
(2013) 07 MP CK 0384

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 66 of 2004

The New India Assurance Company Ltd.

APPELLANT

Vs

Matadin and Others

RESPONDENT

Date of Decision : 25-07-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22
Motor Vehicles Act, 1988 — Section 147, 147(1), 147(1)(b), 149, 163A
Penal Code, 1860 (IPC) — Section 279, 304A, 337

Citation : (2014) ACJ 1792

Hon'ble Judges : G.D. Saxena, J

Bench : Single Bench

Advocate : B.K. Agrawal, for the Appellant; J.S. Bhati, Advocate for respondents No. 2 and 3 in Misc. Appeal Nos. 66 and 67/2004, None for respondent Nos. 1 to 4 and Shri J.S. Bhati, Advocate for respondent No. 5 in Misc. Appeal No. 68/2004, for the Respondent

Final Decision : Allowed

Judgement

G.D. Saxena, J.—This order shall govern the disposal of the aforesaid three appeals. In the aforesaid appeals preferred u/s 173 of the Motor Vehicles Act by the appellants-Insurance Company, a challenge has been made to an Award dated 20th October 2002 in claim cases No. 35/2002, 36/2002 and 101/2003, arising out of the same accident, which was passed by the First Additional Member of the Motor Accident Claims Tribunal, Morena (M.P.) with a prayer for setting aside the findings of the tribunal including the award as according to the averments, the Insurance Company is not statutorily required to cover the liability u/s 147 of the Act in respect of passengers travelling in a vehicle. The facts, in short, are that on 17th December 2001, deceased Ramjilal and injured Matadeen and Ramesh were travelling from Morena to Gwalior on the mudguard of a tractor bearing registration No. MP06 J 2531 which at the time of accident was owned by Shrilal, driven by Damodar Singh and insured with New India Insurance Company (appellants herein). It is alleged that in way near Highway

Hotel, at Police Station Noorabad due to rash and negligent driving, the alleged tractor turned turtle with a trailer causing death of Ramjeelal and injuries to Matadeen and Ramesh. Accordingly, an F.I.R. was lodged against the driver and after investigation, the charge sheet was filed for commission of offence punishable under sections 279, 337 and 304-A of I.P.C. before the criminal court. The learned tribunal after considering the evidence on record passed the award of Rs. 1,66,700/- with interest @ 9% till payment is made, as compensation for the death of Ramjeelal in favour of claimants in claim case No. 35/2002, the award of Rs. 50,000/- with interest @ 9% till payment is made, as compensation for injuries caused to Ramesh Singh in claim case No. 36/2002 and the award of Rs. 25,000/- with interest @ 9% till payment is made as compensation for injuries to injured Matadeen in claim case No. 101/03, against the owner, driver and the Insurance Company, which was payable jointly or severally. It is submitted that in compliance of the directions, half of the amount of awards is deposited with the tribunal by the appellants/Insurance Company.

2. The submissions put forth by the learned counsel appearing for the appellants/ Insurance Company are that the offending vehicle was insured for agriculture and forestry purpose and the policy did not cover liability for hire or reward purposes. No additional premium was paid for transporting/carrying the passengers for hire or gratuitous purposes. It is submitted that at the time of accident, the deceased and injured were travelling on the mudguard of the tractor which was in violation of the terms and conditions of the policy and the provisions of the relevant rules under the Act. Hence, on the basis of the aforesaid, it is prayed that by allowing the appeals, the Award passed against the appellants may be set aside and the directions may be given to the owner and the driver to pay the amount to the claimants. It is further prayed that the amount deposited by the Insurance Company may be released.

3. It may be mentioned here that despite service on claimants/injured, none is present during hearing of appeals. No appeal or cross-objection under Order 41 Rule 22 of C.P.C., seeking enhancement of the award is preferred. The driver also remained absent before the tribunal and after service of notice of the appeal, he did not appear before this court.

4. The contention of the learned counsel appearing on behalf of the owner is that there is no liability exists against the owner for payment of the award amount passed in favour of the claimants/injured. It is submitted that even if any liability is found against the owner, since the vehicle was insured with the Insurance Company, the company should indemnify the liability of the insured and eventually the amount under the award may be directed to be deposited by the Insurance Company and not by the owner of the offending vehicle, as directed by the learned tribunal.

5. Heard the learned counsel for the parties and perused the materials.

6. In view of the submissions made by the learned counsel on either side,

following question arises for consideration of the appeals:-

Whether, in case of death of or bodily injury to any unauthorised passenger while travelling in the vehicle, Insurance Company is bound to indemnify the liability of the insured with respect to such passengers who were neither contemplated at the time the contract of insurance was entered into nor any premium was paid to the extent of the benefit of insurance to such category of persons?

