(2011) 08 BOM CK 0222

In the Bombay High Court

Case No : First Appeal No. 2057 of 2010

Popat Kacharu Kedar APPELLANT

Vs

Jyoti and Others RESPONDENT

Date of Decision : 11-08-2011

Acts Referred:
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (2012) 4 TAC 304

Hon'ble Judges : R.M. Borde, J

Bench : Single Bench

Advocate : B.N. Palve, for the Appellant; M.R. Sonwane, Advocate for the Respondent No. 1, Shri S.R. Bagal holding for Shri H.D. Patil, Advocates for the Respondent No. 2, Shri S.V. Kulkarni, Advocate for the Respondent No. 3 and Shri R.B. Dhakane, Advocate for the Respondent Nos. 4 and 5, for the Respondent

Final Decision : Allowed

Judgement

R.M. Borde, J.—This is an appeal preferred by original opponent No. 1 - owner of the vehicle challenging the judgment and award dated 22nd October, 2008, passed by Motor Accident Claims Tribunal, Ahmednagar in Motor Accident Claim Petition No. 233/2003. The Tribunal awarded compensation on account of death of husband of claimant No. 1, to the tune of Rs. 2,40,000/excluding no fault liability amount alongwith interest @ 6% p.a. from the date of application till realisation of the amount. Deceased Santosh was the husband of original applicant No. 1 Respondent No. 1 herein and son of original opponent Nos. 4 & 5. He was 22 years of age at the time of occurrence of the accident and was running a grocery shop and also cultivating his land situate at village Mangrul, Tq. Shevgaon. According to the claimants, income of the deceased was Rs. 4,500/- per month out of the grocery shop run by him and he used to earn about Rs. 12,000/- per annum from agricultural land.

2. It is the case of the claimants that on 3rd May, 2003 at about 5.00 p.m.,

deceased alongwith his brother-in-law Subhash were returning from village Shevgaon to Mangrul in a jeep bearing No. MH16-E-3226. Original opponent No. 1 was owner of the jeep and opponent No. 2 was the driver, whereas, opponent No. 3 is the Insurance Company. According to the claimants, driver of the jeep drove the vehicle in a rash and negligent manner, which resulted in the occurrence of the accident at village Babhulgaon. Deceased sustained fatal injuries and died on the spot. Police registered Crime No. 62/2003 against the jeep driver for an offence punishable under Sections 304-A and 279 of the Indian Penal Code. According to the claimants, on account of death of deceased Santosh, they are entitled to receive compensation of Rs. 4,30,000/- alongwith interest.

3. Opponent No. 1 opposed the application by filing written statement at Ext. 22 and opponent No. 3 presented written statement at Ext. 23. Both the opponents denied the liability towards payment of compensation.

According to the Insurance Company, risk of the occupants in the jeep was not covered fully and the liability is limited to the extent of Rs. 50,000/- only. According to the Insurance Company, an amount of Rs. 50,000/- has been paid towards no fault liability and as such the Insurance Company is not liable to reimburse claim of the claimants.

4. The Tribunal, after considering the evidence led by respective parties, reached to the conclusion that the claimants are entitled to receive compensation to the tune of Rs. 2,40,000/- excluding the amount of no fault liability and passed award accordingly.

5. The only grievance made in the appeal is in respect of limit of liability, exoneration of the Insurance Company in respect of payment of total amount of compensation and reimbursement of the claim on behalf of owner of the vehicle. The Tribunal has accepted the contention raised by the Insurance Company in respect of limit of liability and held the Insurance Company liable to reimburse the claim only to the extent of Rs. 50,000/-.

6. According to the appellant, considering the nature of the policy, which is comprehensive one, the liability of the Insurance Company in respect of reimbursing the claim amount) cannot be said to be limited. The Insurance Company, however, has supported the judgment delivered by the Tribunal.

7. The only point arises for consideration in the appeal is :

Whether under the comprehensive/package policy, the Insurance Company is liable to compensate for the death or injury of the occupants in a private car; and whether considering the terms of the policy, the limit of liability can be said to be limited to the extent of Rs. 50,000/only.

