

(2001) 08 RAJ CK 0101

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 626 of 1994

Oriental Insurance Company Ltd.

APPELLANT

Vs

Smt. Hulasi Devi and Others

RESPONDENT

Date of Decision : 17-08-2001

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 149

Citation : (2003) 2 ACC 103 : (2002) ACJ 2082 : (2002) 4 RLW 2028 : (2002) 4 WLN 88

Hon'ble Judges : H.R. Panwar, J

Bench : Single Bench

Advocate : D.R. Lunkar, for the Appellant; J.R. Patel, and K.R. Choudhary, for the Respondent

Final Decision : Dismissed

Judgement

Panwar, J.—This appeal is directed against the judgment and award dated 15th Feb., 1994 passed by Motor Accidents Claim Tribunal, Balotra (hereinafter referred to as "the Tribunal") whereby the Tribunal passed an award of Rs. 1,05,000/- in favour of the respondent-claimants No. 1 to 4 (hereinafter referred to as "the claimants") and against the appellant and respondent No. 5.

2. Briefly stated facts which are necessary for the decision of this appeal are that on 2.8.1989 respondent No. 5 Prahlad Ram and deceased Om Prakash were proceeding from Siwana to Balotra on a Motor Cycle No. RNQ-4683 which was owned and driven by the respondent No. 5 and was under a valid insurance with the appellant on the relevant date. It was averred that the respondent No. 5 was driving the motor cycle at a great speed, rashly and negligently, The said motor cycle suddenly went off the road to its wrong side and collided with a tree at road side. Om Prakash who was a pillion rider of the said motor cycle sustained severe injuries and succumbed to injuries. The claimants who are legal representatives and dependents of the deceased Om Prakash filed a claim petition before the Tribunal claiming compensation for a sum of Rs. 10,20,000/- against the owner

and driver of the said motor cycle as also against the appellant insurer. The respondent No. 5 filed the written statement wherein it was admitted that the deceased Om Prakash was pillion rider on the motor cycle which was driven by No. 5, however, plea was taken whereby fact of negligence of the driver was denied. It was further pleaded that the said motor cycle was hit by a truck from behind which resulted in the said accident. The appellant also filed the written statement and in para 10(g) of the written statement, it was admitted that the said vehicle was insured for the period from 26th December, 1988 to 25th Dec., 1989 as such on the date of accident i.e. 2nd August, 1989 the said motor cycle was under valid insurance with the appellant. An additional plea was raised by the appellant that since the deceased Om Prakash was pillion rider, and, therefore, the appellant denied its liability. The Tribunal framed as many as 5 issues. The issue No. 3 is relevant which is as under:-

"As to whether the Insurance Company is not liable because Om Prakash was a pillion rider".

3. The learned Tribunal decided the issue of negligency in favour of the claimants. Issue of quantum, i.e. issue No. 2 was also decided in favour of the claimants. Issue No. 3 and 4 were decided against the appellant and in favour of the claimants and awarded the compensation for a sum of Rs. 1,05,000/- in favour of the claimants and held the appellant insurer liable for compensation.

4. The finding of negligency of the respondent No. 5 is not under challenge.

5. I have heard learned counsel for the parties. Perused the record.

6. It is contended by the learned counsel for the appellant that since the deceased Om Prakash was a pillion rider and, therefore, the appellant is not liable to indemnify the owner insured. He further contended that the Tribunal fell in error in deciding the issue No. 3 against the appellant. There is no dispute with regard to the fact that the deceased was pillion rider at the lime of accident, as also the said motor cycle was comprehensively insured with the appellant. The certificate of the insurance is placed on record. The learned counsel for the appellant further contended that the pillion rider is not a third party and the appellant has undertaken only to cover the risk of third party. He has relied on judgment reported in *Sada Nirmala and Ors. v. Indrapaul Singh and Anr.* (1), *New India Assurance Co. Ltd. v. K.V. Sree Devi and Ors.* (2), *K. Velunni and Ors. v. Premalatha and Ors.* (3) and *George Oakes Co. v. V.S. Govindarajan (dead) Rep. L.Rs. and Ors.* (4).

7. In *New India Assurance Co. Ltd. v. K.V. Sree Devi and Ors.* (supra), it was held by the Orisa High Court that pillion rider cannot be construed to be a third party. In *K. Velunni and Ors. v. Premalatha and Ors.* (supra) the High Court of Kerala held that the pillion rider was not carried for a reward of or in pursuance of contract of employment and, therefore, the Insurance Company is not liable. This case relates to Motor Vehicles Act, 1939 as in the aforesaid case, the date of accident was 7.6.1981. In *George Oakes Co. v. V.S. Govindarajan and Ors.*

(supra) Karnataka High Court held that the liability of the owner is excluded because the employees was using the vehicle in his private and personal use when the accident occurred resulting the death of his friend who was on the pillion.

8. In the instant case, the accident in question took place on 2.8.1989 and the provision of Sections 147 and 149 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act of 1988") are applicable and so far as the liability of the Insurance Company is concerned, it is governed by Chapter XI of Act of 1988. Section 147(1)(b) of the Act of 1988 provides that a policy of the insurance must be a policy which insures the person or classes of persons specified in the policy to the extent specified in sub-sec. (2) of Sec. 147 of the act - (i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. Sub-section (2) of Section 147 provides that subject to the proviso to sub-sec. (1), a policy of insurance referred to in sub-sec. (1) shall cover any liability incurred in respect of any accident, upto the following limits, namely:--

(a) save as provided in Clause (b), the amount of liability incurred:

(b) in respect of damage to any property to a third party, a limit of rupees six thousand;

9. The case is hand is covered by Section 147(2)(b) and as such the appellant is required by statute to indemnify the insured to the extent of liability incurred. In *Amrit Lal Sood and Anr. v. Kaushalya Devi Thapar and Ors.* (5), the Hon"ble Supreme Court held that the expression "any person" would include an occupant of car who is gratuitously travelling in the car.

