(2010) 03 SHI CK 0185

In the High Court Of Himachal Pradesh

Case No : FAO (MVA) No''s. 300 and 398 of 2008

Smt. Seema Devi and Others — APPELLANT

Vs

Sh. Gautam Kumar and Others
 Sh. Gautam Kumar and Others Vs Smt. Seema Devi and Others — RESPONDENT

Date of Decision : 30-03-2010

Acts Referred:
Motor Vehicles Act, 1988 — Section 147

Citation : (2010) 03 SHI CK 0185

Hon'ble Judges : Dev Darshan Sud, J

Bench : Single Bench

Judgement

Dev Darshan Sud, J.—Both these appeals are being disposed of by this judgment as they arise out of the same accident. FAO. No. 398 of 2008 has been preferred by the owners challenging that part of the award which holds that the Insurance Company is not liable to satisfy the award as the deceased Ashok Kumar was the pillion rider on the motor cycle. FAO. No. 300 of 2008 has been preferred by the claimants seeking enhancement of the award.

2. Learned Counsel appearing for the Appellants in FAO. No. 398 of 2008 urges that the deceased was not proved to be riding as a pillion rider and in these circumstances, they could not be saddled with the liability. This submission requires to be rejected. The learned Tribunal while dealing with the evidence on record holds that Ashok Kumar was the pillion rider on Motor Cycle No HP-30-1089 which was involved in the accident. The court holds that the Petitioners-claimants had pleaded that Ashok Kumar was the pillion rider. On the testimony on record, this fact stands established. The case put forth by the Appellants that the deceased was a pedestrian was not supported by any evidence on record. On the second aspect, learned Counsel submits that the fact as to whether the Insurance Company would be liable or not, is pending final decision before the Supreme Court. In particular, he makes a reference to the decision in Bhagyalakshmi and Others Vs. United Insurance Co. Ltd. and Another

etc., holding:

13. The policy in question is a package policy. The contract of insurance if given its face value covers the risk not only of a third party but also of persons traveling in the car including the owner thereof. The question is as to whether the policy in question is a comprehensive policy or only an Act policy....

15. However, in the present case the schedule of the policy does not indicate the limits of liability. It does not indicate exclusion of any person. It takes any person including "insured". Such person indisputably would come within the purview of the liability to third party to which we have referred to hereto before. There being no limitation with regard to coverage, in terms of the provisions of the Act, no upper limit is fixed. Liability of the insurer, this unlike the old Act, may not be limited....

21. Submission of Mr. Patwalia is that whereas carrying of passenger in a goods carriage vehicle is prohibited, it is not so in a private car. Learned Counsel may be correct but we must notice that in a large number of decisions rendered by this Court it has been held that a passenger would not be a third party within the meaning of the provisions of the Act. We may notice some of them....

25. The law which emerges from the said decisions, is: (i) the liability of the insurance company in a case of this nature is not extended to a pillion rider of the motor vehicle unless the requisite amount of premium is paid for covering his/her risk;

(ii) the legal obligation arising u/s 147 of the Act cannot be extended to an injury or death of the owner of vehicle or the pillion rider; (iii) the pillion rider in a two-wheeler was not to be treated as a third party when the accident has taken place owing to rash and negligent riding of the scooter and not on the part of the driver of another vehicle....

28. We, therefore, are of the opinion that the matter requires consideration by a larger Bench. We order accordingly. Let the papers be placed before the learned Chief Justice for appropriate orders.

3. Parties have also not disputed that by a circular issued by the Insurance Regulatory and Development Authority, it has been held that the pillion riders are to be compensated in pursuant to a package policy. The circular reads:

Ref: IRDA/NL/CIR/F&U/073/11/2009

November 16,2009.

To

CE Os of all General Insurance Companies

Re: Liability of Insurance Companies in respect of Occupant of a Private Car and Pillion Ridder in a Two-Wheeler under Standard Motor Package Policy (also called Comprehensive Policy).

