(2012) 10 AHC CK 0198

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 50099 of 2012

Smt. Sonika Jain APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 16-10-2012

Acts Referred:
Motor Vehicles Act, 1988 — Section 103, 146, 147, 149, 157

Citation : (2013) 1 ACC 5914 : (2012) 11 ADJ 719

Hon'ble Judges : Sunil Ambwani, J;Aditya Nath Mittal, J

Bench : Division Bench

Advocate : H.P. Dube, for the Appellant; Sameer Sharma and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

1. We have heard Sri H.P. Dubey for the petitioner. Sri Sameer Sharma appears for the respondent U.P. State Road Transport Corporation. The petitioner is registered owner of vehicle No. UP 15-M/4925, which was being run under a contract with U.P. State Road Transport Corporation (in short the Corporation), of which clause 10 provides that in case of an accident on account of any fault, negligence, accident or illegal act of driver of the vehicle, the second party (the petitioner) or the Insurance Company shall liable to pay the compensation under law. The first party, i.e. the Corporation shall not liable to pay compensation, however, if under the orders of the Court or Tribunal, the first party (the Corporation) has paid any compensation, the second party i.e. the owner of the vehicle (the petitioner) shall liable to reimburse or for deduction of such amount from the amount payable by the Corporation. In case of failure to pay such amount, the Corporation may proceed to recover the same under the U.P. Public Moneys (Recovery of Dues) Act 1972, as arrears of land revenue. Clause 10 of the agreement, further provides that the owner of the vehicle will have no objection, in case of such recovery.

2. The vehicle met with an accident, in which injuries were caused to Shri

Narbeer. A claim petition No. 344 of 2008, was filed by him in the Court of Motor Accident Claims Tribunal, Ghaziabad, which was decided on 22.6.2011 awarding compensation to the claimant. The liability for payment of Rs. 1,31,500/- was fixed by the Tribunal on the Corporation, as the owner of the vehicle, in accordance with the definition of owner in Section 2 (30) of the Motor Vehicles Act 1988.

3. The Corporation did not file any appeal against the award. It has now invoked the provision of clause 10 of the agreement, for recovering the entire amount from the petitioner, and has given a notice to, the petitioner on 3.9.2012, to pay the entire amount.

4. Sri H.P. Dubey has relied on a judgment of the Supreme Court in Rajasthan State Road Transport Corporation Vs. Kailash Nath Kothari and other etc., and on a decision of the Court in United India Insurance Company Ltd. Vs. U.P. State Road Transport Corporation and Others, , to support his contention that the owner of the vehicle in case of contract under which the vehicle is run by the Corporation is the Corporation. The petitioner cannot be held liable for payment of the award and that in any case the amount is not recoverable as she cannot be indemnified by the Insurance Company.

5. We are informed by Sri Sameer Sharma that the judgment of the Court in United India Insurance Corporation v. UPSRTC (Supra) has been set aside by the Hon''ble Supreme Court in Civil Appeal No. 5901 of 2011, on 25.7.2011, in which the Supreme Court held that in the circumstances of that case the liability of insurance company is exclusive and absolute.

6. In the present case, the petitioner did not obtain consent or a no objection certificate from the Insurance Company, which had insured the vehicle before entering into a contract with the Corporation. The Motor Accident Claims Tribunal considered the question of liability under the award and found that the Insurance Company was not a party to the agreement. The registered owner of the vehicle did not get no objection from the Insurance Company, and produce the same before the Corporation. Since the petitioner did not obtain consent, or no objection certificate of allowing the vehicle to be operated for the benefit of the Corporation, the Insurance Company was not held liable.

7. The Tribunal further found, relying on clause 10 of the agreement dated 9.10.2007, that in case of any claim for award against the Corporation for any fault, negligence or accident, the Corporation will be entitled to recover the amount from the registered owner of the vehicle, who will not have any objection if the amount is recovered under the U.P. Pubic Moneys (Recovery of Dues) Act 1972, as arrears of land revenue.

8. In U.P. State Road Transport Corporation v. Kulsum and others, Civil Appeal No. 5901 of 2011, and in connected Civil Appeals, decided on 25.7.2011, the Supreme Court considered the question, and after examining the provisions of Section 2 (30); Section 103 as amended under U.P. Amendment Act 5 of 1993 by

which subsection (1-A) was added after sub-section (1) to Section 103; Sections 146, 147, 149 and 157 of the Motor Vehicles Act, held that in the light of drastic and distinct changes incorporated in the definition of ''owner'' in the old and in the present Act, Rajasthan State Road Transport Corporation Vs. Kailash Nath Kothari and other etc., , has no application to the facts of the case.

9. The Supreme Court held that considering the agreement between the registered owner of the vehicle and the Corporation, which provides that the vehicle should be insured, the insurance company, cannot evade the liability to pay the compensation. For all practical purposes for the relevant period the Corporation had become the owner of the vehicle for the specified period and the vehicle having not been insured at the instance of the original owner, it will be deemed that the vehicle was transferred alongwith insurance policy in existence to the Corporation and thus the insurance company would not be able to escape its liability to pay the amount of compensation.

10. The Supreme Court, thereafter, held after examining the provisions of Section 146 of the Motor Vehicles Act and the certificate of insurance that there was no violation of terms and conditions of the insurance policy.

11. The definition ''vicarious liability'' as given in Black''s Law Dictionary infers that the person supervising the driver through the principle of ''Respondent Superior'', should pay for the damages of the vehicle. It was held by the Supreme Court that the liability to pay the compensation is a statutory provision. Compulsory Insurance of the vehicle is meant for the benefit of the Third Parties. The liability of the owner to have compulsory insurance is only in regard to Third Party and to the property. Once the vehicle is insured, the owner as well as any other person can use the vehicle with the consent of the owner, and for which a separate Insurance Policy is not provided u/s 146. The purpose of compulsory insurance in the Act has been enacted with an object to advance social justice.

12. The Supreme Court held that the terms and conditions of the policy were not violated nor any provisions of the Act, Rules or conditions of the Insurance Company were breached and thus the Insurance Company has no legal justification to deny the payment of compensation to the claimants. The Insurance Company would thus be liable to pay the amount of compensation to the claimants.

13. In the instant case the Tribunal held that the agreement would not bind insurance company unless insurance company was a party or had given no objection certificate to the agreement with the Corporation.

14. The petitioner or the Corporation have not challenged the award of the Tribunal in so far as the liability of payment of compensation under the award is concerned. The award has become final and is binding upon the Corporation.

15. We also find that there is no adjudication between the petitioner and the insurance company regarding the liability to pay the amount under the award.

The award has been satisfied by the Corporation and thus under Clause 10 of the agreement it can recover the amount from the registered owner of the vehicle i.e. the petitioner. The writ petition is dismissed as against the relief claimed against the Corporation. The insurance company is not party to the writ petition. It will be open to the petitioner, if she is so advised to file a suit or a complaint in the Consumer Forum against the insurance company, to indemnify it, if the policy covers the claim. We may observe here that we have not decided any issue between the petitioner and the insurance company. If a claim is filed by the petitioner against the insurance company, the same will be decided on merits in accordance with law.