(2013) 09 CHH CK 0023

In the Chhattisgarh High Court

Case No : Misc. Appeal No. 490 of 2001

Oriental Insurance Company Ltd. APPELLANT

Vs

Smt. Kumari Bai and Others RESPONDENT

Date of Decision : 30-09-2013

Acts Referred:

Citation : (2014) 1 CGLJ 440

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : Abhishek Sinha and Mr. Ghanshyam Patel, for the Appellant; Amrito Das, Advocate for Respondents No. 1 and 2, for the Respondent

Final Decision : Partly Allowed

Judgement

Sanjay K. Agrawal, J.—The appellant/Insurance Company has preferred this appeal u/s 173 of the Motor Vehicles Act, 1988 challenging the award dated 3.5-2001 passed by the Additional Motor Accident Claims Tribunal, Durg (for short ''the Claims Tribunal'') in Claim Case No. 21/1997 whereby the liability of payment of compensation has been fastened upon the appellant/Insurance Company to indemnify the award of Rs. 4,48,272/- along with interest @ 6% per annum from 16.12.2000 till its actual payment. Necessary facts required for adjudication of this appeal are as under:

(1.1) Claimants i.e. unfortunate widow and son of deceased-Sukaluram have filed claim petition u/s 163-A, 166 of the Motor Vehicles Act pleading inter alia that deceased Sukaluram was sitting in the offending vehicle Motor cycle bearing registration No. M.P.24 D/7911 which was driven rashly and negligently by its driver-Tilakram Pargania, owned by respondent No. 3-Shyam Sunder Dewangan, caused death of Shri Sukaluram, aged about 52 years and claimed compensation to the tune of Rs. 13,82,720/- for the death of the deceased.

(1.2) Respondent No. 3-Shyam Sunder Dewangan-Owner of the offending vehicle remained ex parte before the Claims Tribunal and did not file written statement whereas appellant/Insurance Company filed its written statement before the Claims Tribunal and stated that offending vehicle was insured at the time of accident in the name of original owner-Shyam Sunder Dewangan and the driver of the offending vehicle did not have valid and effective driving licence to drive the motor cycle and also pleaded that as the deceased was sitting in the motorcycle as a pillion rider and was not covered under the act only policy issued to the owner of the vehicle, therefore, the appellant/Insurance Company is not liable for payment of compensation to the claimants.

2. Learned Claims Tribunal, after appreciating oral and documentary evidence available on record, partly allowed the claim petition and granted compensation to the tune of Rs. 4,48,272/- along with Interest @ 6% per annum from 16.12.2000 till its actual payment. The Claims Tribunal also recorded a finding that the Insurance Policy issued in the case in favour of owner is a comprehensive policy which cover the risk of pillion rider sitting in the offending vehicle and held that in view of judgment of the Supreme Court in case of New India Assurance Company Vs. Shri Satpal Singh and Others, , appellant/ Insurance Company is liable to make payment of compensation.

3. Shri Abhishek Sinha, learned counsel appearing for the appellant/Insurance Company by placing reliance upon the judgment of Supreme Court in case of United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others, would submit. That policy of Insurance (Ex. D-3) issued by the Insurance Company in favour of the original owner of the vehicle was not the comprehensive policy but it is only motor cycle policy i.e. act only policy which has been duly proved by examining Shri Rajendra Vaishnava (DW-1)-Assistant Administrative Officer of the Insurance Company and, therefore, the finding recorded by the Claims Tribunal holding that the policy is comprehensive policy covering the risk of pillion rider in the offending vehicle deserves to be set aside. He further submits that the act only policy issued by the appellant/Insurance Company in favour of the original owner was not covering the risk of pillion rider sitting in the vehicle. He lastly submits that as per Circular dated 25.11.2009 issued by the Head Office, New Delhi, the vehicle insured under Motor Package Policy is also called as Comprehensive Policy, which covers the risk of pillion rider sitting in the vehicle.

4. On the other hand, learned counsel appearing for the respondents supported the award impugned and submitted, in the facts and circumstances of the case, the Tribunal has rightly fastened the liability of payment of compensation upon the appellant/Insurance Company which does not call for any interference.

5. I have heard learned counsel appearing for the parties and considered the rival submissions made therein and perused the record of the Claims Tribunal and award impugned.

6. First of all, I shall examine as to whether policy issued in favour of the owner of the offending vehicle is comprehensive policy or Act only policy. A bare perusal

of the Insurance Policy (Ex. D-3), which was duly prayed by the witness of Insurance Company Shri Rajendra Vaishnava (DW-1)-Assistant Administrative Officer. It states as under:--

The policy issued in the case is Motor Cycle Policy A ACT only policy for motorcycle No. MP 24-D 7911 for a period of 4.2.1997 to 03.02.1998 in favour of owner Shri Shyam Sunder Dewangam and taken a premium for liability to public-Basic as Rs. 40/- and 5% as tax of Rs. 40/- i.e. Rs. 2/-, total Rs. 42/-.

