

(2007) 07 MP CK 0001
In the Madhya Pradesh High Court

Raj Bai and Others

APPELLANT

Vs

New India Assurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 03-07-2007

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 173

Citation : (2008) ACJ 2017

Hon'ble Judges : Rajendra Menon, J;Abhay Gohil, J

Bench : Division Bench

Judgement

Abhay Gohil, J.—Claimants have filed this appeal u/s 173 of the Motor Vehicles Act, 1988 against the award dated 8.5.2003 passed by First Motor Accidents Claims Tribunal in Claim Case No. 62 of 2003.

2. Brief facts of the case are that on 16.10.2000, the deceased Kanahayaram Prajapati was travelling in truck No. UP 78-T 2129 along with his goods. The said truck owned by Surendra Kaur, respondent No. 3 was being driven by S. Ali, respondent No. 2 on the Agra-Bombay Road and when the vehicle reached between Parbila Babdi and Bilonia, because of rash and negligent driving of the truck, the driver lost its balance, the said truck turned turtle and met with an accident. Kanahayaram who was travelling in the truck died. The claimants those who are the legal heirs of the deceased Kanahayaram filed the claim application for claiming compensation of Rs. 18,50,000 before the Motor Accidents Claims Tribunal, Guna. Before the Claims Tribunal, the respondent Nos. 2 and 3 (i.e., driver and owner of the offending vehicle) remained ex parte and the claim was contested by insurance company, respondent No. 1. The main objection of the insurance company in the written statement was that S. Ali, driver of the truck was not having valid driving licence and was not entitled to drive the said truck. It was also submitted that the truck is insured as a goods vehicle and was not insured for carrying passengers. Deceased Kanahayaram was travelling in the truck as a passenger and the driver was driving the truck contrary to the terms and conditions of the insurance policy, therefore, there is a breach of the policy

and for the death of the deceased, insurance company is not liable to pay any compensation.

3. On the basis of the aforesaid pleadings of the parties, issues were framed, evidence of the parties was recorded and the Tribunal recorded a finding that the accident took place because of rash and negligent driving by the driver of the said truck. Tribunal also found that Kanahayaram who was travelling in the said truck died because of the accident and the respondent Nos. 2 and 3 (driver and owner) committed the breach of the terms and conditions of the policy. Therefore, it is held that the insurance company is not liable to pay compensation and after considering the evidence of the claimants, awarded compensation of Rs. 2,15,000 along with interest at the rate of 8 per cent per annum against the owner and driver of the offending vehicle. Against which the claimants have filed this appeal for enhancement of the compensation on two grounds, firstly, adequate compensation has not been awarded, the income of the deceased has not been considered properly and proper multiplier has also not been applied. Secondly, the Tribunal has wrongly exonerated the insurance company from the liability to pay compensation to the claimants. It was also argued that since it is difficult to recover the amount of compensation from the owner of the vehicle by the claimants, therefore, a direction may be given to the insurance company to pay the amount of compensation with liberty to the insurance company to recover the same from the owner and driver of the vehicle.

4. We have heard learned Counsel for the parties perused the evidence and the documents on record.

5. Mr. S.S. Rajput, learned Counsel for the appellants argued on the aforesaid two grounds but in reply, Mr. A.K. Agarwal, learned Counsel for the insurance company vehemently opposed the submissions and cited various decisions of the Hon'ble Supreme Court and submitted that since the vehicle was being driven contrary to the terms and conditions of the policy, therefore, the insurance company is not liable to pay the compensation. It was also submitted by Mr. Agarwal that the Hon'ble Supreme Court in catena of decisions has consistently held that in such cases, liberty was not granted to the insurance company to pay the compensation to the claimants. Therefore, as a settled view, the court should not give any such liberty or direction and prayed for dismissal of the appeal.

6. After hearing learned Counsel for the parties, firstly, we have considered the question of enhancement of compensation.

7. Raj Bai, wife of deceased Kanahaya-ram Prajapati was examined as PW 1. She has stated that at the time of accident, her husband, Kanahayaram was in good health and was engaged in brick manufacturing and was earning Rs. 5,000 per month. Her son, Mukesh was also travelling along with his father and both have died. In the cross-examination, she has admitted that in the accident both her son and husband died and her younger son, Prakash is not doing anything.

8. Gokal, PW 2 has not stated anything about the income of the deceased. He

was also co-passenger and was examined to prove the accident. He has stated that bus was not available, therefore, he was also travelling in the truck after agreeing to pay Rs. 5 as fare to the driver but before the payment of fare, the accident took place and he could not pay the fare to the driver of the truck. He had also sustained injuries in the accident.

