(2013) 07 MP CK 0155

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 118/04

Ramjeelal APPELLANT

Vs

Deenanath and others RESPONDENT

Date of Decision : 18-07-2013

Acts Referred:
Motor Vehicles Act, 1988 — Section 147, 147(1), 147(1)(b), 149, 163A

Citation : (2013) 07 MP CK 0155

Hon'ble Judges : G.D. Saxena, J

Bench : Single Bench

Advocate : Meena Singhal, for the Appellant; Vandana Kekre, Advocate for respondent No. 3 New India Insurance Company, for the Respondent

Judgement

G.D. Saxena, J.—This appeal u/s 173 of the Motor Vehicles Act 1988 preferred by the claimant/injured is directed against an Award dated 13th November 2003 in Claim Case No. 99/2003 by the Motor Accident Claims Tribunal, Morena (M.P.) with a prayer for enhancement of the impugned Award under appeal by holding the respondent No. 3-New India Insurance Company liable to make payment of the Award to the claimant/injured in accordance with law. Indisputably, respondents No. 1 and 2, owner and driver of the offending vehicle did not prefer any appeal nor file any cross-objection against the Award assailing the impugned findings in this appeal.

2. Admitted facts of the case are that on 13th May 2001, at about 10-30 a.m., injured Ramjeelal was traveling in a tractor-trolley bearing registration No. MP06/JA 0465, which was driven by Raju (Respondent No. 2) and owned by Deenanath (Respondent No. 1). In mid-way to Morena, near Hetampur, at A-B National Highway road, due to negligence and rash driving on the part of the driver of the vehicle, the said trolley attached with insured tractor turned turtle and consequently Ramjeelal got seriously injured. On the FIR of the accident by the injured Ramjeelal, the Crime was registered against the driver by the police and a charge-sheet was filed before the criminal court. It was found that at the time

of accident, the offending tractor-trolley was covered under the "Private Agriculture Use Insurance Policy" with the Insurance Company/respondent No. 3 and on the date of the alleged accident, the driver of the offending vehicle also possessed valid driving licence to ply the vehicle. The learned tribunal after considering the evidence adduced by the claimant, owner as well as the Insurance Company and after hearing them passed an Award in favour of the claimant/injured for a sum of Rs. 30,000/- in all heads. The tribunal however exonerated the Insurance Company from liability to make payment of compensation amount due to violation of the terms of the policy known as "Private Agriculture Use Insurance Policy" and instead directed the owner and driver/respondents No. 1 and 2 of the insuring vehicle to satisfy the awarded amount to the claimant/injured. The Insurance Company/respondent No. 3 was also directed to proceed for recovery of the interim amount against the insured.

3. The contention of the respondent No. 3-Insurance Company is that the offending tractor trolley was illegally used for commercial purposes at the time of accident for loading the sand from Chambal River and the same was also carrying the passengers who were neither employees of the owner for agriculture nor the goods carried in the vehicle was at all useful for the agricultural work. It is submitted that the appellant and others were traveling illegally in the trolley. The tractor was not used for the purpose of agricultural; work for which it was insured. No additional premium for carrying passengers traveling in the trolley was paid by the owner and thus the vehicle was driven by violating the terms and conditions of the specified insurance policy. Under these circumstances, the learned tribunal rightly concluded and recorded a finding that the offending tractor-trolley was driven, by carrying the passengers in utter violation of the terms and conditions of the policy and eventually exonerated the insurer from liability of satisfying the award.

4. Further, submission put forth on behalf of the respondent No. 3/Insurance Company is that except the offending tractor, no other attachment parts such as trolley or agricultural implements were insured vide insurance policy (Ex. D/I-C), so the offending vehicle was driven in utter violation of the terms and conditions of specified insurance policy. Under these circumstances, it is prayed that the finding of exonerating the Insurance Company from the liability to satisfy the awarded amount while directing to make payment of amount of award by the owner and driver may be upheld and the appeal may be dismissed.