7. Before dwelling further, it could be appropriate to extract the relevant provisions of the Motor Vehicles Act.

S. 147. Requirements of policies and limits of liability:-(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which:-

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2):-

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person including, owner of the goods or his authorised 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 in a public place.

149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.-(1) If, after a certificate of insurance has been issued under sub-section (3) of Section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of Section 147 (being a liability covered by the terms of the policy) or under the provisions of section 163-A is obtained against any person insured by the policy then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgment.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely;-

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:-

(i) a condition excluding the use of the vehicle:-

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organized racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false is some material particular.

...

(4) Where a certificate of insurance has been issued under sub-section (3) of Section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any conditions other than those in clause (b) of sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of sub-section (1) of Section 147, be of no effect: Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this subsection shall be recoverable by the insurer from that person.

(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. In *National Insurance Co. Ltd. Vs. V. Chinnamma and Others*, , the Hon. Apex Court has observed as follows:-

There is nothing on records to show that the owner of the tractor had produced any insurance cover in respect of the trolley. It is furthermore not disputed that the tractor was insured only for the purpose of carrying out agricultural works. The representative of the Insurance Company Mr. Hari Singh Meena on cross-

examination merely accepted the suggestion that cutting the earth and levelling the field with earth would be an agricultural work but respondent No. 1 himself categorically stated in his claim petition before the Tribunal stating that the earth had been dug and was being carried in the trolley to the brick-kiln. Evidently the earth was meant to be used only for the purpose of manufacturing bricks. Digging of earth for the purpose of manufacture of brick-kiln indisputably cannot amount to carrying out of the agricultural work. On above facts Apex court considered the above facts and observed as follows:-

16. Furthermore, a tractor is not even a goods carriage. The "goods carriage" has been defined in Section 2(14) to mean "any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods" whereas "tractor" has been defined in Section 2(44) to mean "a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a road-roller". The "trailer" has been defined in Section 2(46) to mean "any vehicle, other than a semi-trailer and a side-car, drawn or intended to be drawn by a motor vehicle.

17. A tractor fitted with a trailer may or may not answer the definition of goods carriage contained in Section 2(14) of the Motor Vehicles Act. The tractor was meant to be used for agricultural purposes. The trailer attached to the tractor, thus, necessarily is required to be used for agricultural purpose, unless registered otherwise. It may be, as has been contended by Mrs. K. Sharda Devi, that carriage of vegetables being agricultural produce would lead to an inference that the tractor was being used for agricultural purposes but the same by itself would not be construed to mean that the tractor and trailer can be used for carriage of goods by another person for his business activities. The deceased was a businessman. He used to deal in vegetables. After he purchased the vegetables, he was to transport the same to market for the purpose of sale thereof and not for any agricultural purpose. The tractor and trailer, therefore, were not being used for agricultural purposes. However, even if it be assumed that the trailer would answer the description of the "goods carriage" as contained in Section 2(14) of the Motor Vehicles Act, the case would be covered by the decisions of this Court in Asha Rani (supra) and other decisions following the same, as the accident had taken place on 24.11.1991, i.e., much prior to coming into force of 1994 amendment.

9. In Oriental Insurance Co. Ltd. Vs. Brij Mohan (AIR 2007 SC 1971), it is observed as follows:-

10. Furthermore, respondent was not the owner of the tractor. He was also not the driver thereof. He was merely a passenger travelling on the trolley attached to the tractor. His claim petition, therefore, could not have been allowed in view of the decision of this Court in New India Assurance Co. Ltd. Vs. Asha Rani and Others, wherein the earlier decision of this Court in New India Assurance Company Vs. Shri Satpal Singh and Others, was overruled. In Asha Rani (supra)

it was, inter alia, held:-

25. 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 Compensation Act. It does not speak of any passenger in a "goods carriage".

26. In view of the changes in the relevant provisions in the 1988 Act vis-?-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.

27. 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.

10. In National Insurance Co. Ltd. Vs. Baljit Kaur and Others, , the Hon. Apex Court, court observed as follows:-

20. It is, therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in S. 147 with respect to persons other than the owner of the goods or his authorised representative remains the same. Although the owner of the goods or his authorised representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the Legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor any premium was paid to the extent of the benefit of insurance to such category of people.