8. A similar issue has arisen for consideration of learned Single Judge of the Delhi High Court in M.A.C. Application No. 176/2009, in the case of Yashpal Luthra & another v. United India Insurance Co. Ltd. & another. The point for

consideration formulated by the Delhi High Court reads thus:

Whether under a comprehensive/package policy, the Insurance Company is liable to compensate for the death or injury of a pillion rider on a two wheeler or the occupants in a private car?

9. The Delhi High Court, while dealing with the matter, examined the competent officer of the United India Insurance Company, so also the Deputy Manager of Insurance Regulatory & Development Authority (''IRDA'') on oath. The officer of the IRDA confirmed the instructions issued by the Tariff Advisory Committee on 2nd June, 1986, so also the instructions and Circular dated 18th March, 1978 to be followed and effective till date and further stated that the Insurance Companies are bound to pay compensation in respect of the liability towards a pillion rider on the scooter and occupant in a car under the comprehensive/ package policy irrespective of the terms contained in the policy. The Officer on Special Duty of IRDA also appeared in the matter and explained the stand of the IRDA. On 2nd November, 2009, a meeting of Chief Executive Officers (CEOs) of the Insurance Companies was convened under the auspices of IRDA. The Delhi High Court appointed amicus curiae as observer in the meeting. The meeting was attended by CEOs of all the seventeen Insurance Companies, namely, Bajaj Allianz General Insurance Co., ICICI Lombard General Insurance Co.Ltd., IFFCO Tokyo Insurance Co.Ltd., Reliance General Insurance Co.Ltd., Royal Sundram Alliance Insurance Co.Ltd., TATA AIG General Insurance Co.Ltd., Cholamandalam General Insurance Co.Ltd., HDFC ERGO General Insurance Co.Ltd., Future Generally India Insurance Co.Ltd., Universal Sompo General Insurance Co.Ltd., Shriram General Insurance Co.Ltd., Bharti Axa General Insurance Co.Ltd., Raheja QBE General Insurance Co.Ltd., National Insurance Co.Ltd., New India Assurance Co.Ltd., Oriental Insurance Co.Ltd. and United India Insurance Co.Ltd. After deliberations with all the Insurance Companies, the liability in respect of occupants in a private car and a pillion rider on a two wheeler under the comprehensive/package policy was accepted by all the Insurance Companies. All the Insurance Companies also agreed to comply with the Circular dated 16th November, 2009 issued by the IRDA restating the position relating to the liability of the Insurance Companies. All the Insurance Companies further agreed to withdraw the contrary plea wherever taken before the Motor Accident Claims Tribunals and to issue directions to their respective lawyers and the operating officers within seven days. The Insurance Companies further agreed to withdraw all appeals filed by them before various High Courts raising this plea and also to concede the liability in appeals filed by the claimants before the High Courts. The minutes of the meeting convened by IRDA on 26th November, 2009, is reproduced as below :

The insurer companies have sought the advice of the learned amicus curiae, Shri Arun Mohan in the matter. The learned amicus curiae explained that it would be prudent on the part of the Companies to take the advice of their Counsel. However he stated that the companies may express their views freely and he will record them as stated by them.

Thereafter the learned amicus curiae noted the stand taken by the Companies on various issues as under :

(i) All the Insurance Companies agreed to comply with the circular dated 16th November, 2009 issued by IRDA restating the position relating to the liability of the Insurance Companies in respect of occupants in a private car and; pillion rider on a two wheeler under the comprehensive/package policies. Insurers, however, maintained that they will take up the issues of pricing with the Regulatory Authority for future.

(ii) With respect to the pending cases before the MACT, all the Insurance Companies have agreed to withdraw the aforesaid plea wherever taken and to issue appropriate instructions to their respective lawyers and the operating officers within 7 days.

(iii) With respect to the appeals pending before the High Courts, all the Insurance Companies have agreed to issue instructions within 7 days to their respective operating officers as well as to Counsels to withdraw the contest on this ground (that of pillion rider in two-wheeler or occupant in a private car).