9. Insurance company had examined Jafar Ahmad, Senior Assistant Branch Manager only to prove the terms and conditions of the policy, Exh. DI, which was issued and premium was paid for driver, conductor and five labourers but it was a goods vehicle in which passengers were not allowed to travel and the driver of the vehicle was driving the vehicle in violation of the terms and conditions of the policy. There is no rebuttal of the oral evidence of the claimant, Raj Bai on the question of income of the deceased.

10. On the basis of aforesaid evidence of the parties, the Tribunal considered the income of the deceased as Rs. 2,000 per month at the rate of Rs. 100 per day and for 20 days calculated the income of Rs. 2,000 per month and Rs. 24,000 per year and after deducting one-third towards personal expenses of the deceased, calculated dependency as Rs. 16,000 per annum and applying the multiplier "13", awarded total compensation of Rs. 2,15,000.

11. It is a fact that there is no documentary evidence on record about income of the deceased but as he was engaged in manufacturing bricks and there is no rebuttal of this fact that the deceased was not engaged in manufacturing bricks. Looking to the size of the family of the deceased and the business in which he was involved, he must be earning approximately Rs. 100 per day. The Tribunal has only considered the income of the deceased for 20 days in a month which is on lower side, when a person was engaged in a business of manufacturing bricks it cannot be said that he was working only for 20 days. In the background of Indian scenario of a working class person, we consider the same for 25 days in a month and consider the income of the deceased as Rs. 2,500 per month and Rs. 30,000 per annum and after deducting one-third towards self expenses, consider the dependency as Rs. 20,000 per annum. Considering the age of the deceased to be 45 years, the Tribunal has applied the multiplier "13". Learned Counsel for the appellants argued that the Tribunal has not applied the proper multiplier. Raj Bai, PW 1, wife of the deceased has stated her age as 41 years in the affidavit and 38 years in the claim petition and the age of her husband on the date of accident as 40 years and in the post-mortem report, Exh. P2, the same has been shown as 45 years. Thus, we consider that on the date of the accident, age of the deceased was between 40-45 years and in such a case, multiplier of "15" should be applied. Therefore, we modify the multiplier and apply the same as "15" instead of "13". Thus, on application of multiplier of "15" on the amount of dependency, Rs. 20,000, the amount of compensation would come to Rs. 3,00,000. We further award a sum of Rs. 20,000 towards funeral expenses, loss of love and affection, loss of consortium and loss to estate. Thus, we quantify the total compensation as Rs. 3,20,000 (rupees three lakh twenty thousand) for

which the claimants are entitled. The claimants shall also be entitled to interest at the rate of 9 per cent per annum on the enhanced amount of compensation from the date of filing of the appeal till payment.

12. Now, the second question for our consideration is about liability of insurance company when the deceased was travelling in a goods vehicle. In this case admittedly, the deceased was travelling in a truck as gratuitous passenger and the vehicle was insured as a goods vehicle and not for carrying passengers and no premium was paid for carrying passengers. There is also no evidence that the deceased was travelling with the goods or as a labourer. Gokal, PW 2 has admitted that because the bus was not available, therefore, he was travelling in a truck and fare was to be paid as agreed. More so, it is not the case of the claimants that the deceased was travelling with his goods or as labourer. Therefore, it is clear that u/s 147(1) of the Motor Vehicles Act, 1988, the liability of the gratuitous passenger cannot be fastened on the insurance company and company cannot be held liable to pay the amount of compensation. The learned Member of the Tribunal has exonerated the insurance company from the liability applying the ratio of decision in the case of *New India Assurance Co. Ltd. Vs. Asha Rani and Others*, . Learned Counsel for the insurance company submitted that insurance company is not liable for the payment of compensation for gratuitous passenger if he was travelling in a goods vehicle and placing reliance on catena of decisions rendered by the Apex Court in the case of *New India Assurance Co. Ltd. Vs. Asha Rani and Others*, ; *National Insurance Co. Ltd. Vs. Bommithi Subbhayamma and Others*, ; *National Insurance Co. Ltd. v. Swaroopa I* (2007) ACC 207; *New India Assurance Co. Ltd. v. Vedwati* 2007 ACJ 1043 ; *The Oriental Insurance Company Limited Vs. Meena Variyal and Others*, and also a Division Bench judgment of this Court in the case of *Mithlesh v. Brijendra Singh Baghel* 2007 ACJ 10 . It is true that in the case of *Asha Rani* (supra), the Hon''ble Supreme Court overruled the decision in the case of *New India Assurance Company Vs. Shri Satpal Singh and Others*, and it has been clearly held that the insurance company is not liable to pay any compensation for the death of gratuitous passenger in a goods vehicle and the decision in the case of *Asha Rani* (supra) was followed in the case of *Oriental Insurance Company Ltd. Vs. Devireddy Konda Reddy and Others* etc. etc. and *Jogi Subbamma and Others* etc. etc., . The same view was upheld in the case of *National Insurance Co. Ltd. Vs. Ajit Kumar and Others*, . The question again came up for consideration before the Hon''ble Supreme Court in the case of *National Insurance Co. Ltd. Vs. Baljit Kaur and Others*, , after considering the effect of amendment carried out in Section 147 of Motor Vehicles Act, 1988, by Motor Vehicles (Amendment) Act, 1994 it was held:

