(2016) 02 MAN CK 0002

In the Manipur High Court

Case No : MAC (Appeal) No. 7 of 2012

The National Insurance Co. Ltd.	APPELLANT
Vs	
Thongam Birahari Singh & Others	RESPONDENT

Date of Decision : 26-02-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 147

Citation : (2016) 2 ACC 810 : (2017) ACJ 318 : (2017) 2 NEJ 70 : (2016) 2 TAC 342

Hon'ble Judges : Laxmi Kanta Mohapatra, J.

Bench : Single Bench

Advocate : A. Deni Sharma, Advocate, for the Appellant; H. Biramani, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Laxmi Kanta Mohapatra, J.—This appeal is directed against the award dated 24.8.2012 passed by the Presiding Officer, Motor Accident Claims Tribunal, Manipur in MAC CSE No.56 of 2005. The Insurance Company is the appellant in this appeal.

2. Claimant/respondent No.1, is the husband of the deceased late Thongam Ongbi Ketuki Devi and the respondents- 2, 3, 4 and 5 are the children of the respondent No.1 and the deceased.

3. The case of the claimant/respondents is that the deceased was running business of ''Soibum'' and other horticultural products. On 28.2.2005 the deceased boarded a truck being Registration No.MN 01/4184 along with some agricultural products and while travelling in the said truck, it met with an accident. The deceased sustained injuries due to the accident and succumbed to the injuries. According to the claimant/respondents the deceased was earning Rs.8000/- per month and was aged about 60 years at the time of death. The claimant respondents claimed compensation of Rs.12 lakhs.

4. The appellant contested the proceeding by filing written statement and it was contended before the trial court in the written statement that the deceased was a gratuitous passenger and therefore the Insurance Company is not liable to indemnify any compensation that may be awarded in favour of the claimant/ respondents.

5. On the pleadings of the parties, the Tribunal framed 4(four) issues and came to the following conclusion:

a) The deceased died because of the accident that took place on 28.2.2005 while travelling in the said truck.

b) The owner of the truck and the appellant, Insurance Company are jointly and severally liable to play compensation in terms of Section 147(1) of the Motor Vehicle Act,1988.

c) The claimant/respondents are entitled to compensation of Rs.1,41,000/- with interest @ 6% per annum.

6. Shri A. Deni Sharma, learned counsel appearing for the appellant, Insurance Company challenged the impugned award of the Tribunal on the ground that the deceased was a gratuitous passenger and therefore the Insurance Company is not liable to indemnify any compensation that may be payable to her. The learned counsel referred to the evidence adduced in course of hearing of the case before the Tribunal to substantiate his submission.

7. The learned counsel appearing for the respondents, Shri H. Biramani, also referred to the evidence and submitted that the deceased is covered u/s 147 of the Motor Vehicle Act and therefore any compensation payable to her is to be indemnified by the Insurance Company.

A copy of the Insurance Policy was produced before the Tribunal. The said policy shows that it covers the driver, cleaner and conductor apart from the owner if he is driving the vehicle. The policy appears to be a third party Insurance policy.

8. The respondent No.1, who is the husband of the deceased, examined himself and stated that on 28.2.2005 his deceased wife had boarded the truck at Kotland village along with articles such as vegetables and fruits. The said truck met with an accident at Keithelmanbi village and his wife died at the spot. He further stated that the incident was informed to the police and a case was registered. The dead body of the deceased was also subjected to post mortem. He further stated that his deceased wife used to earn Rs.1000-2000 per month from the business. The claimant respondent No.2, who is the son of the deceased also examined himself and stated that on the day of accident, his deceased mother had hired the truck for carrying the goods and while travelling in the said truck, it met with an accident causing her death. Much reliance was placed by the learned counsel for the claimant respondents on the statement of PW-4, who is a Sub Inspector of Police. The officer had investigated into the accident. This witness has stated that after receipt of information he went to the spot and found the

dead body of one woman on the western side of the road and he also found that front wheel of the vehicle had fallen into a drain lying on the northern side of the road. The said truck was carrying full load of boulders and was also carrying some vegetables. Relying on this evidence of the witnesses, PW-4, it was submitted by the learned counsel for the claimant/respondents that the deceased had hired the truck for carrying vegetables and also was travelling in the said truck.

9. As it appears from the evidence of PW-4 as well as PW-5 the truck was loaded with boulders before the deceased boarded the truck. It is true that the deceased was carrying some vegetables with her and those vegetables were kept in the truck but that itself does not mean that she had hired the truck for the purpose of carrying the vegetables only. Admittedly, she is not covered under the Insurance Policy. Now, the question for consideration is as to whether she has to be treated as gratuitous passenger or not. If she is treated as gratuitous passenger, the other question to be considered is as to whether the Insurance Company is liable to indemnify the compensation, if any.

10. In the case of National Insurance Co. Ltd. v. Baljit Kaur and Others reported in (2004)2 SCC 1 interpreting Section 147 (as amended in 1994), of the M.V. Act, the Apex Court held that the effect of 1994 amendment on Section 147 is unambiguous. Earlier the words, "any person" could be held not to include the owner of the goods or his authorised representative travelling in the goods vehicle. The Parliament has now made it clear that such a construction is no longer possible. The scope of this rationale does not, however, extend to cover the class of cases where gratuitous passengers for whom no insurance policy was envisaged, and for whom no insurance premium was paid, employed the goods vehicle as a medium of conveyance. The Court, further, held that intention of the Parliament could not have been that the words, "any person" occurring in section 147 would cover all persons who were travelling in a goods carriage in any capacity whatsoever. Therefore, instead and in place of insurer the owner of the vehicle is liable to satisfy the decree.

11. In Civil Appeal No.5 of 2013 (Manager, National Insurance Co.Ltd. v. Saji P. Paul and Another) disposed of on 3.1.2013 several earlier decisions of the Apex Court were taken note of and it was held that for a gratuitous passenger, the insurer is not liable to pay compensation.

This Court also, in the case of National Insurance Company Limited v. Shri Khamtinlan Vaiphei & others vide MFA No.7 of 2012 disposed of on 5.7.2013, relying on two Supreme Court decisions, held that a gratuitous passenger is not covered by the policy and therefore the insurer has no liability to pay compensation.

12. In the present case, admittedly the truck was loaded with boulders and the deceased boarded the truck along with some vegetables and while travelling in the said truck, it met with an accident and the deceased died on the spot. The

deceased is not covered by the Insurance policy and therefore she is to be taken as gratuitous passenger. In view of the above decisions of the Apex Court the insurer has no liability to pay compensation in case of a gratuituous passenger unless covered by the policy.

13. We are, therefore, of the view that fixing the liability on the appellant for payment of compensation is an error committed by the trial court in its award. We, therefore, set aside the award to that extent and direct that the appellant, Insurance Company, is not liable to indemnify the compensation payable to the claimant respondents and same has to be paid by the owner of the vehicle.

14. The appeal is disposed of.

