
(2013) 11 RAJ CK 0063

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 1431 of 2013

Om Prakash Goyal

APPELLANT

Vs

Smt. Meena Mathur and Others

RESPONDENT

Date of Decision : 13-11-2013

Acts Referred:

Citation : (2013) 11 RAJ CK 0063

Hon'ble Judges : R.S. Chauhan, J

Bench : Single Bench

Advocate : G.C. Garg and Ms. Sonal Singh, for the Appellant;

Final Decision : Dismissed

Judgement

R.S. Chauhan, J.—The appellant, Om Prakash Goyal, the owner of the offending vehicle, is aggrieved by the award dated 02.01.2013 passed by the Motor Accident Claims Tribunal and Additional District Judge, No. 14, Jaipur Metropolitan, whereby while granting a compensation of Rs. 4,23,000/- in favour of the claimants-respondents No. 1 and 2, the learned Tribunal has absolved the Insurance Company. Briefly, the facts of the case are that on 07.04.2008, Miss Monika Mathur and her colleagues from Chirag International were travelling in Safari Jeep bearing Registration No. RJ-14-U-3506. The said jeep was driven by Surendra Singh, and was owned by the present appellant. They were travelling from Jaipur to Ajmer in order to pray at the shrine of Mohammad Chishti. While they were returning, Surendra Singh, the driver, drove the jeep rashly and negligently. Near the Reliance Petrol Pump situated on National Highway No. 8, Jaipur, Madanganj Bypass Road, one of the back tyres burst and the Safari jeep turned turtle twice or thrice. It went off the road into the Kachcha area. Unfortunately, Miss Monika Mathur came under the jeep. She sustained grievous injuries; subsequently, she expired. Her mother and her sister filed a claim petition before the Tribunal. In order to substantiate their case, they examined a single witness and submitted seventeen documents.

2. The Insurance Company filed a reply. It contended that according to Insurance Policy it had insured only seven passengers of the Jeep and had taken a premium of Rs. 350/-. For the same, its liability was limited only to Rs. 1 lakh per passenger. Since it had paid the said amount, by cheque No. 952314 dated 09.06.2008, therefore, it stood absolved of its liability to pay any further compensation to the claimants. After going to the oral and documentary evidence, the learned Tribunal passed the award as aforementioned. While passing the award, the learned Tribunal absolved the Insurance Company of its liability. Hence, this appeal before this Court by the owner of the offending vehicle.

3. Mr. G.C. Garg, the learned counsel for the appellant, has raised the following contentions before this Court:-

Firstly, the claimants did not produce any evidence with regard to the fact whether any fare was paid by the deceased, Monika Mathur, or not. Therefore, she cannot be said to be ?a passenger? in the offending vehicle.

Secondly, the appellant had taken out a comprehensive policy of insurance for the said vehicle. Therefore, the Insurance Company was liable to pay the entire compensation amount. Hence, it could not argue that its liability is limited to only Rs. 1 lakh. In order to buttress this contention, the learned counsel has relied cases of United India Insurance Company Limited Vs. Ahmadi Begum and Others, National Insurance Company Ltd. Vs. Balakrishnan and Another, and National Insurance Co. Ltd. Vs. Chand Chhabra and Others, He has also produced a copy of the Insurance Policy (Ex. 11).

4. Heard the learned counsel for the appellant, perused the impugned award, and considered the case law cited at the Bar.

5. The word "Passenger" means a person travelling through a mode of transportation. According to Smt. Meena Mathur A.W. 1, Monika Mathur was travelling with her colleagues from her place of work in the offending vehicle. Thus, she would have to be considered as ?a passenger" in the vehicle. Hence, even if it is not proved whether any fare had been paid to be appellant or not, it would not take Monika Mathur out of the category of being ?a passenger?.