(iv) The number of appeals pending before the High Courts (whether filed by the claimants or the insurers) on this issue will be identified by the Companies within a period of 2 weeks and the contest on this ground shall be withdrawn within a period of four weeks thereafter.

(v) With respect to the appeals pending before the Hon''ble Supreme Court, all the insurance companies have agreed to inform, within a period of 7 days, their respective Advocates on record about the IRDA circulars for appropriate advice and action.

The companies have submitted that in view of the difficulty in collecting data on the number of claims pending on the issue before the MACTs, they may be given time. The learned amicus curiae explained that collection of such data is required by the Honourable Court and efforts must made and if there are difficulties the Court may be apprised of the position. The Government companies expressed lot of difficulty in finding out the statistics on this ground because they have to work out the statistics on the basis of the information extracted from each of the file and contacting each of the advocate and also by examining the defences the advocate might have taken before the Courts. However, all the insurers were unanimous that they shall abide by the orders of the High Court by not contesting the cases before MACT/High Courts on this ground at all. The learned amicus curiae advised the insurers to take immediate steps and collect the statistics at a central point for further necessary communication to the Hon''ble High Court.

10. The IRDA issued a Circular to all the Insurance Companies on 3rd December 2009, which is reproduced hereunder :

IRDA

IRDA/NL/CIR/F&u/078/12/2009

3rd Dec. 2009.

To

All CEOs of All General Insurance Companies (except ECGC, AIC, Staff Health, Apollo)

Re : 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.

Pursuant to the Order of the Delhi High Court dated 23rd November, 2009 in M.A.C. A.P.P. No. 176/2009 in the case of Yashpal Luthra v. United India & others, the Authority convened a meeting on 26th November, 2009 of the CEOs of all the general insurance companies doing motor insurance business in the presence of the Counsel appearing on behalf of the Authority and the learned amicus curiae. Based on the unanimous decision taken in the meeting by the representatives of the general insurance companies to comply with the IRDA circular dated 16th November, 2009 restating the position relating to the liability of all the general insurance companies doing motor insurance business in respect of the occupants in a private car and pillion rider on a two wheeler under the comprehensive/package policies which was communicated to the Court on the same day i.e. 26th November, 2009 and the Court was pleased to pass the order (dated 26th November, 2009) received from the Court Master, Delhi High Court, is enclosed for your ready reference and adherence in terms of the said order and the admitted liability of all the general insurance companies doing motor insurance business in respect of the occupants in a private car and pillion rider on a two wheeler under the comprehensive/package policies, you are advised to confirm to the Authority, strict compliance of the circular dated 16th November, 2009 and orders dated 26th November, 2009 of the High Court. Such compliance on your part would also involve.

(i) Withdrawing the plea against such a contest wherever taken in the cases pending before the MACT, and issue appropriate instructions to their respective lawyers and the operating officers within 7 days.

(ii) With respect to all appeals pending before the High Courts on this point, issuing instructions within 7 days to the respective operating officers and the Counsels to withdraw the contest on this ground which would require, identification of the number of appeals pending before the High Courts (whether filed by the claimants or the insurers) on this issue within a period of 2 weeks and the contest on this ground being withdrawn within a period of four weeks thereafter.

(iii) With respect to the appeals pending before the Hon''ble, Supreme Court, informing within a period of 7 days, their respective Advocates on record about the IRDA Circulars, for appropriate advice and action.

Your attention is also drawn to the discussions in the CEOs meeting on 26th November, 2009, when it was reiterated that insurers must take immediate steps to collect statistics about accident claims on the above subject through a central point of reference decided by them as the same has to be communicated in due course to the Honourable High Court. You are therefore advised to take up the exercise of collecting and collating the information within a period of two months to ensure necessary & effective compliance of the order of the Court. The information may be centralized with the Secretariat of the General Insurance Council and also furnished to us.

The IRDA requires a written confirmation from you on the action taken by you in this regard.

This has the approval of the Competent Authority.