5. The respondent No 1-owner of the offending vehicle, on the other hand, by filing written statement submitted that since the vehicle was at the time of accident insured with the Insurance Company, the Insurance Company is solely liable to indemnify and satisfy the awarded amount to the injured/claimant. Hence, it is prayed that appropriate direction for payment of award against the Insurance Company may be issued.

6. The submissions put forth by the appellant/injured are in two folds; firstly that the claimant/injured was engaged as masonry worker with the owner for

construction of protection of water pump hut at the agricultural field of respondent No. 1-owner of the vehicle. It is submitted that at the relevant time for purchasing the windows, ventilators and cement from Morena Market, the claimant was traveling in the tractor-trolley. In midway, the driver of the vehicle loaded the sand in a trolley for raising construction from the bank of Chambal River. It is, thus, submitted that the vehicle involved in an accident was driven in accordance with the issued policy and as per terms of the insurance. Hence, according to the learned counsel when there is an award in favour of the claimant by the Tribunal, u/s 149, the Insurer is bound to pay to the person entitled to the benefit of the decree and even if there is any violation, the insurer, after paying the amount to the claimant, can recover the same from the owner of the vehicle. It is accordingly prayed for issuing directions in accordance with law. Second submission is that the learned tribunal passed the award on lower side and it did not consider other factors properly such as medical expenses, pain and suffering, loss of income during treatment and loss of future income looking to the permanent disability with other permissible head and, therefore, the amount of Award has to be enhanced in favour of the claimant/appellant in the light of the facts and circumstances of the case.

7. Heard the learned counsel for the parties and perused the materials.

8. In view of the submissions made by the learned counsel on either side, now two questions that arise for consideration are:-

(i) Whether, in case of injuries sustained by the unauthorised passenger while traveling in the vehicle, can a direction be given to the Insurance Company to pay the amount to the victim?

(ii) Whether the award passed by the learned tribunal is on lower side and needs enhancement?

9. Before discussing the issue with regard to the doctrine of ''pay and recover'', it could be appropriate to extract the relevant provisions of the Motor Vehicles Act.

S.147. Requirements of policies and limits of liability:- (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)-

(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.

149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.-(1) If, after a certificate of insurance has been issued

under sub-section (3) of Section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of Section 147 (being a liability covered by the terms of the policy) or under the provisions of section 163-A is obtained against any person insured by the policy then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgment. (2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely;-

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:-

(i) a condition excluding the use of the vehicle-

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organized racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false is some material particular.

...

(4) Where a certificate of insurance has been issued under sub-section (3) of

Section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any conditions other than those in clause (b) of sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of sub-section (1) of Section 147, be of no effect: Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.

(5) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

10. In National Insurance Co. Ltd. Vs. V. Chinnamma and Others, the Hon. Apex Court has observed as follows:-

There is nothing on records to show that the owner of the tractor had produced any insurance cover in respect of the trolley. It is furthermore not disputed that the tractor was insured only for the purpose of carrying out agricultural works. The representative of the Insurance Company Mr. Hari Singh Meena on cross-examination merely accepted the suggestion that cutting the earth and levelling the field with earth would be an agricultural work but respondent No. 1 himself categorically stated in his claim petition before the Tribunal stating that the earth had been dug and was being carried in the trolley to the brick-kiln. Evidently the earth was meant to be used only for the purpose of manufacturing bricks. Digging of earth for the purpose of manufacture of brick-kiln indisputably cannot amount to carrying out of the agricultural work. On above facts Apex court considered the above facts and observed as follows:-

16. Furthermore, a tractor is not even a goods carriage. The "goods carriage" has been defined in Section 2(14) to mean "any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods" whereas "tractor" has been defined in Section 2(44) to mean "a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a road-roller". The "trailer" has been defined in Section 2(46) to mean "any vehicle, other than a semi-trailer and a side-car, drawn or intended to be drawn by a motor vehicle."

