
(2017) 01 MP CK 0220
In the Madhya Pradesh High Court
Case No : 5119-2009

State of M.P. & another

APPELLANT

Vs

M/s Jain Automobiles Dealer

RESPONDENT

Date of Decision : 03-01-2017

Acts Referred:

[Motor Vehicles Act, 1988](#), [Section 173](#),
[Section 173](#) - Appeals

Citation : (2017) 01 MP CK 0220

Hon'ble Judges : Ashok Kumar Joshi

Bench : Single Bench

Advocate : Rahul Shrivastava, Asghari Khan

Judgement

1. This appeal under Section 173 of the Motor Vehicle Act 1988 has been preferred by the claimant mainly against the award dated 2/7/2009 passed by Sixth A.M.A.C.T., Jabalpur in M.V.C. No.126/2006 being aggrieved by the inadequacy of the compensation awarded by the tribunal and also exonerating the insurance company from the liability despite the fact that there was valid policy coverage in respect of the vehicle involved and further that the same was a package policy subsequently renamed as Standard Motor Package Policy covering the risk of pillion rider as well. The tribunal exonerated the insurance company by placing reliance on the decision rendered by the Supreme Court in the case of Oriental Insurance Co. Ltd. vs. Sudhakaran K.M. and others [(2008) (3) T.A.C. 1] to the effect that pillion rider is not covered under the clause of third party.

2. On the date of accident, i.e. 2/7/2009, the petitioner was travelling as a pillion rider on a motorcycle bearing registration no. MP20KB3392 driven by respondent no.1 Dayaram, when abovementioned motorcycle collided with an another motorcycle due to rash and negligent driving by respondent no.1 Dayaram and the appellant sustained injuries in the accident. Appellant got fractures in nasal and jaw bones and after accident, he was taken to medical hospital. In accident,

the driver of another motorcycle expired and criminal case was registered at police station Garha against respondent no.1 Dayaram. Respondent no.2 was the owner and respondent no.3 was the insurer of the motorcycle driven by respondent no.1 on the date of incident. Thus, they were liable for payment of compensation to the claimant jointly and severally.

3. Respondent no.1 Dayaram pleaded before the tribunal that the accident had not occurred due to his fault. Present respondent no.2 remained ex parte before the tribunal. Respondent no.3 Insurance Co. pleaded that respondent no.1 was not having valid and effective driving licence on the date of accident and the risk of pillion rider was not covered under the policy, thus insurance company is not liable to pay compensation. It was also pleaded that the owner and insurance company of the other motorcycle have not been made party in the claim.

4. The appellant/claimant was examined as P.W-1 and Administrative Officer of respondent no.3, A. Tirke (D.W-1) was examined by the insurance company. Copy of the policy was proved as Ex-D-1 by D.W.-1. The tribunal arrived at a finding that the accident occurred due to rash and negligent driving of respondent no.1 Dayaram.

5. Appellant has pleaded that in accident grievous injuries were caused to him and looking to the CT scan report (Ex.P-13), it was found proved by the tribunal that fractures of nasal bone of the appellant was proved, but in absence of medical evidence and disability certificate, appellant's pleading regarding disablement was not found proved; the owner and insurance company of another motorcycle were not the necessary parties, but under the policy the risk of pillion rider was not covered. Thus, looking to the fracture of nasal bone, the tribunal awarded Rs.25,000/- under the head of pain and suffering, Rs.12,000/- under the head of treatment, travelling and healthy food and appellant was also awarded Rs. 3,000/- under the head of loss of income for a period of one month. Thus, the tribunal awarded in total a compensation of Rs. 40,000/- with interest @ 6% per annum from the date of presentation of claim petition till realization jointly and severally exonerating insurance co. respondent no.3.

6. Placing reliance on the citations of the cases of ICICI Lombard General Insurance Co. vs. Ashaben Gautambai Bala & others [(2008) (3) T.A.C. 36] and Francis K.T. vs. Sabu Augustine and another (2016 ACJ 1074) and circulars dated 16/11/2009 and others issued by Insurance Regulatory and Development Authority (IRDA) it has been argued that under Standard Motor Package Policy (also called comprehensive policy) in private cars risk of the occupants and in a two-wheeler vehicle, the risk of pillion riders is also covered and the tribunal had erred in exonerating the insurance company.

7. The learned tribunal has relied on the citation of Hon"ble The Supreme Court in the case of Oriental Insurance Company vs. Sudhakarn K. V. and others [(2008)(3) T.A.C. 1 SC], but that case was relating to ""Act Policy Only"". In the case in hand, according to deposition of A. Tirke (D.W.-1) and certified copy of

the policy (Ex.D-1) for the relevant period, the questioned vehicle was covered under "motorcycle/scooter policy B-package". Though, it has also been stated by A. Tirke (D.W-1) that under this package policy, no any premium was paid by the owner for the pillion rider, but in the light of judgment rendered in Francis K.T. (supra) and ICICI Lombard General Ins. Co. vs. Ashaben (supra) and in the light of above-mentioned circulars, it is clear that the risk of pillion rider was covered under the above-mentioned exhibited policy. In the case of Francis K.T. (supra), the earlier circulars issued by IRDA, particularly those dated 18/3/1978 and 2/6/1986, were also considered, which were to the effect that insured's liability in respect of occupant(s) carried in a private car and pillion rider on a two-wheeler would stand covered under the Standard Motor Package Policy. Learned tribunal has relied on a citation, in which it was held that pillion rider is not included in third party, but that case was relating to "Act policy only" . Thus, it is clear in the light of the above-mentioned citations and circulars that the learned tribunal has erred in exonerating the insurance company (respondent no.3.) from the liability to pay compensation. Thus, on this point the appeal is worthy of acceptance.

8. On the point of enhancement of compensation, it is clear that the tribunal has rightly calculated and estimated the compensation under different heads and just and proper compensation has been awarded to the appellant. Thus, there is no question of any enhancement.

9. In the result, the appeal filed by the claimant is partially allowed and it is directed that respondent no.3 (Insurance Company) is also jointly and severally liable to pay the compensation to the claimant/appellant as awarded by the learned tribunal with the interest as indicated above. No costs.