(2020) 08 J&K CK 0016

In the Jammu And Kashmir High Court

Case No : Miscellaneous Appeal No. 177 Of 2013, IA No. 727 Of 2013

Oriental Insurance Company Limited APPELLANT

Vs

Mohd. Yousuf And Others RESPONDENT

Date of Decision : 18-08-2020

Acts Referred:
Motor Vehicles Act, 1988 — Section 173

Citation : (2020) 08 J&K CK 0016

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Vishnu Gupta, R.K.S.Thakur

Final Decision : Allowed

Judgement

Sanjeev Kumar, J

1. This appeal by the Oriental Insurance Company Limited (hereinafter ?the insurer") filed under Section 173 of the Motor Vehicles Act, 1988 is directed against the award dated 31st November, 2012 passed by the Motor Accident Claims Tribunal, Ramban (hereinafter "the Tribunal") in Claim No.24/2008 titled Mohd. Yousuf v. Oriental Insurance Company Limited and others, whereby respondent No.1 (hereinafter referred to as ?the claimant?) has been held entitled to compensation of ☐ 3,22,000/- along with pendente lite and future interest @ 7.5% per annum to be paid by the appellant-insurer within a period of 30 days from the date of award.

2. The impugned award has been challenged primarily on the following grounds:-

i) The claimant was travelling in the goods carriage as a gratuitous passenger and, therefore, was not covered under the policy. The Tribunal has erroneously held the insurer liable to indemnify the insured and pay compensation to the claimant.

ii) Respondent No.3, Sarista, was neither owner of the offending vehicle nor insured under the policy on the date of the accident.

3. It is submitted that the ownership of the offending vehicle, on the date of accident, stood in the name of S. Tara Singh and in the absence of registered owner and insured being party respondent in the claim petition, no award could have been passed by the Tribunal.

4. Mr. R. K. S. Thakur, learned counsel for the claimant, has resisted the appeal primarily on the ground that no such issue was framed by the Tribunal nor the parties had any opportunity to lead evidence on the point of contention raised by the appellant-insurer in this appeal.

5. Having heard learned counsel for the parties and perused the record, it is necessary to first set out issues framed by the Tribunal, which read as under:-

"1. Whether petitioner was permanently disabled as a result of injuries received in Road Traffic Accident involving offending vehicle No.JK02B/6852 driven by respondent No.3, owned by respondent No.2 and insured with respondent No.1 on 26.02.2007 at Haldano Batote driven rashly and negligently ? (OPP)

2. Whether petitioner is entitled to compensation under M.V.Act for the disablement from respondents ? (OPP)

3. Relief ?"

6. As is apparent, no issue with regard to the actual registered owner of the vehicle has been framed. From a perusal of the pleadings of the parties filed before the Tribunal, I could not find any such plea having been taken by the Insurance Company. It was, thus, not expected of the Tribunal to frame a issue that did not arise out of the pleadings of the parties. The contention of Mr. Vishnu Gupta, learned counsel for the insurer, that the actual registered owner/insured was not arrayed as party-respondent in the claim petition and, therefore, there could not have been any direction by the Tribunal to the insurer to indemnify the person, who was not the registered owner of the vehicle, cannot be entertained at this stage. The issue raised by the appellant is a pure question of fact, which could have been determined by the Tribunal, had the insurer taken specific plea in this regard and, accordingly, a issue had been struck.

7. For the foregoing reasons, I am not inclined to entertain this plea raised for the first time in appeal, though by the documents on record, the plea raised perhaps could have been tenable before the Tribunal. Regarding the plea of the appellant that the injured-claimant was travelling in a goods carriage as a gratuitous passenger, therefore, the Insurance Company was not liable to pay compensation, it may be noted that even if the aforesaid plea of the insurer is accepted in its entirety, the Company would not be absolved of its liability to pay compensation to the claimant. It may, however, be entitled to recover the same from the owner/insured. The issue has been elaborately discussed and decided by this Court in MA No.14/2020 (Bajaj Allianz General Insurance Company Ltd. v. Rafiq Ahmed and others) decided on 10.08.2020.

8. It may be noted that in the instant case, this plea has been specifically taken by the Insurance Company in its objections but the Tribunal has not framed any issue. From a bare reading of the pleadings of the parties, it clearly transpires that the offending vehicle was a truck (goods carriage) and the claimant was travelling as a passenger therein. Unless, it is shown and proved that the injured was travelling in the goods carriage as owner of the goods, if any, carried in the vehicle, he would be unauthorized passenger in the vehicle and in that situation, the insurer may not be legally liable to indemnify the insured. However, in view of the judgment (supra), the insurer can be directed to pay compensation to the third party with liberty to recover the same from the insured.

9. Be that as it may, the fact remains that the Tribunal has committed serious error in not framing issue as to whether the injured was travelling in the goods carriage as a gratuitous/unauthorized passenger and if so, what was its effect on the liability of the insurer to pay compensation under the award.

10. In view of the aforesaid discussion, this appeal is allowed to the aforesaid limited extent and matter is remanded to the Tribunal for framing issue as to "whether the injured was travelling in the offending vehicle as a gratuitous passenger and if so, what is its effect on the liability of the insurer?". Notwithstanding the remand, the insurer shall satisfy the award in the first instance by making payment of entire compensation awarded to the claimant. It?s right to recover the amount from the insured/owner of the vehicle shall depend upon determination of the issue as as directed to be framed hereinabove.

The Tribunal, on receipt of the file, shall frame the aforesaid issue and put all the parties to notice and determine the aforesaid issue. In case, the Tribunal decides in favour of the insurer, in that eventuality the insurer would be entitled to recover the amount paid to the claimant from the insured/owner of the offending vehicle by filing execution petition before the Tribunal. It shall also be open to the insurer to seek impleadment of the registered owner of the offending vehicle as party respondent in the claim petition in accordance with law.