17. A tractor fitted with a trailer may or may not answer the definition of goods carriage contained in Section 2(14) of the Motor Vehicles Act. The tractor was meant to be used for agricultural purposes. The trailer attached to the tractor, thus, necessarily is required to be used for agricultural purpose, unless registered otherwise. It may be, as has been contended by Mrs. K. Sharda Devi, that carriage of vegetables being agricultural produce would lead to an inference

that the tractor was being used for agricultural purposes but the same by itself would not be construed to mean that the tractor and trailer can be used for carriage of goods by another person for his business activities. The deceased was a businessman. He used to deal in vegetables. After he purchased the vegetables, he was to transport the same to market for the purpose of sale thereof and not for any agricultural purpose. The tractor and trailer, therefore, were not being used for agricultural purposes. However, even if it be assumed that the trailer would answer the description of the "goods carriage" as contained in Section 2(14) of the Motor Vehicles Act, the case would be covered by the decisions of this Court in Asha Rani (supra) and other decisions following the same, as the accident had taken place on 24.11.1991, i.e., much prior to coming into force of 1994 amendment.

11. In Oriental Insurance Co. Ltd. Vs. Brij Mohan and Others, , it is observed as follows:-

10. Furthermore, respondent was not the owner of the tractor. He was also not the driver thereof. He was merely a passenger traveling on the trolley attached to the tractor. His claim petition, therefore, could not have been allowed in view of the decision of this Court in New India Assurance Co. Ltd. Vs. Asha Rani and Others, wherein the earlier decision of this Court in New India Assurance Company Vs. Shri Satpal Singh and Others, was overruled. In Asha Rani (supra) it was, inter alia, held:-

25. Section 147 of the 1988 Act, inter alia, prescribes compulsory coverage against the death of or bodily injury to any passenger of "public service vehicle". Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under the Workmen Compensation Act. It does not speak of any passenger in a "goods carriage".

26. In view of the changes in the relevant provisions in the 1988 Act vis-a-vis the 1939 Act, we are of the opinion that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e. "a third party". Keeping in view the provisions of the 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger traveling in a goods vehicle, the insurers would not be liable therefor.

27. Furthermore, sub-clause (i) of clause (b) of sub-section (1) of Section 147 speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place, whereas sub-clause (ii) thereof deals with liability which may be incurred by the owner of a vehicle against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place.

12. In National Insurance Co. Ltd. Vs. Baljit Kaur and Others, the Hon. Apex

Court observed as follows:-

20. It is, therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in S. 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.

21. The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The Tribunal as also the High Court had proceeded in terms of the decisions of this Court in Satpal Singh (supra). The said decision has been overruled only in Asha Rani (supra). We, therefore, are of the opinion that the interest of justice will be sub-served if the appellant herein is directed to satisfy the awarded amount in favour of the claimant if not already satisfied and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing Court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. We have issued the aforementioned directions having regard to the scope and purport of S. 168 of the Motor Vehicles Act, 1988 in terms whereof it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the Tribunal in such a proceeding.

13. In National Insurance Co. Ltd. Vs. Prembai Patel and Others, it is observed as follows:-

The insurance policy being in the nature of a contract, it is permissible for an owner to take such a policy whereunder the entire liability in respect of the death of or bodily injury to any such employee as is described in sub-clauses (a) or (b) or (c) of proviso (i) to Section 147(1)(b) may be fastened upon the insurance company and insurance company may become liable to satisfy the entire award. However, for this purpose the owner must take a policy of that particular kind for which he may be required to pay additional premium and the policy must clearly show that the liability of the insurance company in case of death of or bodily injury to the aforesaid kind of employees is not restricted to that provided under the Workmen''s Act and is either more or unlimited depending upon the quantum of premium paid and the terms of the policy.

