(2011) 08 CHH CK 0005

In the Chhattisgarh High Court

Case No : M.A. (C) No. 946 of 2009

The New India Assurance Company Ltd. APPELLANT

Vs

Jhaduram and Others RESPONDENT

Date of Decision : 29-08-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 145(g), 147, 149(5), 166

Citation : (2011) 2 CGBCLJ 166

Hon'ble Judges : I.M. Quddusi, J;Gulam Minhajuddin, J

Bench : Full Bench

Advocate : Saurabh Sharma, for the Insurance Company, for the Appellant;

Final Decision : Allowed

Judgement

I.M. Quddusi, J.—The appellant before us is the insurer of the vehicle. This appeal is directed against the judgment dated 10.04.2009 passed in Claim Case No. 03/2007 whereby the learned Additional Motor Accident Claims Tribunal, Sakti, District Janjgir-Champa (CG) (for short ''the Claims Tribunal'') has partly allowed the claim application of the respondent No. 1 herein, awarded a sum of Rs. 4,56,515/- as compensation and fastened liability on the appellant herein to satisfy the award.

2. Facts of the case, in brief, are that on 08.07.2006 at about 3.30 p.m. after purchasing fruits from the market, respondent No. 1-claimant was returning to his house, which is situate in Jaijaipur, by his car bearing registration number CG00-ZB-1125. Near Baradwar, after answering the call of nature, when respondent No. 1 was entering in the car, the driver of said car has all of a sudden accelerated the speed of vehicle as a result of which he sustained grievous injuries in his leg and became unconscious. He was taken to Gayatri Hospital, Bilaspur for treatment where he was treated for about 10-12 days but he could not recover from the said injury and therefore he was taken to Dr. Surjeet Singh where his left leg below the knee was amputated. Report of the accident was lodged in Police Station Baradwar on the basis of which charge

sheet was filed against respondent No. 2 before the court below concerned. The claimant filed a claim application u/s 166 of the Motor Vehicles Act, 1988 (for short ''the Act, 1988'') claiming compensation to the tune of Rs. 13,03,000/- for the permanent disability sustained by him in the said accident on the ground that due to his permanent disablement, he has sustained loss of earning capacity as prior to incident he was earning Rs. 5,000/- per month.

3. On service of summons of the claim application, the respondents/non-applicants appeared before the Claims Tribunal and filed their separate written statements denying the claim of the injured-claimants.

4. The Claims Tribunal, on close scrutiny of evidence led, material placed and submissions made by the parties, has partly allowed the claim applications of the injured claimant and held the appellant/Insurance Company liable to pay compensation to the injured-claimant.

5. Mr. Saurabh Sharma, learned counsel for the appellant-Insurance Company has mainly pressed the ground that since the injured-owner is not a third party within its meaning u/s 147 of the Act, 1988, the appellant-Insurance Company is not liable to pay the amount of compensation. He has further submitted that there is no evidence available on record to show that at the time of accident the claimant was traveling in the vehicle-in-question. He has further submitted that there is delay in lodging the first information report as the date of accident is 8.7.2006, whereas report was lodged on 21.2.2007. He has further submitted that there was breach of terms & conditions of the insurance policy and therefore, the impugned award passed by the Claims Tribunal is liable to be interfered with.

6. We have heard learned counsel for the appellant. We have perused the record and the impugned award passed by the Claims Tribunal.

7. Under the Act, 1988 the owner of a vehicle has been given umbrella to cover his liability by way of insurance and the insurance company covers the liability of the insured. In this regard, it is necessary to peruse the provision of Section 149(5) of the Act, 1988, which reads as under:-

5. If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would apart from the provisions of this section be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

8. A bare perusal of the above provision shows that the insurance company is liable to pay compensation only to the extent it covers liability to pay compensation on behalf of the insured to a third party. In the instant case, at the time of accident the owner of vehicle was not sitting inside the vehicle but was outside the vehicle and was trying to come inside the vehicle and in that process, he met with the accident.

9. Now the question before us is that when it is liability of the owner to pay compensation to the victim of an accident from his vehicle and if the liability to pay compensation is covered by any insurance company, as to how the insurance company can be held liable to pay compensation to the owner and as to how the owner can become recipient of the amount of compensation which was, infact, his liability to pay and under the insurance policy it has been covered by the insurance company on his behalf.

