
(2019) 12 BOM CK 0028

In the Bombay High Court

Case No : First Appeal No. 1523 Of 2008, 648 Of 2009

Sheela And Ors

APPELLANT

Vs

Branch Manager National Insurance Co. Ltd And Ors

RESPONDENT

Date of Decision : 13-12-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2019) 12 BOM CK 0028

Hon'ble Judges : Pushpa V. Ganediwala, J

Bench : Single Bench

Advocate : A.P. Wachasunder, Shashikant Borkar, M.H. Pathade, P.S. Mirache

Final Decision : Allowed/Disposed Of

Judgement

1. Heard.

2. In both these appeals, the appellant - owner of the offending vehicle challenges the legality and correctness of the award dated 30/07/2008 in Claim Petition No.281/2000 and award dated 25/11/2008 in Claim Petition No.9/2000 passed by the Member, Motor Accident Claims Tribunal, Nagpur.

3. Briefly stated, on 05/06/1999, the Tempo Trax No.MH-31/G-6545 carrying 7 - 8 persons, turned turtle near Bharsingi turning on Katol - Jalalkheda Road, which resulted in injuries to several persons. The injured / claimants filed claim petition for compensation under Section 166 of the Motor Vehicles Act, 1988 claiming compensation towards various heads. The appellant - owner and respondent No.1 - Insurance Company resisted the claim on the ground that there was no reason for the claimants to sit unauthorisedly in the private car and therefore, owner and Insurance Company are not liable. The Insurance Company has also taken the defence of fundamental breach of policy by the owner inasmuch as the offending vehicle which was for private use of the owner, was used for the purposes of 'Hire or Reward'.

4. The learned Tribunal framed necessary issues, recorded evidence as adduced

by both the parties and partly allowed the claim petitions, thereby fixing the liability on the owner and absolving the Insurance Company on the ground that owner has committed fundamental breach of terms and conditions of the policy.

5. The impugned Judgment and award of the learned Tribunal is assailed in these appeals by the owner. Shri Wachasundar, learned counsel appearing on behalf of the appellant-owner placed reliance on the various Judgments of the Hon'ble Apex Court and submitted that there was no wilful breach of the conditions of Insurance Policy by the owner and the Insurance Company has failed to prove that the said vehicle was used for 'Hire or Reward' purposes by the owner.

6. Per contra, Shri Borkar, learned counsel appearing on behalf of respondent / Insurance Company while supporting the impugned Judgment and award submitted that injured witness in his cross-examination has admitted that he and seven other persons boarded the offending vehicle by paying Rs.20/-each towards ticket. This admission apparently would reflect that the offending vehicle which is a private car was used for 'Hire or Reward' purposes which is a clear breach of the policy by the owner and therefore, Insurance Company is not liable.

7. I have considered the submissions on behalf of both the parties. The following point arose for determination.

"Whether the appellant - owner has committed fundamental breach of conditions of the Insurance Policy ?"

8. At the outset, the respondent No.1 - Insurance Company does not dispute that at the relevant time, the offending vehicle i.e. Tempo Trax No.MH-31/G-6545 was insured with respondent No.1 and the driver of the offending vehicle was having effective and valid driving licence, at the relevant time. It is also not disputed that as per the terms of the Insurance Policy at Exh.40, the policy did not cover the use of vehicle for 'Hire or Reward' purposes. Evidently, apart from admission by the claimants that he paid Rs.20/- towards ticket for travelling in the vehicle, there is no other evidence brought on record by the Insurance Company to show that the owner was using the offending vehicle for the business of travelling passengers on 'Hire or Reward' basis. Only on stray admission by the claimants, who obviously gave admission to show his authorized entry in the said vehicle cannot be said that the said vehicle was being used by the owner for hire purpose.

9. Furthermore, the learned counsel could not point out from the record that the appellant - owner of the vehicle was knowing that his driver was carrying the passengers in his vehicle. In the absence of any knowledge on the part of owner of the offending vehicle, the finding of the wilful default by the owner cannot be given against him. There is absolutely no evidence on record that the owner was intentionally and knowingly using the offending vehicle for hire purpose.

10. The Hon'ble Apex Court in the case of Jagtar Singh alias Jagdev Singh Vrs. Sanjeev Kumar and others, reported in (2018) 15 Supreme Court Cases 189

while referring the Judgment of Delhi High Court in the case of Yashpal Luthra and others Vrs. United India Insurance Co. Ltd. and others, reported in 2011 ACJ 1415 and Judgment of Hon'ble Apex Court in the case of National Insurance Co. Ltd. Vrs. Balakrishnan and another, reported in (2013) 1 Supreme Court Cases 731 and quoted following para of the Judgment of Yashpal Luthra (supra).

'27. In view of the aforesaid, it is clear that the comprehensive/package policy of a two-wheeler covers a pillion rider and comprehensive/package policy of a private car covers the occupants and where the vehicle is covered under a comprehensive/package policy, there is no need for the Motor Accidents Claims Tribunal to go into the question whether 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. In fact, in view of the TAC's directives and those of IRDA, such a plea was not permissible and ought not to have been raised as, for instance, it was done in the present case.'

The Hon'ble Apex Court observed that in view of aforesaid factual position, there is no scintilla of doubt that a comprehensive policy would cover the liability of the insurer for payment of compensation for the occupant in car.

11. In the instant case, it is not disputed that the offending vehicle was insured under Comprehensive Policy at the relevant time. In the light of the aforesaid ratio, the Insurance Company is liable to pay compensation to the occupants in the private car, inasmuch as the Insurance Company has failed to prove by way of credible and substantive evidence that the owner / insured was knowingly and wilfully driving the offending vehicle for 'Hire or Reward'.

12. For the reasons aforestated, I have no hesitation to hold that respondent No.1 - Insurance Company is liable severally to pay compensation to the claimants. In such circumstances, the Judgment and award of learned Trial Court with regard to fixing of liability on the insured / owner by absolving the Insurance Company is quashed and set aside and the Insurance Company is directed to pay compensation as has been awarded by the learned Tribunal to the claimants.

13. In view of above, both the appeals are allowed and stand disposed of accordingly. No costs.