

(2013) 01 DEL CK 0117

In the Delhi High Court

Case No : Review Petition 262 of 2012 in MAC APP. 580 of 2010

Shobha Devi and Others

APPELLANT

Vs

Bajaj Allianz Geneal Insurance Company Ltd.

RESPONDENT

Date of Decision : 24-01-2013

Acts Referred:

Citation : (2013) 01 DEL CK 0117

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : S. Pandit, for the Appellant; Neerja Sachdeva, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mittal, J.

CM APPL. /2012 (Exemption) (to be numbered)

Exemption allowed, subject to all just exceptions.

The Application is allowed.

CM APPL. 7120/2012 (Delay)

There is a delay of 2 days in filing the Petition.

For the reasons as stated in the Application, the delay of 2 days in filing the Petition is condoned.

The Application is allowed.

REVIEW PET. 262/2012 in MAC APP. 580/2010

1. The Petitioners (Respondents No. 1 to 5 in the main Appeal) seek review of the judgment dated 22.02.2012 passed by this Court whereby Appeal filed by the Appellant Insurance Company (Respondent herein) was allowed holding that in case of gratuitous passengers, the Insurance Company had no liability at all.

In this case, it was represented on behalf of the Respondent Insurance Company that the vehicle involved in the accident was a three wheeler having seating capacity of just one person and thus, the owner of the goods could not be carried in the vehicle involved in the accident. While dealing with this contention, this Court held as under:-

4. The Claims Tribunal by the impugned judgment held that since the deceased was travelling along with the boxes for purchasing fish, it shall be deemed that the owner was travelling along with the goods. I need not go into that question as in the instant case, it is established in the cross-examination of PW2 Kare Saini that the deceased was sharing the driver's seat in the three-wheeler which was not permissible as per the report of the Supreme Court in *United India Insurance Co. Ltd. Vs. Suresh K.K. and Another*, . In para 10 of the report, it was held as under:

10. It is now well settled that the term "any person" envisaged under the said provision shall not include any gratuitous passenger. (*National Insurance Co. Ltd. v. Baljit Kaur*). If the claimant had not been travelling in the vehicle as owner of the goods, he shall not be covered by the policy of the insurance. In any view of the matter, in a three-wheeler goods carriage, the driver could not have allowed anybody else to share his seat. No other person whether as a passenger or as a owner of the vehicle is supposed to share the seat of the driver. Violation of the condition of the contract of insurance, therefore, is approved. The Tribunal and the High Court, therefore, in our considered opinion, should have held that the owner of the vehicle is guilty of the breach of the conditions of policy.

5. A perusal of the Insurance Policy Ex. R4W1/1 shows that the three-wheeler No. DL-1LH-1762 had the sitting capacity for just one person i.e. the driver of the vehicle. In view of the judgment in *United India Insurance Company Limited v. Suresh K.K. & Anr* (supra), it was not permissible for the driver to share the seat; thus there was a violation of the condition of the contract of insurance. Since the deceased was not a third party, there is no statutory liability of the Insurance Company to pay the compensation in the first instance and then to recover the same from the owner of the vehicle.

2. In the Review Petition, it is contended that the Respondent Insurance Company had mislead the Court in contending that the seating capacity of the vehicle involved in the accident was one or that the Insurance Company charged premium only towards the coverage of the risk of just one person being driver of the vehicle. It is stated that in fact the seating capacity as per the registration certificate was two; and the Insurance Company in the cover note issued to the insured charged premium for one passenger in addition to the driver. However, while issuing the insurance policy, the seating capacity was wrongly shown as one.

3. The averments made in the Review Petition are refuted by the Respondent Insurance Company. It is, however, conceded that the seating capacity as per the

registration certificate was two. It is stated that in the insurance policy, the seating capacity was mentioned as one and premium of Rs. 25/- towards legal liability of one more person for operation/maintenance was charged.

4. I have already extracted Para 4 of the impugned judgment wherein this Court relied on the judgment in United India Insurance Co. Ltd. Vs. Suresh K.K. and Another, and observed that in a three-wheeler goods carriage, the driver could not have allowed anybody else to share his seat. Since it is proved that the seating capacity was two, another person was entitled to sit in vehicle No. DL-1LH-1762 involved in the accident in addition to the driver.

5. Learned counsel for the Respondent Insurance Company has not been able to explain as to how the premium of Rs. 25/- was charged as legal liability for operation/maintenance for one more person in addition to the driver. In any case, even if no separate premium is charged for the owner of the goods, the risk is required to be covered for the owner of the goods by Section 147(i)(b)(i) of the M.V. Act as amended w.e.f. 14.11.1994. The deceased Bhonu Sahani @ Upender Sahani was travelling in the vehicle No. DL-1LH-1762 from Kapashera to Gazipur market to purchase fish. In Oriental Insurance Co. Ltd. Vs. Hazara and Others, , a coordinate Bench of this Court relying on National Insurance Company Limited v. Sarojamma & Ors. 2009 ACJ 119 held that wherever a person travels in a goods vehicle to reach the place for purchase of the goods, he would be deemed to be owner of the goods. Paras 4 and 5 of the report are extracted hereunder:-

4. In National Insurance Company Limited Vs. Sarojamma and Others, . a similar situation has arisen; a vegetable vender was travelling in a Tempo to procure vegetables for his shop when the unfortunate accident occurred; accident had occurred before he had reached his destination point. The evidence had come on record that the vehicle had been hired by him for the purpose of transportation of his goods; he not being a gratuitous passenger and nor a fare paid passenger insurance company was held liable. This court finds support from the ratio of this judgment delivered by the Karnataka Bench.

5. A reading of Section 147 of the Motor Vehicle Act in fact clearly shows that if the death or injury has occurred to any person including the owner of the goods or his authorized representative in the vehicle, insurance company is liable. Evidence in the present case shows that the accident had occurred before the victim could reach the destination point to purchase their buffaloes. The vehicle had been hired by them only for transporting the goods and they were travelling in this vehicle for this purpose which was the transportation of their goods; even though the goods were not in the vehicle when the vehicle met with the accident but the vehicle was proceeding to reach the place of its destination, in such a scenario it cannot be said that the victims were gratuitous or paid passengers. The vehicle i.e. the cantor had been hired by them only this purpose; in such a situation if their vehicle had met with an accident, it had to be deemed that the goods were with them. It is thus clear that the finding of the learned Tribunal on

this count suffers from no infirmity. Appeals of the insurance company are accordingly dismissed.

6. Since, it is admitted that the seating capacity of the vehicle involved in the accident was two and one more person could travel in addition to the driver, the judgment dated 22.02.2012 is liable to be reviewed.

7. The Respondent Insurance Company shall be under obligation to satisfy the award and pay the compensation to the Petitioners No. 1 to 5 (Respondents No. 1 to 5 in the main Appeal). The Review Petition is allowed in above terms.