Sd/- (Prabodh Chander) Executive Director

11. Various Insurance Companies also issued instructions in accordance with the understanding reached before the Delhi High Court and in consonance with the directives issued by IRDA. The National Insurance Co.Ltd. has also issued a circular on 27th November, 2009 to all their Regional Incharges and Regional Offices, which is annexed to the affidavit in reply tendered by Respondent No. 3, which is quoted as below:

National Insurance

HO/MOTOR/TP/27/11/2009

Re : IRDA Circular Ref :

IRDA/NL/CIR/F&U/073/11/2009 occupants of Pvt. Cars and Pillion rider of two wheelers under Package Policy.

We forward herewith the captioned circular of the IRDA dated 16th November, 2009.

In the Meeting of CEOs/GMs convened by IRDA on 26th November, 2009 at New Delhi, it has unanimously been, decided by the PSU Companies that for the time being, no fresh SLPs will be filed in the Supreme Court on the above ground and all currently pending SLPs will be dealt with as per the advice of our Counsels on a case to case basis. Further advices in this regard will be intimated in due course.

Meanwhile, you are advised to take the following steps in the matter immediately.

1. Initiate immediate action, at any rate before 7th December, 2009, for withdrawal of all Appeal cases filed by you in High Courts SOLELY ON THE GROUND OF LACK OF LIABILITY TOWARDS OCCUPANTS OF PVT. CARS AND

PILLION RIDER OF TWO WHEELERS (NOT CARRIED FOR HIRE OR REWARD) COVERED UNDER PACKAGE POLICIES.

2. If such Appeals have been filed on concurrent grounds of Quantum, Negligence etc. as well alongwith the above ground, FILE APPLICATIONS BEFORE HIGH COURTS TO THE EFFECT THAT THE COMPANY IS NOT PRESSING THE GROUND OF LACK OF LIABILITY TOWARDS OCCUPANTS OF PVT. CARS AND PILLION RIDERS OF TWO WHEELERS UNDER PACKAGE POLICIES AND THEREAFTER CONTINUE TO MAINTAIN THE SAID APPEALS ON THE REMAINING GROUNDS.

3. Segregate all MACT cases where such a pleading has been taken in our written statements, AND FILE APPLICATIONS BEFORE THE RESPECTIVE COURTS TO THE EFFECT THAT THE COMPANY NO LONGER WISHES TO PRESS THE SAID PLEADING AND CONTINUE TO DEFEND THE CASES ON OTHER GROUNDS.

4. Update the data of all such cases filed solely on the above ground before High Courts and furnish the same to HO TP department in the format already sent to you ALONGWITH THE FINANCIAL IMPACT OF SUCH WITHDRAWAL.

5. You are also advised to SUBMIT DETAILS OF THE INSTANCES FALLING UNDER ITEM NO. 3 ABOVE IN A SPECIFIC FORMAT BEING SENT TO YOU SEPARATELY.

Since, the Company is required to furnish the accurate Data regarding the above to IRDA and to Delhi High Court by 7th December, 2009, you are advised to take immediate action in compliance.

Sd/- (CPR VARMA) General Manager

12. Respondent No. 3 National Insurance Company also issued further instructions in the matter vide communication dated 20th July, 2011 wherein it is stated in clear terms thus :

In fact, our liability is unlimited towards Occupant in Private Car and Pillion Rider in two wheeler under the Standard Motor Package Policy (also called as Comprehensive Policy) as per the circular IRDA/NL/CIR/F&U/073/11/2009 dated 16th November, 2009.

13. The Circular dated 16th November, 2009, issued by IRDA, is quoted as below :

INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY

Ref : IRDA/NL/CIR/F&U/073/11/2009

16th November, 2009

To,

CEOs of all General Insurance Companies

Re : 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)

Insurers'' attention is drawn to wordings of Section (II)1(i) of Standard Motor Package Policy (also called Comprehensive Policy) for Private Car and two wheeler under the (erstwhile) India Motor Tariff. For convenience the relevant provisions are reproduced hereunder :

Section II - Liability to Third Parties

1. Subject to the limits of liability as laid down in the Schedule hereto the Company will indemnify the insured in the event of an accident caused by or arising out of the use of the insured vehicle against all sums which the insured shall become legally liable to pay in respect of-

(i) death or bodily injury to any person including occupants carried in the vehicle (provided such occupants are not carried for hire or reward) but except so far as it is necessary to meet the requirements of Motor Vehicles Act, the Company shall not be liable where such death or injury arises out of and in the course of employment of such person by the insured.