It is thus clear that in case the owner of the vehicle wants the liability of the insurance company in respect of death of or bodily injury to any such employee as is described in clauses (a) or (b) or (c) of proviso (i) to Section 147(1) (b) should not be restricted to that under the Workmen''s Act but should be more or unlimited, he must take such a policy by making payment of extra premium and the policy should also contain a clause to that effect. However, where the policy mentions "a policy for Act Liability" or "Act Liability", the liability of the insurance company qua the employees as aforesaid would not be unlimited but would be limited to that arising under the Workmen''s Act.

14. In the case of Bhav Singh Vs. Smt. Savirani and Others, Full bench of this court observes as follows:-

10. Sub Section (5) of Section 147 of the Act, however provides that notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance u/s 147 of the Act shall be liable to indemnify a person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or classes of persons. Thus if the policy of insurance covers any liability in addition to the liability u/s 147(1) of the Act, the insurer will be liability to indemnify the insured in case of any liability not because of the provisions of sub section (1) of section 147 but because of the terms and conditions of contract of insurance between the insurer and the insured. Therefore, if the contract of insurance provides for a liability to a passenger or to an employee other than the liabilities provided under sub section (1) of the Section 147 of the Act, the insurer would be liable to indemnify the insured against such liability.

15. Recently, in S.M. Sharmila Vs. National Insurance Company Ltd. and Others, the Hon. Apex Court considered where the appellant, the owner of vehicle and her workman were traveling in the offending vehicle. The workman claimed compensation contending that accident arose out of and in course of employment. So, liability was fixed on respondent insurance company. In appeal High Court concluded that vehicle involved in accident was not insured with the insurer on the date of accident and fixed the liability on the owner of the vehicle, which was held to be justified.

16. A reading of the above judgments would show that only in a case, where the Insurance Company is successful in its defence u/s 149, it may yet be required to pay the amount to the claimant and thereafter, it may recover from the owner of the vehicle. When the insurance company is not statutorily required to cover the liability in respect of a passenger in a vehicle u/s 147 unless such passengers is the owner or agent of the owner of the goods accompanying such goods absolutely there is no need for the Insurance Company to pay compensation since there is no contractual liability under the statute to pay the amount to the

gratuitous passenger traveling in the goods carriage vehicle. Under such circumstances, in the opinion of this court, a direction could not be given to the Insurance Company to pay to the claimants and recover from the owner of the vehicle.

17. Now turning back to the facts of the case, on perusal of the record, this court finds that the offending vehicle tractor was insured by the insured vide insurance policy (Ex. D.1-C) (Cover-note) under "Private Agriculture Use Only" but no document relating to insurance of the attachments like trolley or any terms and condition of the insurance in relation therewith are placed on record. On seeing the cover-note, it is gathered that a lump sum premium amounting to Rs. 2020/- was recovered for the period from 7th July 2000 up till 6th July 2001. No additional premium for passengers, agricultural labour or causal labour carrying for agriculture work in trolley attached with the tractor was paid by the owner of the vehicle. On going through the pleadings and evidence on record, it further comes to notice that Ramjeelal an injured (AW-1) deposed in his statement before the court that at the time of accident, he was working as masonry with Deenanath, the owner of the tractor. He went in a trolley from village Chandapur to Morena for purchasing the windows, ventilators and other materials. Tractor was attached with a trolley in which he was traveling. The tractor was driven by Raju, who told him to bring sand from the Chambal River. Thereafter the sand was loaded in a trolley. In way to Morena, the trolley attached with the tractor which was driven by Raju in a high speed turned turtle. Consequently, he received injuries. On the basis of his statement it can be concluded that at the relevant time, the injured was engaged as casual masonry worker for construction of pump house at the agricultural field. The injured was traveling in a trolley which was un-insured and meant for private agricultural use. To prove or in support of the plea that the injured in a tractor was engaged for masonry work of construction of pump house at agricultural field and during purchase of the construction material, at the time of accident, the injured with Deenanath and others was going to Morena Town in a trolley, no written statement was filed by the owner Deenanath and the driver of the vehicle. Even Deenanath did not appear for his statement before tribunal. This fact is also not mentioned in the FIR lodged by the injured after incident.

