

(2019) 07 DEL CK 0365

In the Delhi High Court

Case No : MAC.APP. No. 1139, 1140, 1141 Of 2018, CAV 1192 Of 2018, Civil Miscellaneous Application No. 53473, 53475, 53507 Of 2018, 10188, 10195, 10196 Of 2019

Shriram General Insurance Co Ltd

APPELLANT

Vs

Anila Devi & Ors

RESPONDENT

Date of Decision : 24-07-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (2019) 07 DEL CK 0365

Hon'ble Judges : Najmi Waziri, J

Bench : Single Bench

Advocate : Amit Kumar, Aatreya Singh

Final Decision : Dismissed

Judgement

Najmi Waziri, J

1. The learned counsel for the appellant submits that two new wheelchairs each have been supplied to the Medical Superintendent/Director of the National Institute of Tuberculosis and Respiratory Diseases, Sri Aurobindo Marg, Near Qutub Minar, Sheikh Sarai, Mehrauli, New Delhi and Sushruta Trauma Centre, 9 Metcalfe Road, Civil Lines, Delhi-110054 alongwith five and six digital thermometers, respectively.

2. He seeks time to file a Compliance Report supported by an affidavit and photographs. Let it be so done in two weeks.

3. These appeals impugn the award of compensation dated 22.09.2018 granted by the learned MACT in MAC APP. 6814/2016, 6815/2016 and 6812/2016 on the ground that three persons, who suffered fatality on account of motor vehicle accident, were travelling as gratuitous passengers and were sitting on the rear side of the goods vehicle i.e. a truck bearing registration no. HR 55Q 4029, insured with the appellant. According to the DAR, Sh. Buchun Singh, Sh. Pawan

Yadav and Sh. Dalip Yadav passed away in the accident. They were travelling alongwith Sh. Arvind Yadav and Sh. Nanhu. The vehicle was being driven by Kailash Mandal at a high speed, in a rash and negligent manner, completely disregarding traffic regulations. They claimed that at the time of the accident, the driver was talking on the mobile phone while driving; the truck loaded with cement bags struck against the right-hand side divider of G.T. Karnal Road, when it was going towards Palla Red Light. Resultantly, the truck turned upside down, towards the left side. The cement bags got strewn on the road. The aforementioned persons too fell violently and received injuries; three of them succumbed to their injuries. The driver fled from the spot. The offending vehicle was seized by the police. A criminal case was also initiated against the driver.

4. Considering the facts and circumstances of the case, the award of compensation was granted by the impugned order. It is the appellant's case that the deceased were gratuitous passengers, therefore, the appellant would not be liable to indemnify for any loss suffered by such "thirdparties" i.e. there being breach of the conditions of the insurance policy, the appellant would not be liable for any indemnification.

5. The appellant refers to the dicta of the Supreme Court in National Insurance Co. Ltd. vs. Anjana Shyam and Others (2007) 7 SCC 445, which held, inter alia:-

" 22. Then arises the question, how to determine the compensation payable or how to quantify the compensation since there is no means of ascertaining who out of the overloaded passengers constitute the passengers covered by the insurance policy as permitted to be carried by the permit itself. As this Court has indicated, the purpose of the Act is to bring benefit to the third parties who are either injured or dead in an accident. It serves a social purpose. Keeping that in mind, we think that the practical and proper course would be to hold that the insurance company, in such a case, would be bound to cover the higher of the various awards and will be compelled to deposit the higher of the amounts of compensation awarded to the extent of the number of passengers covered by the insurance policy.

23. Illustratively, we may put it like this. In the case on hand, 42 passengers were the permitted passengers and they are the ones who have been insured by the insurance company. 90 persons have either died or got injured in the accident. Awards have been passed for varied sums. The Tribunal should take into account, the higher of the 42 awards made, add them up and direct the insurance company to deposit that lump sum. Thus, the liability of the insurance company would be to pay the compensation awarded to 42 out of the 90 passengers. It is to ensure that the maximum benefit is derived by the insurance taken for the passengers of the vehicle, that we hold that the 42 awards to be satisfied by the insurance company would be the 42 awards in the descending order starting from the highest of the awards. In other words, the higher of the 42 awards will be taken into account and it would be the sum total of those higher 42 awards that would be the amount that the insurance company would

be liable to deposit. It will be for the Tribunal thereafter to direct distribution of the money so deposited by the insurance company proportionately to all the claimants, here all the 90, and leave all the claimants to recover the balance from the owner of the vehicle. In such cases, it will be necessary for the Tribunal, even at the initial stage, to make appropriate orders to ensure that the amount could be recovered from the owner by ordering attachment or by passing other restrictive orders against the owner so as to ensure the satisfaction in full of the awards that may be passed ultimately."

6. The learned counsel for the claimants submit that the aforesaid judgment is not applicable to the facts of the present case because National Insurance Co. Ltd. vs. Anjana Shyam and Others (supra) related to a passenger bus, in which about 90 passengers were affected while it had insurance coverage of only 42 passengers. Whereas in the present case, a goods vehicle was carrying cement bags to its consignee and the deceased were claimed to be the Authorized Representatives of the consignee. This aspect was not impugned by the appellant.