It is further brought to the attention of insurers that the above provisions are in line with the following circulars earlier issued by the Tariff Advisory Committee on the subject:

(i) Circular M.V. No. 1 of 1978 - dated 18th March 1978 (regarding occupants carried in Private Car) effective from 25th March 1977.

(ii) MOT/GEN/10 dated 2nd June 1986 (regarding Pillion Riders in a two wheeler) effective from the date of the circular.

The above circulars make it clear that the Insured''s liability in respect of Occupant(s) in a Private Car and Pillion Rider carried on two wheeler is covered under the Standard Motor Package Policy. A copy each of the above circulars is enclosed for ready reference.

The authority vide circular No. 066/IRDA/F&U/Mar 08 dated 26th March, 2008 issued under File & Use Guidelines has reiterated that pending further orders the insurers shall not vary the coverage, terms and conditions, wordings, warranties, clauses and endorsements in respect of covers that were under the erstwhile tariffs. Further the Authority, vide circular No. 019/IRDA/NL/F&U/Oct. 08 dated 6th November, 2008 has mandated that insurers are not permitted to abridge the scope of standard covers available under the erstwhile tariffs beyond the options permitted in the erstwhile tariffs.

All general insurers are advised to adhere to the aforementioned circulars and any noncompliance of the same would be viewed seriously by the Authority.

This is issued with the approval of competent authority.

Sd/- (Prabodh Chander) Executive Director

14. Apart from the National Insurance Company Ltd., having adopted a policy in consonance with the directives issued by IRDA, all other Insurance Companies have also issued internal Circulars for observance of the directives issued by IRDA on 16th November, 2009 and 3rd December, 2009.

15. Thus, there can be a little doubt as regards limits of liability under the comprehensive/package policy to compensate in the event of occurrence of death or sustenance of injury of a pillion rider on the two wheeler or occupant in a private car. It is stated in clear terms that there are no limits on the liability and the Insurance Companies are liable to reimburse the claim in its entirety.

16. I had called upon the Insurance Companies to clarify the stand adopted by them in similar matters and also called upon them to clarify as to whether they adhere to the agreement arrived at in the meeting convened under the auspices of IRDA in pursuance to the initiative taken by the Delhi High Court. In an affidavit in reply presented by the Insurance Company, it has been unequivocally stated that the IRDA Circular dated 16th November, 2009 followed by Circular issued by the General Manager dated 27th November, 2009 and the Circular issued by the Regional Manager, Pune dated 20th July, 2011 clarifies the stand and the policy directives issued by IRDA are binding on the Insurance Companies. It is also specifically stated in reference to Circular dated 27th November, 2009 that the risk in respect of occupants in a private car is unlimited under the standard motor package policy.

17. In this view of the matter, decision rendered by the Chairman, Motor Accident Claims Tribunal, Ahmednagar, on 22nd October, 2008 in Motor Accident Claims Petition No. 233/2003, is liable to be quashed and set aside, so far as it relates to exonerating the Insurance Company from reimbursing the claim of the claimants on behalf of the insured. Original opponent No. 3 - National Insurance Company Limited shall also be responsible alongwith original opponents No. 1 & 2 to pay jointly and severally the compensation amount of Rs. 2,40,000/ excluding the no fault liability amount (already paid) to the claimants with interest @ 6% p.a. from the date of application i.e. 9th June, 2003 till the date of realisation of the amount. The appeal accordingly stands allowed to the extent specified above. In the facts and circumstances of this case, there shall be no order as to costs. Pending Civil Applications do not survive and stand disposed off.

