(2003) 11 BOM CK 0036

In the Bombay High Court

Case No : First Appeal No. 59 of 1990

New India Assurance Company Ltd. APPELLANT

Vs

Santoshidevi Sharma and Others RESPONDENT

Date of Decision : 21-11-2003

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A

Citation : (2004) ACJ 1524 : (2004) 2 MhLj 273

Hon'ble Judges : S.T. Kharche, J

Bench : Single Bench

Advocate : A.J. Pophaly, for the Appellant; M.S. Deshpande, for Respondent Nos. 1 to 6 and S.P. Dharmadhikari, for the Respondent

Final Decision : Allowed

Judgement

S.T. Kharche, J.—Heard Shri A. J. Pophaly, the learned counsel for the appellant. Shri M. S. Deshpande, the learned counsel for respondent Nos. 1 to 6 and Shri S. P. Dharmadhikari, the learned counsel for respondent No. 7. The respondent No. 8 though served is absent.

2. This appeal is directed against the award dated 27-10-1989 passed by the Member, Motor Accidents Claims Tribunal. Akola in M. V. Case No. 62/86 awarding compensation of Rs. 1,63,200/- together with proportionate cost and interest @ 10% per annum from the date of the accident till realisation making the appellant-insurance Company as well as respondent No. 7 owner jointly and severally liable to pay the said amount of compensation.

3. Brief facts are as under:

The respondent Nos. 1 to 6 are the claimants and the legal representatives of deceased Radheshyam Sharma, who died in an accident arising out of the use of motor-vehicle i.e. truck bearing registration No. MHG 7015. This motor vehicle involved in the accident is admittedly owned by respondent No. 7 and it was being driven by respondent No. 8 on the relevant date and time. The deceased

Radheshyam was travelling in the truck as he was returning to Daryapur. The truck was loaded with murum. When the truck reached at the spot of accident, near Hajari-wada at a distance of about 3 kms. from Murtizapur police station, it had turtle and gone off the road and had fallen into the ditch by the side of the road. Radheshyam sustained grievous injuries and succumbed to the injuries in that accident on the spot of incident itself. The first information report was lodged at police station Murtizapur on the basis of which offence u/s 304 of the Indian Penal Code was registered. Police had visited the spot of incident and drew the spot panchanama. They had also prepared inquest panchanama of the dead body of deceased Radheshyam and forwarded the same to the Medical Officer for the purpose of postmortem examination. The postmortem report was also received which was placed on the record of the case.

4. The respondent Nos. 1 to 7 thereafter filed the claim petition seeking relief of compensation u/s 110A of the Motor Vehicles Act, 1939 (for short, the Act). The claimant had adduced oral as well as documentary evidence. The tribunal, on considering the evidence had granted compensation to the legal representatives of the deceased making the Insurance Company and owner and driver of the motor vehicle jointly and severally liable to pay the compensation. This award of the Tribunal is under challenge in this appeal.

5. Mr. Pophaly, the learned counsel for the appellant-insurance Company contended that deceased Radheshyam was travelling in the goods vehicle, and therefore, the Insurance Company would not be liable to pay the compensation because there was breach of the terms and conditions of the insurance policy. He contended that the Tribunal has committed an error of law in holding the Insurance Company liable for indemnifying the owner of the motor vehicle involved in the accident to pay compensation. In support of his submissions, he relied on the decisions of the Supreme Court in the case of Smt. Mallawwa Etc. Vs. The Oriental Insurance Co. Ltd. and Others, , Ramesh Kumar Vs. National Insurance Co. Ltd. and Others, and the larger Bench decision in the case of New India Assurance Co. Ltd. Vs. Asha Rani and Others, .

6. The learned counsel for the respondents do not dispute the law position that has been reflected in the aforesaid decisions of the Supreme Court. The learned counsel for the respondents contended that the Tribunal was not justified in adopting the multiplier of 20 years purchase factor while assessing the amount of compensation and it is settled position of law that the multiplier cannot exceed 18 years. Therefore, he contended that the amount of compensation may kindly be reassessed.

7. I have given thoughtful consideration to the contentions canvassed by the learned counsel for the parties. In Ramesh Kumar v. National Insurance Co. Ltd. and Ors. (cited supra), the Division Bench of the Supreme Court considered the question as to whether the Insurance Company is liable to pay compensation on account of death or bodily injury of the gratuitous passengers including the owner of the goods or his representatives travelling in the goods vehicle u/s 95