18. Thus, it appears from the facts and the evidence on record of the learned tribunal that on the day of incident the claimant-injured was traveling in a trolley attached with the insured tractor causing accident which was driven by Raju (Respondent No. 2) and owned by Deenanath (Respondent No.) as a passenger and not as a casual labour/agricultural employee of the owner of the vehicle involved in accident. The tractor involved in accident was insured for agricultural purpose under "Private Agriculture purpose" but the trolley attached with the tractor involved in accident was not insured for agriculture or carrying the causal agriculture labourers or his employees engaged in agriculture. No premium for carrying the passengers or workers or agricultural labourers was paid to the Insurance Company. Hence, there was no statutory liability u/s 147 of the Act

upon the Insurance Company to indemnify the insured for payment of compensation to the claimants, heirs of deceased traveling in trolley attached with the tractor. In that view of the matter, learned tribunal rightly decided that the Insurance Company/respondent No. 3 was not responsible for indemnifying the liability of payment of awarded amount to injured/claimant. Hence, this court is not inclined to accept the submission made by the learned counsel for the appellant that since there was an award in favour of the appellant-claimant, the Insurance Company is bound to satisfy the said award.

19. Second submission of the learned counsel for the appellant-injured is that learned tribunal passed the award on lower side and it did not determine other relevant factors such as loss of medical expenses, pain and suffering, loss of income during treatment and future loss of income, looking to the permanent disability vis-a-vis other like permissible heads and passed an award on lower side. It is, therefore, requested that by considering all heads, the amount of compensation may be enhanced in favour of the claimant/appellant.

20. On perusal of the record, it is found that the learned tribunal awarded in lump sum compensation for grievous injury and permanent disability caused in an accident amounting to Rs. 30,000/- after considering other heads which was payable by the owner and driver of the vehicle. Considered the evidence on record and the principles laid down in Mohan Soni Vs. Ram Awtar Tomar (2012) 2 SCC 271, with further fact as proved by un-rebutted evidence because on the date of accident, the injured was skilled labour working as masonry, his daily income as shown was Rs. 100/- and monthly as Rs. 3,000/-. Looking to the nature of injury and period of treatment, loss of present income for three months would be Rs. 9,000/-. His annual income from masonry would be assessed at Rs. 36,000/-. Looking to the nature of injuries caused, the Treating Orthopaedic Surgeon Dr. Vinod Sharma (AW-3) opined that permanent injury caused in left leg is above 15% of body vide Disability Certificate (Ex. P/38). Looking to the age of injured as 36 years, the multiplier of 17 would apply and thus loss of future income of injured would be Rs. 91,800/-. Expenses for medical treatment as per medical treatment, cash-memos produced and exhibited is Rs. 2812/-, but Hospital expenses and other expenses like fees of the Surgeon that are not included by the tribunal which being actual expenses require to be added. Thus, the claimant would be entitled to have received Rs. 20,000/- towards medical expenses for grave injury instead of Rs. 2812. Expenses for future treatment inclusive of subsequent operation for removal of iron plate and future treatment would be estimated at Rs. 10,000/-. Apart from it, amount for nourishing diet would be charged at Rs. 5,000/- and for damages like pain and suffering as a consequence of the injuries and loss of expectation of life would be assessed at Rs. 10,000/-. Thus, total compensation of damages due to accident would come to Rs. 1,36,800/- (Rs. One Lac Thirty Six thousand and Eight Hundred only). The awarded mount of Rs. 30,000/- would be minus from this amount of enhanced compensation. Resultantly, the appellant would be entitled to receive rest amount of Rs. 1,06800/- (Rs. One Lac Six Thousand and Eight Hundred only)

with simple interest @ 7% from the date of appeal payable by respondent No. 1 and 2, i.e., the owner and driver of the vehicle involved. With the aforesaid modification in the award, the appeal stands partly allowed.

No order as to costs.

