(2015) 10 TP CK 0029

In the Tripura High Court

Case No : MAC App. No. 41 of 2011

New India Assurance Company Ltd. APPELLANT

Vs

Kamala Debbarma and Others RESPONDENT

Date of Decision : 14-10-2015

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 161

Citation : (2015) 10 TP CK 0029

Hon'ble Judges : Deepak Gupta, C.J.

Bench : Single Bench

Advocate : A. Gon. Choudhury, Advocate, for the Appellant; Raju Datta, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Deepak Gupta, C.J.

1. This appeal by the insurance company is directed against the award dated 15.12.2010 passed by the learned Motor Accident Claims Tribunal, Sonamura, West Tripura whereby he awarded compensation of Rs. 26,51,688/- in favour of the claimant and held the insurance company liable to pay the compensation.

2. It is alleged that in an accident which took place at Taijiling on 17.05.2009, deceased Pankhi Rai Debbarma was injured and died as a result of the injury sustained by the accident. He was 35 years old and serving as a Government school teacher. A claim petition was fled by the widow, children and mother of the deceased claiming compensation. In the claim petition it was alleged that the accident took place on 17.05.2009. Initially FIR was registered against an Auto Van bearing registration No.TR-01-H-1773 (Auto Rickshaw).

3. In the claim petition it was alleged that the accident had taken place with motor cycle bearing registration No. TR-01E-4564. It would be pertinent to mention that the FIR was lodged by the widow and in that FIR it was stated that the deceased was waiting at Taijiling near the house of Bishu Debbarma. In the

FIR it was mentioned as follows:

"Pankhi Rai Debbarma was waiting at Taijiling near the house of Bishu Debbarma for proceeding towards Bishramganj, at that time one vehicle bearing registration No. TR-01-H-1773 Auto-Van suddenly came and dashed Pankhirai Debbarma, resulting he received grievous injuries on his body. Then and there he shifted to Bishramganj hospital from where he referred to G.B.P. hospital for better treatment. Subsequently, on 17.05.2009 night Pankhirai Debbarma succumbed his injuries at G.B.P. hospital."

4. It would be important to note that though the accident is alleged to have taken place on 17.05.2009, the FIR was lodged more than one and half months later on 03.07.2009. This is not an FIR lodged immediately after the accident and in this FIR what was clearly stated was that the vehicle was an Auto Van and the number of the vehicle was also given.

5. It appears that subsequently the widow fled another affidavit before the police authorities in which it was stated that the action had not taken place with the Auto Van but with motor cycle No.TR-01-E-4564. The explanation given by the claimant is as follows:

"It is pertinent to mention here that, initially the case was registered against an Auto Van bearing registration No.TR-01-H-1773 (Auto Rickshaw). During investigation local witness it reveals that, the auto van bearing registration no.TR-01-H-1773 (AUTO RICKSHAW) was not involved in the alleged accident. Thereafter the Claimant petitioner No. 1 Smt. Kamala Debbarma has also submitted an affidavit regarding the involvement of the motor bike bearing registration No. TR-01-E-4564 TVS Solo Motor Bike instead of the Auto Van bearing registration no.TR-01-H-1773 (AUTO RICKSHAW). The investigation officer of the P.S. case has found that a prima facie charge has been well established against the rider of the said motor bike i.e. TR-01-E4564 TVS Solo"

In my view this explanation is totally false. As noted above the FIR was lodged one and half months later. It is obvious that the wife had not seen the accident herself. Therefore, she must have got information about the accident from some other person. She has not named any person nor she has examined any other person except herself. A person especially a villager may be in confusion about one or two Alphabets or digits but the whole number cannot change. Furthermore, the vehicle cannot change from an Auto Van which is the three wheeler goods vehicle to a motor cycle.

6. Even more importantly the motor cycle in the original complaint made to the police it was alleged that the deceased was standing on the side of the road but now the case set up is that he was travelling as a pillion rider on the motor cycle belonging to respondent No. 1 and driven by respondent No. 2. Respondents No. 1 and 2 have virtually admitted the claim of the petitioner. However, the stand of respondent No. 1, the owner is quite unbelievable. In the first part of his reply of para 6 of his reply he has denied all the allegations made in the claim petition.

But later on he says that the vehicle was insured and was being driven by Tarun Debnath who had a valid driving licence. The driver has also admitted the accident. The insurance company contested the petition and denied the accident and the manner in which it had occurred and also took a plea that the claimant was a pillion rider on the motor cycle and therefore, the insurance company was not liable as per the terms of policy.

