(2012) 09 GAU CK 0082

In the Gauhati High Court

Case No : MAC App. No. 274 of 2006

New India Assurance Company Ltd. APPELLANT

Vs

Manasha Barman and Ors. RESPONDENT

Date of Decision : 28-09-2012

Acts Referred:
Motor Vehicles Act, 1988 — Section 147, 147

Citation : (2013) 2 GLR 136

Hon'ble Judges : S.Talapatra, J

Bench : Single Bench

Advocate : Mr: S.S. Sharma, Mr. K.K. Bhatta , Mr. R.K. Bhatra for the appellant.??Mr. S.C. Biswas, Ms. S.D. Choudhury , Mr. N. Debnath for the respondents., Advocates appearing for Parties

Judgement

1. This is an appeal by the New India Assurance Company Ltd. against the judgement and award dated 7.6.2006 passed by the Motor Accident Claims Tribunal, Silchar in MAC Case No. 1057 of 2004.

2. The findings as returned by the Tribunal as regards the vehicular accident that occurred on 13.7.2004, the death of one Sudip Barman who was travelling by the offending vehicle bearing registration No.AS114856 (Haruti Van) which met with the accident for rash and negligent driving of the driver and its insurance coverage by the appellant arc not in dispute by either of the parties or in the appeal. As such those findings stand affirmed without requiring any further appraisal.

3. The questions that has been raised in the appeal may be encapsulated as :

Whether the appellant has got any liability to indemnify the owner of the offending vehicle for the reasons that the deceased was a gratuitous passenger being carried in private vehicle and the vehicle was covered under the ''act only'' policy meaning thereby that the policy only covered the third party risk as per section 147(1) of the Motor Vehicles Act.

4. Mr. S. S. Sharma, learned senior counsel appearing for the appellant quite categorically submitted that this appeal is covered by the decision of the Apex Court as rendered in United India Insurance Company Ltd. v. Tilak Singh and Others, (2006) 4 SCC 404 the Apex Court having reference to a decision as reported in New India Assurance Co. Ltd. v. Asha Rani, (2003) 2 SCC 223 held that

"Section 147 of the Motor Vehicles Act, 1988 inter alia, prescribes compulsory coverage against the death of or bodily injury to any passenger of ''public service vehicle''. Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees earned in a goods vehicle would be limited to the liability under the Workmen''s Compensation Act, it does not speak of any passenger in a ''good carriage''."

5. In Tilak Singh (supra) the Apex Court held as under :

"21. In our view, although the observations made in Asha Rani case (2003) 2 SCC 223 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."

6. Mr. S.S. Sharma, learned counsel appearing for the appellant relied on a decision of this court as rendered by the judgment and award dated 22.6.2012 in New India Assurance Company Ltd. v. Rupmala Das and Others, MAC Appeal No. 278 of 2006. In paras 10, 11 and 12 of Rupmala Das (supra), it has been held as under :

"10. After the said survey of the precedents made, the Apex Court in Tilak Singh (supra), in no uncertain terms, discarded the proposition of Satpal Singh case (2000) 1 SCC 237, as was overruled by Asha Rani case (2003) 2 SCC 223, holding that the contention of the appellant Insurance Company that it owed no liability towards the injuries of 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 gratituous passenger.

In Tilak Singh (supra), the deceased was a pillion rider, who died in the accident and the dependants claimed for compensation. Ultimately, the Apex Court held that though the compensation is payable to the dependants of the deceased, but the liability was not with the Insurance Company as the vehicle was insured with the statutory policy.

11. Mr. Bhatta further relied a decision of the Apex Court in Uttar Pradesh State Road Transport Corporation v. Kulsum and Ors., (2011) 8 SCC 142, where the Apex Court held :

31. The liability to pay compensation is based on a statutory provision. Compulsory Insurance of the vehicle is meant for the benefit of the Third Parties. The liability of the owner to have compulsory insurance is only in regard to Third Party and not to the property. Once the vehicle is insured, the owner as well as any other person can use the vehicle with the consent of the owner. Section M6 does not provide that any person who uses the vehicle independently, a separate Insurance Policy should be taken. The purpose of compulsory insurance in the Act has been enacted with an object to advance social justice.