10. In the matter of Oriental Insurance Co. Ltd. Vs. Sunita Rathi and Others, the three Judge Bench of the Hon''ble Supreme Court has held in Para-3 thus:-

3. It follows that the insurer cannot be held liable on the basis of the above policy in the present case and, therefore, the liability has to be of the owner of the vehicle. However, we find that the High Court, without assigning any reason, has simply assumed that the owner of the vehicle was not liable and that the insurer alone was liable in the present case. This conclusion, reached by the High Court, is clearly erroneous. The liability of the insurer arises only when the liability of the insured has been upheld for the purpose of indemnifying the insured under the contract of insurance. There is, thus, a basis fallacy in the conclusion reached by the High Court on this point.

11. In the matter of Dhanraj Vs. New India Assurance Co. Ltd. and Another, the Hon''ble Supreme court has held thus:-

8. Thus, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorized representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. Section 147 does not require an insurance company to assume risk of death or bodily injury to the owner of the vehicle.

9. In the case of Oriental Insurance Co. Ltd. Vs. Sunita Rathi it has been held that the insurance company is only for the purpose of indemnifying the insured against liabilities incurred towards a third person or in respect of damages to property. Thus, where the insured i.e. an owner of the vehicle has no liability to a third party the insurance company has no liability also.

10. In this case, it has not been shown that the policy covered any risk for injury to the owner himself. We are unable to accept the contention that the premium of Rs. 4989 paid under the heading "Own damage'' is for covering liability towards personal injury. Under the heading "Own damage", the words "premium on vehicle and non-electrical accessories" appear. It is thus clear that this premium is towards damage to the vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim provided a personal accident insurance has been taken out. In this case there is no such insurance.

12. Further, the Full Bench of the High Court of Madhya Pradesh in the matter of Smt. Sunita Lokhande and Others Vs. The New India Assurance Company Limited

and Others, while deciding the question that can the owner under any circumstance be treated or deemed to be treated as a third party? has held in Para-10 as under:-

10. The question referred under clause (c) by the Division Bench is whether the owner in any circumstance can be treated or deemed to be treated as a ''third party''? The expression ''third party'' was interpreted by the Full Bench of this Court in Jugal Kishore and Another Vs. Ramlesh Devi and Others, to mean parties other than the contracting parties to the insurance policy. Para-17 of the judgment of the Full Bench in Jugal Kishore''s case (supra) is quoted herein under:-

(17) Section 145(g) of the Act defines ''third party''. It defines that the ''third party'' includes the government. It would mean that other than the contracting parties to insurance policy, the expression ''third party'' should include everyone, be it a person traveling in another vehicle, one walking on the road or a passenger in the vehicle itself which is the subject-matter of the insurance policy. Every insured takes out an insurance policy against third party risk and enters into a contract with the insurer only with the motive, intention and purpose of covering the risks which may arise in relation to claims lodged against him by a third party. Insurer agreeing to issue insurance policy thereby undertakes to insure the insured and indemnify him against all risks in relation to all claims lodged against him by third party. It will not be proper to narrow the scope and ambit of the words ''third party'' and exclude the passengers from the operation and purview which would not only defeat the very purpose of taking out the insurance policy, but the very object of the Motor Vehicles Act which makes it mandatory requirement of low that all vehicles/owners of the vehicles must be compulsorily insured against third party risk.

It will be clear from the aforesaid judgment of the Full Bench that the insured who is a party of the policy of insurance is not a ''third party'' for the purpose of Chapter XI of the Act and in particular section 147 thereof.

13. In view of the above, we are of the opinion that owner of the vehicle is not entitled to get the amount of compensation as a ''third party'' and therefore, the impugned award imposing liability on the appellant herein to pay compensation to the owner-claimant, who sustained injuries when he was trying to come inside the vehicle from outside, is erroneous and is liable to be set aside.

14. So far as the payment of extra premium to the insurance company under the head ''Personal Accident'' for owner-cum-driver is concerned, the same is applicable only when the owner would be driving the vehicle. In the case in hand, the situation was not like that, here, the owner was not driving the vehicle and therefore the contractual liability under the insurance policy would not be applicable. Further, it is to be noticed that the owner was not covered under the policy and there was no contractual liability also of the insurance company to pay compensation to the owner in any case. In the result, the appeal is allowed, the

impugned award is set aside and we hold that that the respondent No. 1 -owner of the vehicle-in-question was not entitled to get any amount of compensation as a third party from the Insurance Company. It is directed that if the amount deposited by the appellant herein has not been disbursed so far to the claimant-respondent No. 1, the appellant shall be allowed to withdraw the same and if the same has been withdrawn by the claimant, it will be open for the appellant-Insurance Company to recover the same from the claimant-respondent No. 1 herein. No order as to costs.