7. As pointed out earlier the claimant did not examine any other witness except herself. The finding of the learned Tribunal on the issue as to whether the accident had taken place or not are as follows:

"7. Issue No. 1

To meet this issue, the petitioners side adduced certified copy of charge-sheet of Melaghar P.S. vide No. 85/09, statements of the witnesses u/s. 161 , Cr.P.C. and copy of P.M. Report by which it is seen that on 17.05.2009 at about 05.30 a.m. at Taijiling on Taijiling-Bishramganj road under Bishramganj Police Station, the husband of the petitioner No. 1 as a pillion rider met with an accident involving the motor bike bearing No. TR-01-E-4564 and the said motor bike was ridden by one Tarun Debnath having a valid driving licence and due to the accident, the victim succumbed to his injuries.

To meet this issue, the petitioner No. 1 as PW. 1 submitted her examination in chief and she was duly cross-examined by the opposite parties. Besides, PW. 1 also adduced some documentary evidence under Exbt. 1 series. During cross-examination by the opposite parties nothing material has come out to rebut the petitioners'' case as the opposite parties put some suggestive questions during cross-examination of the PW1 in the shape of denial which are not supported by any cogent evidence. Therefore, the evidence of the petitioners stands unrebutted. Accordingly, I find force to give the answer in favour of the petitioners on this issue. Hence, this issue is decided in affirmative."

8. To say the least, these are no findings. No evidence has been discussed at all. There is no discussion as to how and why the number of the vehicle changed. How and why the colour of the vehicle changed. How and why the vehicle changed from an Auto Van to a motor cycle and how did the deceased turn from a pedestrian to a pillion rider on the vehicle. It is apparent that this is a totally false case set up. In my stint of more than two and half years as Chief Justice of the High Court of Tripura I have unfortunately found a disproportionately high number of totally false cases being fled in the State of Tripura under the provisions of Motor Vehicles Act. The provisions of this act are being grossly misused. This Court always has sympathy with the victims of Motor Vehicle accident but no misplaced sympathy can be shown to those people who are liars and come to Court on totally false grounds. They corrupt the entire judicial system which cannot be permitted.

9. As far as the present case is concerned the following features stand out:

(i) No FIR was lodged for more than 1 and a half months

(ii) In the FIR lodged after 1 and half months the vehicle was shown to be a red colour Auto Van and the deceased was shown to be a pedestrian hit by the Auto Van.

(iii) During the course of investigation of the criminal case the same claimant files an affidavit stating that the accident was of a motor cycle on which her husband was travelling as a pillion rider. Admittedly the wife was not present when the accident took place and she has not stated who were the persons who informed her that her husband was hit by an Auto Van and who was the person who informed her that the husband was traveling on the motor cycle.

The case in my opinion is totally false.

10. Having held so I cannot lose sight of the fact that the owner and the driver have admitted the accident. The question then arises is whether the insurance company can be held liable to pay compensation in respect of the pillion rider. Reference in this behalf may be made to the judgment of the Apex Court in United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others, wherein the Apex Court held as follows:

"21 In our view, although the observations made in Asha Rani Case were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant Insurance Company that it owed no liability towards the injuries suffered by the deceased Rajinder Singh who was a pillion rider, as the insurance policy was a statutory policy, and hence it did not cover the risk of death of or bodily injury to a gratuitous passenger."

This view has been followed by the Supreme Court in The General Manager, United Insurance Co. Ltd. Vs. M. Laxmi and Others, .

11. I have carefully gone through the policy in this case. The learned Tribunal while fixing the liability on the insurance company has held that since it is a package policy the insurance company is liable. This is total misunderstanding of the law. Only because a policy is a package policy does not mean that the insurance company is liable. In the case in hand in the policy I find that the only premium paid is basic 3rd party premium and personal accident insurance cover to the owner cum driver of Rs. 1,00,000/- only. There is no coverage of any pillion rider or passenger. As held by the Apex Court gratuitous passengers are not required to be compulsorily covered and therefore, even if the accident had taken place as alleged the insurance company could not have been held liable to pay the compensation.

12. In view of the above discussion I find that the claimants have failed to prove the accident in the manner in which it has been alleged. In fact the claimants have failed to prove that the accident took place. The insurance company cannot be held liable. However, since the owner and driver have admitted the accident

the owner and driver are held jointly liable to pay the entire amount of compensation and the insurance company is exonerated of its liability to pay any amount.

13. The appeal is disposed of in the aforesaid terms. No order as to costs.

14. Send down the LCRs forthwith.