Insurers'' attention is drawn to wordings of Section (II) 1 (i) of Standard Motor Package Policy (also called Comprehensive Policy) for Private Car and Two-Wheeler under the (erstwhile) India Motor Tariff. For convenience the relevant provisions are reproduced hereunder:

Section II-Liability to Third Parties

1. Subject to the limits of liability as laid down in the Schedule hereto the Company will indemnify the insured in the event of an accident caused by or arising out of the use of the insured vehicle against all sums which the insured shall become legally liable to pay in respect of-(i) death or bodily injury to any person including occupants carried in the vehicle (provided such occupants are not carried for hire or reward) but except so far as it is necessary to meet the requirements of Motor Vehicles Act, the Company shall not be liable where such death or injury arises out of and in the course of employment of such person by the insured". It is further brought to the attention of insurers that the above provisions are in line with the following circulars earlier issued by the Tariff Advisory Committee on the subject:

(i) Circular M.V. No. 1 of 1978-dated 18th March 1978 (regarding occupants carried in Private Car) effective from 25th March 1977.

(ii) MOT/GEN/10 dated 2nd June, 1986 (regarding Pillion Riders in a Two-Wheeler) effective from the date of the circular.

The above circulars make it clear that the Insured''s liability in respect of Occupant(s) carried in a Private Car and Pillion Rider carried on Two wheeler is covered under the Standard Motor Package Policy. A copy each of the above circulars is enclosed for ready reference. The Authority vide circular No. 066/ IRDA/F&U/Mar-08 dated March 26, 2008 issued under File & Use Guidelines has reiterated that pending further orders the insurers shall not vary the coverage, terms and conditions, wordings, warranties, clauses and endorsements in respect of covers that were under the erstwhile tariffs. Further the Authority, vide circular No. 019/IRDA/NL/F&U/Oct-08 dated November 6, 2008 has mandated that insurers are not permitted to abridge the scope of standard covers available under the erstwhile tariffs beyond the options permitted in the erstwhile tariffs. All General Insurers are advised to adhere to the aforementioned circulars and any non-compliance of the same would be viewed seriously by the Authority.

This is issued with the approval of Competent Authority.

Sd/- Executive Director

4. According to the learned Counsel appearing for the Appellants, this circular when read with in conjunction with order RW2/A which is the insurance policy and is a package policy, the liability should be that of the Insurance Company.

Reading the circular and the insurance policy in conjunction, the submission made by the Appellants requires to be accepted. However, since the law point is pending decision before a Constitutional Bench as has been referred to in Bhagyalakshmi''s case, it would be in the fitness of things, if it is directed that the Insurance Company should meet the liability and that the parties shall be bound by the decision of the Constitution Bench.

5. In the second appeal which has been preferred, the Petitioners who are the claimants pray for enhancement of compensation. The learned Tribunal holds that the age of the husband of Smt. Seema Devi-Petitioner No. 1 at the time of accident was 38 years which fact is substantiated by Ext.PW-4/B which is the matriculation certificate of the deceased. His salary was Rs. 13,417/- per month out of which he was getting Rs. 12,872/- after all deductions. The Tribunal holds that with the passage of time, this salary was bound to increase. The Court, however, fixed the salary of the deceased at Rs. 13,000/- per month. In cross-examination, PW-4 Seema Devi states that the deceased was retaining Rs. 4,000/- per month for himself for his personal expenses and the remaining amount on the dependents i.e. Rs. 8,600/-. The learned Tribunal has used a multiplier of 14 and awarded a sum of Rs. 14,91,056/- as compensation.

6. Learned Counsel for the Petitioners submits that the court was wrong in calculating the dependency. According to him, deduction of Rs. 4,000/- could not be made and that the dependency figure was much higher. This submission cannot be accepted as it is in the cross-examination of PW-4 it is accepted that the deceased was spending this amount on himself. On the question of multiplier, I find that a multiplier of 16 should have been used as the deceased was 38 years of age which is what the schedule to the Act also provides.

7. In these circumstances, I hold that the Petitioners-claimants are entitled to an additional sum of Rs.

8. This amount shall be apportioned amongst the Petitioners-claimants in the ratio for which the original claim has been apportioned. This amount shall carry interest @ 7.5% per annum from the date of award till its payment. These appeals are accordingly disposed of. There shall be no order as to costs.