cover of insurance is mandatory. In terms of Sections 147 and 149 of the Act, however, taking of an insurance policy in relation to damages which may be suffered by the owner of the vehicle is not compulsorily insurable.

10. The word "owner" has been defined in Section 2(30) of the Act which means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under

that agreement. In Chapter-XI, under clause (g) of Section 145, the Government has been included in definition of "third party".

11. Section 146 has been enacted with an object to insure the third party who may suffer due to use of the motor vehicle and enable it to get compensation for injuries suffered. This Section also casts a duty upon the owner of a motor vehicle to keep the vehicle insured and failure to do so renders him liable to prosecution u/s 125 of the Act.

12. Section 147 lays down the requirements of policies and limits of liability. Its sub-section (2)(b) provides that a policy of insurance shall cover any liability incurred in respect of any accident, up to the limit provided therein. Clause (b) of Section 147(2) provides that the liability under a policy of insurance would be in respect of damage to any property of a third party.

13. Now coming to Section 165 of the Act which deals with the Claims Tribunal. It provides for the establishment of Claims Tribunal for the purpose of adjudicating upon claim petition for compensation in respect of accidents

(1) involving the death of, or bodily injury to, persons arising out of the use of motor vehicles; or

(2) damages to any property of a third parry so arising; or

(3) both.

14. A plain reading of the aforesaid provision would show that the Claims Tribunal has jurisdiction to entertain claim petition with respect to damages to any property of a third party alone. The use of words "third parry" is of some significance. It necessarily excludes the claim for dam-ages to a property other than of a third parry. The use of word "third parry" in the last clause of Section 165(1) is indicative of the legislation intention that the damage to owner''s property is not within the ambit and scope of Claims Tribunal. Payment of compensation involving death or bodily injury or damages to any property or both to a third party is conceptually different to payment of such compensation to the injured person for damages to his own vehicle, under the Act.

15. It is useful to notice the following observations of the Apex Court in Dhanraj Vs. New India Assurance Co. Ltd. and Another, . The relevant paragraph-8 of the aforesaid judgment is reproduced below:

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 authorized 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."

16. In the case of Oriental Insurance Co. Ltd. Vs. Sunita Rathi and Others, , the Apex Court has held that the liability of an insurance company is only for the

purpose of indemnifying the insured against liabilities incurred towards a third person or in respect of damages to property. Thus, where the insured i.e. an owner of the vehicle has no liability to a third party the insurance company has no liability also.

17. The aforesaid passage supports the point of view of the Insurance Company that claim petition on behalf of owner in respect of damages caused to owner''s vehicle is beyond jurisdiction of the Tribunal.

18. The above view also finds supports from the following decisions, which were relied upon by the learned counsel for the petitioner. Jahar Deb v. National Insurance Co. Ltd and others, 2007 (3) TAC 231 (Gau); Oriental Insurance Co. Ltd Karimnagar v. Tnaniparthy Raghava Rao, 2009 (2) TAC 932 (AP) and Tek Ram Vs. Narinder Singh and Others, .

19. In United India Insurance Co. Ltd. Vs. Davinder Singh, , the Apex Court has pointed out that a distinction must be borne in mind as regards the statutory liability of the insurer vis-a-vis the purport and object sought to be achieved by a beneficent legislation before a forum constituted under the Act and enforcement of a contract qua contract before a Consumer Forum. In para-8, it has been stated that the Motor Vehicles Act, 1988 was enacted to meet the social obligation in regard to a third party as a result whereof taking a cover of insurance is mandatory.

20. The Tribunal has relied upon Kamal Kusha v. S. Kirpal Singh and others, AIR 1988 J&K 11 to hold otherwise. A close reading of the said judgment would show that it is distinguishable on facts and has no relevancy to the issue involved herein. A reading of the said judgment does not show that claim petition therein was made by owner of the vehicle. It was made by a third party. Limited question involved therein was whether compensation in respect of damage to a vehicle could be claimed before the Tribunal or not. The High Court by interpreting the words "or both" occurred in Section 110 of the old Motor Vehicle Act has held that claim petition with respect to compensation for damage to any property of a third person or for bodily injury or both is maintainable before the Tribunal. It was held that it is not necessary that one must sustain bodily injury, then alone he can apply to the Tribunal and in the said application, he can then claim damages to any property of a third party.

21. The Tribunal has committed error in placing reliance upon the above citation which is distinguishable on facts and besides the point.

22. Viewed as above, there is sufficient force in the argument of the Insurance Company that claim petition for compensation with regard to owner''s vehicle does not come within the ambit and scope of Section 165 of the Act. In the result, the writ petition succeeds and is allowed. The order dated 16th February, 2000 is hereby, quashed and the claim petition is rejected by deciding issue No. 3 in favour of the petitioner and against respondent No. 2. No order as to costs.