32. Third party rights have been considered by this court in several judgments and the law on the said point is now fairly well settled.

33. The Apex Court in the case of Guru Govekar v. Filomena F. Lobo, (1998) 3 SCC1 haled that: (SCC pp.607 and 11), paras 8 and 1314)

8...... Thus, if a policy is taken in respect of a motor vehicle from an insurer in compliance with the requirements of Chapter VIII of the Act, the insurer is under an obligation to pay the compensation payable to a third party on account of any injury to his/her person or property or payable to the legal representatives of the third party in case of death of the third party caused by or arising out of the use of the vehicle at a public place. The liability to pay compensation in respect of death of or bodily injury caused to the person or property of a third party undoubtedly arises when such injury is caused when the insured is using the vehicle in a public place. It also arises when the insured has caused or allowed '' any other person (including an independent contractor) to use his vehicle in a public area and the death of or injury to the person or property of a third party is caused on account of the use of the said vehicle during such period, unless such other person has himself taken out a policy of insurance to cover the liability arising out of such an accident.

13......This meant that once the insurer had issued a certificate of insurance in accordance with subsection (4) of section 95 of the Act the insurer had to satisfy any decree which a person receiving injuries from the use of the vehicle insured had obtained against any person insured by the policy. He was liable to satisfy the decree when he had been served with a notice under subsection (2) of section 96 of the Act about the proceedings in which the judgment was delivered.

14......Any other view will expose innocent third parties to go without compensation when they suffer injury on account of such motor accidents and will defeat the very object of introducing the necessity for taking out insurance policy under the Act."

12. It appears that section 146 of the M.V. Act, 1988 gives complete protection to the third party in respect of death of or bodily injury or damage to the property while using the vehicle in public place, but the gratuitous occupants in a private vehicle unfortunately does not come within the purview of the definition of the third party as appearing in section 147 of the M.V. Act, 1988."

7. On the other hand, S.C. Biswas, learned counsel appearing for the respondent urged this court to direct the appellant to make the payment of the awarded sum first, thereafter to recover the same from the owner of the v.ehicle even if this court holds that the appellant is not liable to make payment of the awarded sum. He however, submitted that the finding of the Tribunal that the deceased was the third party in respect of the offending vehicle and, thus, the deceased cannot be excluded from the insurance cover cannot be faulted.

8. On appreciation of the rival contentions as advanced by the learned counsel for the parties and scrutinising the records, this court finds that the deceased was travelling by the offending vehicle, which was a private vehicle, covered by the statutory policy as issued by the appellant only covering third party risk.

9. In view of this, the gratuitous passengers as the deceased cannot be stated to be the third party since the private vehicle are not permitted to carry passengers either on payment of fare or without fare.

10. In view of Tilak Singh (supra) and Rupmala Das (supra) the law has been crystallized that the gratuitous passenger in a private vehicle cannot be stated to be the third party for any purpose.

11. As corollary to this finding, it has to be held by this court that the deceased was not covered by the insurance policy. As such this court has been left with no other alternative but to set aside the impugned finding and direction of the Tribunal whereby the liability of making of payment of the awarded sum has been saddled with the appellant.

12. The claimantrespondent Nos.1, 2 and 3 will be at liberty to recover the awarded sum of compensation from the respondent No.4, the owner of the offending vehicle as the appellant has been discharged from the liability of indemnifying the damage that ensued from the said accident. The respondent No.4 is directed to pay the entire awarded sum with interest as per the impugned judgment and award which has been otherwise held affirmed.

13. For the reasons as discussed above, the appeal stands allowed to the extent as indicated above. However, there shall be no order as to costs.

14. The statutory deposit be returned to the appellant forthwith. Send down the LCRs forthwith.