10. In *United Insurance Company Ltd. v. Aku Pattal* (6), a Division Bench of Kerala High Court (Hon"ble Justice K.T. Thamas and N. Dinakar JJ.), while deciding the case on a similar facts held that in the new Act it does not necessarily mean that the Insurance company will stand absolved from the liability in respect of pillion rider of the motor cycle.

11. In *Oriental Insurance Company and Ors. v. Ved Prakash and Ors.* (7), the case relates to the death of pillion rider due to the negligence of the motor cyclist. There was a clause in the policy to the effect that the Insurance Company is not liable for the death of pillion rider. Relying on Five Judges Bench decision of the Gauhati High Court in *New India Assurance Company Ltd. and Anr. v. Satyanath Hazarika and Ors.* (8) which was based on the instruction of the Tariff Advisory Committee requiring Insurance Company to mandatorily incorporate a clause in the contract to indemnify the insured in respect of compensation for death and bodily injury to any person including the occupant carried in the motor car provided that such occupant is not carried for hire or reward. The Tariff Advisory Committee amended on 25th March, 1977 and by this amendment the

insurance companies were compulsorily required to incorporate a clause in the contract to indemnify the insured for the death or bodily injury to any person including the occupant.

12. In *Oriental Insurance Company Ltd. v. Minaxi and Ors.* (9) while deciding the case of identical facts held that "any person" as envisaged u/s 147(1) of the Act also covers the pillion rider. Relying on the Tariff Advisory Committee letter dated 2nd June, 1986 wherein it was specifically mentioned as under:--

"It has now been decided that the Standard Motor Cycle Comprehensive Policy should cover liability to Pillion Passengers treating them as occupants in the Motor Cycle and provide indemnity to such person who are not carried for hire or reward."

13. It was further held that the term "any person" used u/s 147(1) of the Act also covers the pillion rider. In 1998(1) TAC 187 (10) Rajasthan this Court held that any person other than the party to contract is a third party. In *National Insurance Company Ltd. v. Faqir Chand and Ors.* (11) a similar view was taken by the High Court of Jammu and Kashmir. Madhya Pradesh High Court in *New India Assurance Company Ltd. v. Riaz Mohammed and Ors.* (12) and in *Divisional Manager, National Insurance Co. Ltd. v. Rayashree Rath and Ors.* (13) held that the insurer is the first party and the insured is the second party, other than two every person is a third party.

14. Chapter XI of the Act of 1988 deals with the Insurance of Motor Vehicles against third party risks. The expression "Third party" has not been defined in the Act of 1988. Section 145(g) of the Act defines the word "Third Party" includes the Government Generally, the word "includes" is used in the statute to give wider meaning of words or phrase occurring in the body of the statute. In Stroud's judicial dictionary, 3rd Ed. Vol. 4 page 3019-3020, the expression "Third party risks" has been given meaning as under:-

"Third party risks connotes that the insurer is one party to the contract, that the policy holder insured is another party, and that claim made by others in respect of the negligent use of the car, may be naturally described as claims by third parties."

15. Thus, it is clear that any person other than the insurer and insured is third party and the insurance policy covers liabilities for death or bodily injury to any person or damage to any property of third party caused by or arising out of the use of the vehicle in a public place. The expression "any person" would include an occupant of car/motor cycle who is gratuitously travelling in the car/motor cycle (vide *Amrit Lal Sood and Another Vs. Smt. Kaushalya Devi Thapar and Others*, In *New India Assurance Co. v. Satpal Singh and Ors.* (14) Hon'ble Supreme Court held as under:-

"The result is that under the new Act an insurance policy covering third-party risk is not required to exclude gratuitous passengers in a vehicle, no matter that the

vehicle is of any type or class. Hence the decisions rendered under the old Act vis-a-vis gratuitous passengers are of no avail while considering the liability of the insurance company in respect of any accident which occurred or would occur after the new act came into force."

16. In *Ashok v. Narmada* (15) Madhya Pradesh High Court while dealing with similar matter held that pillion rider is covered by the expression "any person" mentioned u/s 147 and in the policy. It was held that the Insurance Company is liable for the death of pillion rider.

17. The view expressed by the Orisa and Karnataka High Courts in *New Assurance Co. Ltd. v. K.V. Sree Devi and Ors.* (supra) and in *K. Velunni and Ors. v. Premalatha and Ors.* (supra) cannot be said to be the correct view, in view of the judgment of Three Judges Bench of Hon"ble Supreme court in *Amrit Lal Sood and Anr. v. Kaushalya Devi Thapar and Ors.* (supra). More so the instant case is governed by the new Act and it is squarely covered by the decision rendered by Hon"ble Supreme Court in *New India Assurance Company v. Satpal Singh and Ors.* (supra).

18. No other point was pressed.

19. In view of the aforesaid discussion, I am of the considered opinion that the Tribunal was not in error in holding the appellant liable for the compensation. Accordingly, the finding of the learned Tribunal is hereby affirmed.

20. In view of the aforesaid discussion, there is no merit in this appeal and accordingly, it is hereby dismissed with costs, which is quantified at Rs. 2,500/-.