(17) By reason of the 1994 amendment what was added is "including owner of the goods or his authorised representative carried in the vehicle". The liability of the owner of the vehicle to insure it compulsorily, thus, by reason of the aforementioned amendment included only the owner of the goods or his authorised representative carried in the vehicle besides the third parties. The

intention of Parliament, therefore, could not have been that the words "any person" occurring in Section 147 would cover all persons who were travelling in a goods carriage in any capacity whatsoever. If such was the intention there was no necessity of Parliament to carry out an amendment inasmuch as the expression "any person" contained in the Sub-clause (i) of Clause (b) of Sub-section (1) of Section 147 would have included the owner of the goods or his authorised representative besides the passengers who are gratuitous or otherwise.

13. In the case of *Bommithi Subbhayamma* 2005 ACJ 721 (SC), the Hon'ble Apex Court has again held that in spite of the amendment of 1994, the effect of the provisions contained in Section 147 with respect to persons other than the owner of the goods or his authorised representative remains the same. Although the owner of the goods or his authorised representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor any premium was paid to the extent of the benefit of insurance to such category of people. The same view was reiterated by the Hon'ble Supreme Court again in the case of *National Insurance Co. Ltd. Vs. Challa Bharathamma and Others*, ; *Sri Pramod Kumar Agrawal and Another Vs. Smt. Mushtari Begum and Others*, ; and *National Insurance Co. Ltd. Vs. V. Chinnamma and Others*, and in the case of *The Oriental Insurance Company Limited Vs. Meena Variyal and Others*, , position has been elaborately clarified by the Hon'ble Apex Court wherein it has been clearly held that the owner of the vehicle or an employee is not covered by the insurance policy taken in terms of the Act?without any special contract, since there is no award under Workmen's Compensation Act that is required to be satisfied by the insurer, insurance company is not liable to indemnify the insured and not obliged to satisfy the award of the Claims Tribunal/court.

14. In the case of *Mithlesh* 2007 ACJ 10, a Division Bench of this Court in which one of us (Gohil, J.) was party has held that the Tribunal has rightly considered the question of liability of the insurance company and in such circumstances it is rightly held that the insurance company is not liable to pay any compensation as the liability is not covered under the policy and more so, present case is not a case of third party risk as the deceased was not a third party. Same is the position in this case.

Thus, considering the totality of the facts and circumstances of the case and Section 147 of the Motor Vehicles Act, 1988, we hold that the insurance company is not liable for payment of any compensation and there is no scope for interference in the view taken by the Tribunal. Thus, we uphold the finding of the Tribunal so far as the question of liability of the insurance company is concerned.

15. Thus, on considering the fact that Kartahayaram Prajapati who was the main breadwinner of the family and Mukesh, eldest son of the deceased, also died in

the same accident and there is nothing on record and the learned Counsel are also not aware whether any claim petition was filed or any compensation has been paid for the death of Mukesh or not and looking to the fact that the claimants have not received any interim compensation under no fault liability, we direct that the offending vehicle and other movable and immovable properties of respondent Nos. 2 and 3 (i.e., driver and owner) shall remain under attachment till the amount of compensation awarded is paid and satisfied by them to the claimants.

16. The executing court whether it is at Guna or at Kanpur (State of Uttar Pradesh) shall execute the award/judgment passed by this Bench as quickly as possible, say within six months and recover the amount of compensation awarded from the offending vehicle or any other movable and/or immovable properties of the respondent Nos. 2 and 3, i.e., the driver and owner respectively and disburse the same to the claimants in accordance with law.

17. Registry is directed to return back the original record of the claim case to the Tribunal along with a copy of the judgment for registering an execution case and to proceed against the owner and driver of the offending vehicle for recovering the amount of compensation awarded and for disbursement of the same to the claimants in accordance with law.

18. Appellants counsel will be entitled for fee and expenses Rs. 1,500 (rupees one thousand five hundred).