of the said Act. Relying upon the earlier decision in Mallawwa and Ors. v. Oriental Insurance Co. Ltd. and Ors. (cited supra), the Supreme Court held that; "Category I cases are all in which a claim petition has been filed by the claimants on account of death or bodily injuries of either the owners or their representative or the gratuitous passengers. In all these cases the claimants claimed compensation u/s 95(1)(b)(i) and Clause (ii) of the proviso after its amendment in 1939 under the old Act. The submission is, it is the Insurance Company, which is liable to pay the compensation notwithstanding that the vehicle involved in the accident is a goods vehicle. On the other hand, submission for the Insurance Company is that they are not liable for those passengers who travel by goods vehicle, in view of the language used in Section 95 of the old Act. The cases under this category need not detain us long as this question has been directly raised and decided in the case of Smt. Mallawwa Etc. Vs. The Oriental Insurance Co. Ltd. and Others, . In this case the accidents were in the period between 1971 and 1985. The Supreme Court held that, the Insurance Company is not liable for any damage in case of the gratuitous passengers including owner of the goods or his representative who travelled in a goods vehicle. So the first category of cases is disposed of in terms of this declaration that liability to pay compensation to the claimants of such person is not on the Insurance Company but on the owner of the goods vehicle. In case the Insurance Company had made part or full payment towards such compensation awarded, the same shall not be refunded from the claimants but is recoverable by the Insurance Company from the owner. In case the amount has been withdrawn by the claimants on furnishing any security, the said security shall stand discharged. In case no payment or part payment has been made to the claimants, we direct the owners of the vehicle to pay the awarded compensation to the claimants within a period of three months from today. Accordingly the first category of cases is disposed of.

8, In New India Assurance Company v. Asha Rani and Ors. (cited supra) the Hon''ble Supreme Court considered the provisions of Motor Vehicles Act 59 of 1988 and also overruled the decision in New India Assurance Co. v. Satpalsingh, 2000(1) Mh.L.J. (SC) 740 1999 AIR SCW 4337 and held that:

"It is true that sometimes the legislature amends the law by way of amplification and clarification of an inherent position which is there in the statute, but a plain meaning being given to the words used in the statute, as it stood prior to its amendment of 1994, and as it stands subsequent to its amendments in 1994 and bearing in mind the objects and reasons engrafted in the amended provisions referred to earlier. The expression ''including owner of the goods or his authorised representative carried in the vehicle which was added to the pre-existed expression ''injury to any person'' cannot be construed as either clarificatory or amplification of the pre-existing statute. On the other hand it clearly demonstrates that the legislature wanted to bring within the sweep of Section 147 and making it compulsory for the insurer to insure even in case of a goods vehicle, the owner of the goods or his authorised representative being carried in a goods vehicle when that vehicle met with an accident and the owner of the goods or his representative either dies or suffers bodily injury. Therefore in a case prior to amendment the insurer was not liable for paying compensation to the owner of goods or his authorised representative on being carried in a goods vehicle when that vehicle meets with an accident and the owner of goods or his representative dies or suffers any bodily injury".

9. It may also be useful to make a reference to the decision of the Hon''ble Supreme Court in the case of National Insurance Co. Ltd. v. Ajit Kumar and Ors. AIR2003 SCW 4120 wherein it is held that; "the difference in the language of "goods vehicle" as appearing in the old Act and "goods carriage" in the new Act is of significance. A bare reading of the provisions makes it clear that the legislative intent was to prohibit goods vehicle from carrying any passenger. This is clear from the expression "in addition to passengers" as contained in definition of "goods vehicle" in the old Act. The position become further clear because the expression used is "goods carriage" is solely for the carriage of goods". Carrying of passengers in a goods carriage is not contemplated in the Act. There is no provision similar to Clause (ii) of the proviso appended to Section 95 of the Act, 1939. The old Act prescribed requirement of insurance policy. Even Section 147 of the Act, inter alia, prescribes compulsory coverage against the death of or bodily injury to any passenger of "public service vehicle". The proviso makes it further clear that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under the Workmen''s compensation Act, 1923. There is no reference to any passengers in "goods carriage".

10. In the aforesaid case, the Supreme Court has considered the earlier decision in the New India Assurance Co. Ltd. v. Asha Rani and New India Assurance Company v. Satpal Singh and therefore, the question whether the insurer is liable to pay the compensation under the provisions of old or new Motor Vehicles Act if the death or bodily injury to the person travelling in goods vehicle as passenger is no longer res integra and there is clear dictum of Honourable Supreme Court in the case of National Insurance Co. Ltd. v. Ajit Kumar that the insurer cannot be made liable to pay compensation if the passenger is travelling in the goods vehicle.

11. It is not disputed that the deceased Radheshyam Sharma was travelling in the truck, i.e. a goods vehicle, as a passenger and in this view of the matter, it is obvious that the Tribunal was not justified and has committed an error in holding the Insurance Company liable to pay compensation.

12. However, it may be mentioned here that since no cross objections or cross appeal is filed by the respondent-claimant, in my view the judgment of the Tribunal awarding compensation adopting the multiplier method is not liable to be disturbed.

13. In the result, the appeal is allowed. The impugned judgment and award is set aside so far as the liability of Insurance Company is concerned and it would be

open for the appellant-insurance Company to recover the amount of compensation, if already paid, not from the claimants but from the owner respondent No. 7 and driver respondent No. 8. In the circumstances of the case, no orders as to the cost.

