

(2008) 11 SC CK 0068

In the Supreme Court Of India

Case No : Civil Appeal No. 6659 of 2008 (Arising out of SLP (C) No. 20608 of 2004)

The General Manager, United Insurance Co. Ltd.

APPELLANT

Vs

M. Laxmi and Others

RESPONDENT

Date of Decision : 14-11-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 166

Citation : (2009) ACJ 104 : AIR 2009 SC 626 : (2009) 1 ALD 54 : (2008) 6 ALLMR 951 : (2010) 2 ALT 15 : (2009) 1 AWC 18 Supp : (2008) 12 JT 216 : (2009) 3 LW 134 : (2009) 154 PLR 495 : (2009) 17 SCC 301 : (2011) 1 SCC(Cri) 1016

Hon'ble Judges : Mukundakam Sharma, J;Arijit Pasayat, J

Bench : Division Bench

Advocate : Sakshi Mittal and B.K. Satija, for the Appellant; K. Sarada Devi, for the Respondent

Final Decision : Allowed

Judgement

Arijit Pasayat, J.—Leave granted.

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Andhra Pradesh High Court allowing the appeal filed by respondent Nos. 1 to 3.

3. Background facts in a nutshell are as follows:

One Ramulu (hereinafter referred to as the 'deceased') died in a vehicular accident on 8.10.1996. Respondents 1 to 3 are his widow, son and father respectively. A claim petition was filed u/s 166 of the Motor Vehicles Act, 1988 (in short 'the Act') claiming compensation of Rs. 3,00,000/-. The claimants averred in the claim petition that the deceased and one Mohd. Mohsin were going on a scooter belonging to M. Yadireddy, respondent No. 4 in the present appeal. The scooter was being driven by Mohd. Mohsin. At about 7.00 p.m. the scooter hit a bullock cart which was going in the same direction because of rash and

negligent driving of the scooter, the deceased fell down and sustained fatal injuries. At the time of his death, he was 29 years of age. Compensation was claimed from the owner of the scooter. Present appellant was the insurer which had insured the vehicle in question. The insured remained ex-parte. The present appellant filed its counter-affidavit denying all the material allegations. It was pointed out that admittedly, the policy of insurance was an Act policy and the deceased was a pillion rider and also gratuitous passenger and hence, not a third party, and he cannot claim compensation from the insurance company which insured the vehicle. The learned Additional Special Judge for SPE and ACB Cases-cum-V Additional Chief Judge, City Civil Court, Hyderabad (hereinafter referred to as 'MACT') who adjudicated the claim petition, held that the policy was an Act policy in respect of the Scooter on the date of accident, therefore, the insurer had no liability. It was categorically held that unless the policy in question covers even a gratuitous passenger, such person, who met with an accident while going in the vehicle in question and received injuries or his legal heirs, in case of his death following such accident, cannot proceed against the concerned insurance company for any compensation. The compensation payable was fixed at Rs. 1,07,436/- with 12% interest per annum. It was held that the sum was to be realized from the insured and not from the present appellant.

An appeal was preferred by the claimants before the High Court, which, by the impugned judgment relying on a Circular of the Tariff Advisory Committee held that the liability of the insurer was there. The appeal was, accordingly, allowed.

4. Learned Counsel for the appellant submitted that the High Court has misread the Circular of the Tariff Advisory Committee dated 2.6.1986. The same referred to compensation payable to pillion riders in case of comprehensive policy. The Clarification/Circular has no relevance so far as Act Policy Cases are concerned and it related to only Comprehensive Policy.

5. Learned Counsel for respondent Nos. 1 to 3, on the other hand, supported the judgment of the High Court.

6. There is no dispute that the Circular dated 2.6.1986 refers to Comprehensive Policy. It categorically states that standard form for motorcycle should cover liability to pillion passengers in case of Comprehensive Policy. As noted by the MACT, the policy in the instant case was an Act Policy.

7. In *New India Assurance Co. Ltd. Vs. Asha Rani and Others*, , it has been noted as follows:

Section 147 of the 1988 Act, inter alia, prescribes compulsory coverage against the death of or bodily injury to any passenger of "public service vehicle". Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under the Workmen's Compensation Act. It does not speak of any passenger in a "goods carriage".

In view of the changes in the relevant provisions in the 1988 Act vis-à-vis the 1939 Act, we are of the opinion that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e. "a third party". Keeping in view the provisions of the 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor.

Furthermore, Sub-clause (i) of clause (b) of Sub-section (1) of Section 147 speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place, whereas Sub-clause (ii) thereof deals with liability which may be incurred by the owner of a vehicle against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place.

8. In *United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others*, it has been noted as follows:

In our view, although the observations made in *Asha Rani* case (supra) were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant Insurance Company that it owed no liability towards the injuries suffered by the deceased *Rajinder Singh* who was a pillion rider, as the insurance policy was a statutory policy, and hence it did not cover the risk of death of or bodily injury to a gratuitous passenger.

9. In view of what has been stated by this Court in *Asha Rani* and *Tilak Singh* cases (supra), the order of the High Court is clearly unsustainable and is set aside and that of the MACT is restored.

10. The appeal is disposed of accordingly.