It would dear that the policy issued in the case is a act only policy, which did not cover the risk of pillion rider sitting in the vehicle.

7. The Oriental Insurance Company Limited, Head Office New Delhi has issued a circular on 25.11.2009, which reads as under:

The Oriental Insurance Company Ltd., Head Office, New Delhi

Deptt, Motor

Dated 25th November, 2009

Circular No. HO/MOT (U/W) 282/2008-09/CR-6473 Circular to All BOs/Dos/ROs., I.A.D., Vigilance Deptt, IT Deptt, OSTC, All Deptts, of H.O. & CMDS Sectt/Service Centre at Hansalaya & Hyderabad.

Liability of Insurance Companies in Respect of Occupant of a Private Car and Pillion Rider in a Two Wheeler Under Standard Motor Package Policy (also Called Comprehensive Policy)

We have received Circular No. IRDA/NL/CIR/F & U/073/11/2009 dt. 16.11.2009 from IRDA whereby it is confirmed that insured''s liability in respect of occupant carried in a Private car and pillion rider carried on 2-wheeler is covered under the standard Motor Package Policy, IRDA has further confirmed that vide various Circulars issued after detariff of Motor, there has been no change in the scope of the standard covers.

A copy of the Circular is enclosed for record & ready reference. The term of the cover as per the Motor Package Policy for Private Cars and 2-wheeler as given in Policy wording Section 2.1(i) are very clear and are reconfirmed by the IRDA''s Circular.

It is, therefore, advised to immediately review all cases where appeal has been filed on the grounds that insurer is not liable for occupants of private car and pillion rider in a 2-wheeler under the Motor Package Policy. If the appeal is based solely on these grounds then it must be immediately withdrawn. If there are other grounds for filing appeal then the case must be examined on merits and decision regarding continuation of appeal be taken by the Regional Manager concerned. Lastly, It must be ensured that our offices desist from filing appeals on the grounds of Pillion Rider or occupants of Private Car not being covered under Motor Package Policies.

Kindly acknowledge receipt and confirm action taken regarding appeal cases to Head Office Motor Department.

Sd/- N.K. Singh General Manager

Encl: As above.

A bare perusal of the aforesaid circular would show that comprehensive policy would cover the liability of the Insurer for payment of compensation for pillion rider/occupant of car and "Act only" policy would not cover the risk of pillion rider/occupant of the car.

8. Thus, for the foregoing reasons, it is held that in the instant case, policy issued in favour of respondent No. 2/owner of the vehicle is "Act Only" policy and it is not a comprehensive policy as held by the Learned Claims Tribunal and, therefore, the Insurance Policy (Ex. D-3) being Act only policy did not cover the risk of pillion rider sitting in the motor cycle and the finding recorded by the Tribunal that Insurance Company is liable to indemnify the award holding that policy is comprehensive policy is contrary to the record. Insurance policy (Ex. D-3) would reveal that appellant/insurance company has not undertaken the risk of pillion rider sitting in the motorcycle by entering into special contract with the owner and by charging extra premium therefor, in the absence whereof, the insurance company cannot be held liable for payment of compensation to the claimants.

9. The Supreme-Court in case of National Insurance Company Ltd. Vs. Balakrishnan and Another, , has held in para 21 as under:

21. In view of the aforesaid factual position, there is no scintilla of doubt that a "comprehensive/package policy" would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an "Act Policy" stands on a different footing from a "Comprehensive/Package Policy". As the circular have made the position very clear and the IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a "comprehensive/package policy" covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the "Act Policy" which admittedly cannot cover a third party risk of an occupant in a car. But, if the policy is a "Comprehensive/Package Policy", the liability would be covered. Theses aspects were not noticed in the case of Bhagyalakshmi and Others Vs. United Insurance Co. Ltd. and Another etc., and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a large Bench as the IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same.

10. In my considered opinion, the Claims Tribunal has erred in saddling the liability upon the appellant/insurance company to pay compensation to the

claimant.

11. Resultantly, the appeal is partly allowed. Part of the impugned award dated 03.05.2001 passed in Claim Case No. 21/97 (Smt. Kumari Bai & others Vs. The Oriental Insurance Company Limited) by which the liability has been fastened upon the appellant/Oriental Insurance Company Limited to pay compensation to the claimants is set aside and it is held that respondent No. 3/owner would be liable to make payment of compensation in place of appellant/Insurance Company. Award is modified to the above extent. Rest of the conditions mentioned in the award shall remain intact. Since the award amount has already been paid by the appellant/Insurance Company to the claimants, appellant/ Insurance Company would be entitled to recover the amount from the respondent No. 3/owner of the vehicle. No order as to cost.