6. A bare perusal of the Insurance Policy (Ex. 11) clearly reveals that although it was a comprehensive policy, but subsequently it was clearly written ?PA cover for seven passengers of Rs. 1 lakh each and for this purpose, a premium of Rs. 350/- had been charged from the appellant?. Thus, an exceptional category had been carved out i.e. the category of seven passengers. Thus, although the policy was a comprehensive one, but as far as passengers travelling in the vehicle were concerned, the Insurance Company had made it clear to the appellant that its liability would be limited only to an amount of Rs. 1 lakh. Therefore, the contention raised by the learned counsel for the appellant that since, a passenger happens to be a third party and since the policy happens to be a comprehensive one, the policy would make the Insurance Company liable for the total amount of

compensation, is highly misplaced. Once an exceptional clause is carved out from the general clause, even general clause would have to be read keeping in mind the exceptional clause. Thus, the word comprehensive policy would cover injury or death of any other person, who is not a passenger of the vehicle. If a passerby or an occupant of another vehicle had been injured by the offending vehicle, then such a case would be covered under the term of comprehensive policy. However, by no stretch of imagination can a passenger, who falls within the exceptional clause, can be said to fall equally in the general category of being a third party. Therefore, the interpretation being offered by the learned counsel is clearly unacceptable.

7. The case of United India Insurance Co. Ltd. vs. Ahmadi Begum & Ors. (supra) is distinguishable on factual matrix itself. In the said case the Insurance Company had disputed its liability on the ground that it was Act Policy. It further claimed that since passengers were travelling on hire, the policy does not cover the risk of such person. However, the Insurance Company failed to adduce any evidence to prove the fact that the offending vehicle was used for transporting passengers for hire. Moreover, the policy showed that Rs. 225/- was paid towards premium apart from third party risk. It is in these circumstances that Their Lordships of the Hon'ble Andhra Pradesh High Court held that the Insurance Company would be liable for payment of the compensation. However, in the present case, the Insurance Company has never taken the defence that the appellant had merely an Act policy. In fact, the Insurance Company has taken a legally valid position that although the Insurance policy is comprehensive one, but the policy itself is limited to the liability of the Insurance Company qua the passengers to an extent of only Rs. 1 lakh. Therefore, the case of Ahmadi Begum & Ors. (supra) does not support the case of the appellant.

8. Similarly, the case of National Insurance Company Ltd. vs. Balakrishnan & Anr. (supra), belies the position taken by the appellant. For in the case of Balakrishnan (supra), the Hon'ble Apex Court has clearly held that it would be appropriate to scan terms of entire policy in order to arrive at a conclusion, as to whether the policy is really a package policy to cover a liability occupant car or not?. Thus, a test has been laid down by the Hon'ble Apex Court in the said case. When the said test is applied to the present case, and when the entire terms of the policy are scanned, it is obvious that the Insurance Company had agreed to its liability towards any injury/death caused to a passenger of the vehicle to the limited amount of Rs. 1 lakh per passenger.

9. Likewise the case of Chand Chhabra & Ors. (supra), is distinguishable on factual matrix. In that case, the Insurance Company had taken the position that according to one of the witnesses all the passengers in the car had hired it as a Taxi, although the car was a private one. Therefore, the person who were injured, or had expired were gratuitous passengers. Therefore, the issue that arose before the Hon'ble Punjab & Haryana High Court was whether the Insurance Company was liable for a gratuitous passenger in a private car, which

is insured under a package. According to Their Lordship of the Punjab and Haryana High Court, the Insurance Company was, indeed, liable for the same. However, the present issue is not with regard to gratuitous passenger. Therefore, the case of Chand Chhabra (supra) does not rescue the appellant.

10. Considering the fact that the Insurance Policy qua the passenger was limited to the payment of Rs. 1 paid by the Insurance Company during the pendency of the claim petition, the learned Tribunal was justified in absolving the Insurance Company from its liability to pay anything more. Therefore, this Court does not find any merit in the present appeal and it is, hereby dismissed.