7. On this issue, the impugned order has reasoned as under:-

"63. As already noted above, the claimants have put forth their stand that deceased were travelling as authorised representatives of the owner of the goods in the offending truck at the time accident. Although, no cogent or definite evidence has been led by them to prove this assertion as a fact during the course of inquiry but even if the said plea is presumed to have been proved by them for the sake of arguments, it becomes irrelevant in the back drop of the fact that it is an undisputed fact on record that all the three deceased persons were sitting in the rear portion of Truck bearing registration no. HR55Q-4029 at the time of accident. Hon'ble Apex Court has categorically held in the case of " National Insurance Co Ltd Vs. Cholleti Dhamtamma", (mention supra) that even owner of the goods or the authorised representatives of the owner of goods, are required to sit in the cabin of the insured vehicle and not with the goods in the rear portion, in order to claim protection U/s 147 of the M.V Act 1988. Considering the fact that all the three deceased persons were undisputedly not travelling in the cabin of the vehicle, it is concluded that they gratuitous passengers in the insured vehicle i.e. Truck bearing registration no HR55Q-4029.

64. This brings me down to the next question as to whether in case of gratuitous passengers, insurance company should be granted recovery rights. In the above noted decisions relied by counsel for insurance company, it has been held that insurance company cannot be saddled with the liability to pay the compensation amount in such a situation. However, it may be noted here that the decisions cited by counsel for insurance company have been delivered by two Judges Bench of Hon'ble Apex Court. The last cited decision is shown to have been decided on 03.01.13. However, counsel for claimants has relied upon decisions, two of which i.e. " National Insurance co Ltd Vs. Baljeet kaur & Ors." and " Singh Ram Vs. Nirmal & Ors." (mentioned supra), have been delivered by three Judges Bench of Hon'ble Apex court. In the case of Baljeet Kaur (supra), deceased was

found to be travelling as passenger in goods vehicle and it was held in para 21 of the judgment that insurance company should satisfy the awarded amount in favour of the claimant and to recover the same from the owner of the vehicle. Similar view has been taken by two Judges bench of Hon'ble Apex Court in the case of Manuara Khatun & Ors. Vs. Rajesh Kumar Singh & Ors., 2017 ACJ 1031 (SC) & Shivraj Vs. Rajendra & Anr., Civil Appeal Nos. 8278-8279 of 2018 decided on 05.09.2018 as also in the case of "Bhom Singh & Anr. Vs. Reliance General Insurance Co Ltd 7 Anr." ,MAC APP No. 87/18 decided on 27.07.18 by Hon,ble Delhi High Court."

8. In National Insurance Co Ltd. Vs. Baljeet Kaur &Ors. 2004 ACJ, 428 (SC). It has held as under:-

"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 decision 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 subserved 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 section 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."

9. The same view has been taken a decade later in Manuara Khatun and Others vs. Rajesh Kumar Singh and Others (2017) 4 SCC 796 and Shivaraj Ks. Rajendra & Anr., Civil Appeal Nos. 8278-8279 of 2018 decided on 05.09.2018 which clarified that the insurer would have to first pay the awarded amount and would recover the same from the owner. The present appellant would have to do the same.

10. In Manuara Khatun and Others vs. Rajesh Kumar Singh and Others, it has held as under:

"18. Learned counsel for respondent No. 3 (United India Insurance Company

Ltd.), however, contended that the facts of the case at hand are not identical to the one involved in the case of Saju P. Paul (supra) and hence the law laid down therein cannot be applied to the facts of the case at hand. Learned counsel pointed out that firstly, the awarded compensation in this case is quite substantial and secondly, it is not yet paid to the claimants. Learned counsel also submitted that since the question involved herein is referred to a larger Bench and hence this Court should not give such directions, as prayed by the appellants, against the Insurance Company.

19. We find no merit in any of the submissions. Firstly, as mentioned above, we find marked similarity in the facts of this case and the one involved in Saju P. Paul's Case (supra).

Secondly, merely because the compensation has not yet been paid to the claimants though the case is quite old (16 years) like the one in Saju P. Paul's Case (supra), it cannot be a ground to deny the claimants the relief claimed in these appeals. Thirdly, this Court has already considered and rejected the argument regarding not granting of the relief of the nature claimed herein due to pendency of the reference to a larger Bench as would be clear from Para 26 of the judgment in Saju P. Paul's case (supra). That apart, learned counsel for the appellants stated at the bar that the reference made to the larger Bench has since been disposed of by keeping the issue undecided. It is for this reason also, the argument does not survive any more.

20. It is for all these reasons, we find no good ground to take a different view than the one consistently being taken by this Court in all previous decisions, which are referred supra, in this regard.

21. In view of the foregoing discussion, we are of the view that the direction to United India Insurance Company (respondent No. 3) - they being the insurer of the offending vehicle which was found involved in causing accident due to negligence of its driver needs to be issued directing them (United India Insurance Company-respondent No.3) to first pay the awarded sum to the appellants (claimants) and then to recover the paid awarded sum from the owner of the offending vehicle (Tata Sumo)-respondent No.1 in execution proceedings arising in this very case as per the law laid down in Para 26 of Saju P. Paul's case quoted supra.

22. Accordingly, the appeals succeed and are allowed. Impugned order is modified to the extent that respondent No. 3-United India Insurance Company Ltd. is accordingly directed to pay the awarded sum to the appellants (claimants). Thereafter respondent No. 3 - United India Insurance Company Ltd. would be entitled to recover the entire paid awarded sum from the owner (insured) of the offending Vehicle (Tata Sumo)-respondent No.1 in these very proceedings by filing execution application against the insured."

11. The point of law argued by the appellant already stands answered in the preceding judgments against the appellant. Accordingly, the contention is

rejected.

12. There is no merit in the appeal. It is dismissed.