21. The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The Tribunal as also the High Court had proceeded in terms of the decisions of this Court in Satpal Singh (supra). The said decision has been overruled only in Asha Rani (supra). We, therefore, are of the opinion that the interest of justice will be sub-served if the appellant herein is directed to satisfy the awarded amount in favour of the claimant if not already satisfied and recover

the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing Court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. We have issued the aforementioned directions having regard to the scope and purport of S. 168 of the Motor Vehicles Act, 1988 in terms whereof it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the Tribunal in such a proceeding.

11. In National Insurance Co. Ltd. Vs. Prembai Patel and Others, it is observed as follows:-

The insurance policy being in the nature of a contract, it is permissible for an owner to take such a policy whereunder the entire liability in respect of the death of or bodily injury to any such employee as is described in sub-clauses (a) or (b) or (c) of proviso (i) to Section 147(1)(b) may be fastened upon the insurance company and insurance company may become liable to satisfy the entire award. However, for this purpose the owner must take a policy of that particular kind for which he may be required to pay additional premium and the policy must clearly show that the liability of the insurance company in case of death of or bodily injury to the aforesaid kind of employees is not restricted to that provided under the Workmen's Act and is either more or unlimited depending upon the quantum of premium paid and the terms of the policy.

It is thus clear that in case the owner of the vehicle wants the liability of the insurance company in respect of death of or bodily injury to any such employee as is described in clauses (a) or (b) or (c) of proviso (i) to Section 147(1)(b) should not be restricted to that under the Workmen's Act but should be more or unlimited, he must take such a policy by making payment of extra premium and the policy should also contain a clause to that effect. However, where the policy mentions "a policy for Act Liability" or "Act Liability", the liability of the insurance company qua the employees as aforesaid would not be unlimited but would be limited to that arising under the Workmen's Act.

12. In the case of Bhav Singh Vs. Smt. Savirani and Others, Full bench of this court observes as follows:-

10. Sub Section (5) of Section 147 of the Act, however provides that notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance u/s 147 of the Act shall be liable to indemnify a person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or classes of persons. Thus if the policy of insurance covers any liability in addition to the

liability u/s 147(1) of the Act, the insurer will be liable to indemnify the insured in case of any liability not because of the provisions of sub section (1) of section 147 but because of the terms and conditions of contract of insurance between the insurer and the insured. Therefore, if the contract of insurance provides for a liability to a passenger or to an employee other than the liabilities provided under sub section (1) of the Section 147 of the Act, the insurer would be liable to indemnify the insured against such liability.

13. A reading of the above judgments would show that only in a case, where the Insurance Company is successful in its defence u/s 149, it may yet be required to pay the amount to the claimant and thereafter, it may recover from the owner of the vehicle. When the insurance company is not statutorily required to cover the liability in respect of a passenger in a vehicle u/s 147 unless such passengers is the owner or agent of the owner of the goods accompanying such goods absolutely there is no need for the Insurance Company to pay compensation since there is no contractual liability under the statute to pay the amount to the gratuitous passenger travelling in the goods carriage vehicle.

14. Now, coming to the present scenario of the case, it appears from the facts and the evidence on record of the tribunal that on the day of accident, the claimants of deceased and injured were travelling while sitting on the mudguard of the tractor involved in accident which was driven by Damodar Singh. Sitting on the mudguard is against the policy of the insurance as in the tractor, except the driver's seat there is no other provision for sitting. Mudguard is not meant for sitting as it is neither safe nor comfortable. No such permission is given under the policy for sitting on the mudguard. As discussed above, the tractor involved in accident was insured for agricultural and forestry purposes and no premium for carrying such passengers by the side of driver on the mudguard except driver of the vehicle is paid to the Insurance Company. Obviously, therefore, there is no statutory obligation u/s 147 of the Act for indemnifying the liability by the Insurance Company on behalf of the insured to make payment of the awards to the claimants/heirs of the deceased or injured, who were travelling on the mudguard of the offending tractor. In that view of the matter, the findings of the learned tribunal issued against the appellants/Insurance Company to the extent of indemnifying the liability of the insured in respect of payment of compensation to the claimants of deceased and injured are not sustainable in law. Since the tractor was being used for the purposes other than the purpose for which it was insured, no liability could be fastened on the Insurance Company. Resultantly, the owner of the vehicle shall be vicariously liable for negligent act of his driver to satisfy the award amount alongwith interest. Since the appellants/Insurance company has deposited part of the amount under award in compliance of the directions of the tribunal, the learned tribunal is directed to recover and deliver such amount to the Insurance company in pending execution proceedings. Costs of the appeals shall be borne by the owner of the offending vehicle. Counsel fee Rs. 1,000/-, if certified. In view of above, all the three appeals stand allowed.