(2013) 07 MP CK 0385

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 100 of 2004 and Miscellaneous Appeal No. 201 of 2004

The New India Assurance Company Ltd.	APPELLANT
Vs	
Omprakash and Others Omprakash and Another Vs Deenanath and Others	RESPONDENT

Date of Decision : 25-07-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 147(1), 147(1)(b), 149, 163A
Penal Code, 1860 (IPC) — Section 279, 304A, 337

Citation : (2013) 07 MP CK 0385

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

Bench : Single Bench

Advocate : B.N. Malhotra in Misc. Appeal Nos. 100 and 103/2004 and Mr. Arun Sharma, in Misc. Appeal No. 201/2004, for the Appellant; H.K. Shukla, Advocate for respondent No. 1, None for respondents No. 2 to 4 in Misc. Appeal Nos. 100 and 103/2004, Shri B.N. Malhotra, Advocate for respondent No. 3 and None for respondents No. 1 and 2 in Misc. Appeal No. 201/2004, for the Respondent

Judgement

G.D. Saxena, J.—Misc. Appeal Nos. 100/04 and 103/04 have been submitted by the appellant-Insurance company whereas Misc. Appeal No. 201/04 has been preferred on behalf of claimants of the deceased arising out of common impugned Award dated 22nd October 2003 in claim cases Nos. 18/03, 19/03 by the injured Om Prakash and another/legal heirs of the deceased Neelu @ Surjeet Singh S/o. Om Prakash by the Third Additional Member of the Motor Accident Claims Tribunal, Morena (M.P.) seeking enhancement of compensation to be recovered from the respondents. On the other hand, the Insurance Company by preferring aforesaid two appeals has prayed for setting aside the Award passed against it with a direction to release the amount deposited under the impugned directions. It is not in dispute by either of the parties that at the time of accident, the offending tractor bearing No. MP06/JA 2895 was being driven by Ramroop Singh and the same was owned by Deenanath Singh and insured with the New India Insurance Company.

2. The facts, in short, necessary for adjudication of the appeals are that on 22nd November 2002, the deceased Surjeet Singh @ Neelu alongwith his father injured Om Prakash was coming in a tractor from Morena to Sukhpura with two begs of manure. As tractor reached at the bridge of Kwari River, due to rash and negligent driving, it turned turtle, resultantly, Surjeet Singh was pressed under the vehicle and died on the spot. The father of the deceased sustained fracture of left leg with head injury. On the report of the accident by the injured, an FIR was lodged and crime for offence under sections 279, 337 and 304-A of I.P.C. was registered against the driver of the tractor. After investigation, the charge-sheet was filed before the criminal court. 3. The claimants of the deceased Neelu @ Surjeet Singh who are none else but the parents filed a petition (Claim Case No. 18/03) for award of compensation on account of death of their son. Another petition (Claim Case No. 19/03) has been preferred by the injured-father Om Prakash claiming compensation for the injuries received by him in an accident. The learned claims tribunal after recording and considering the evidence while dealing with separate claim cases passed the common award. The compensation of Rs. 25,000/- in favour of claimant Om Prakash in Claim Case No. 19/03 for the injuries sustained by him in the alleged accident was awarded. While deciding Claim Case No. 18/03, compensation of Rs. 1,64,000/- with annual interest @ 9% on the award amount was ordered in favour of the claimants for death of their son, which was directed to be paid by the respondents, i.e., owner, driver and the Insurance Company in a joint or several manner. Having been dissatisfied with the award aforesaid, the Insurance Company filed two separate appeals against the claimants, owner and the driver. The claimants have also filed appeal for enhancement of the compensation, as mentioned in the preceding paragraphs.

4. Learned counsel appearing for the Insurance Company contended that the learned MACT has committed an error in issuing the Award against the Company. It is submitted that the offending vehicle was insured for the agriculture and forestry purposes which did not purport to cover the persons for hire or reward purposes. It is submitted that no additional premium was paid for transporting such passengers for hire or gratuitous purposes and at the time of accident, the deceased and injured were travelling on the mudguard alongwith their goods, contrary to the terms and conditions of the policy and the relevant provisions of 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.

5. It may be noted here that despite service on claimants/injured, no one is present before this court during hearing of their appeal. Further, the owner and the driver in their written statements denied the accident owing to rash and negligent driving. They also denied the claims of injured and claimants for compensation. In alternative, they submitted that since the tractor was insured

with the Insurance Company, in the event of any liability found on account of use of the vehicle insured, the award may be satisfied by the Insurance Company.

6. The submissions on behalf of the injured and claimants of the deceased are that learned tribunal erred in deciding the age of deceased as 16 years whereas at the time of accident, he was 20 years of age and earning member of the family. It is submitted that by doing work of diesel mechanic at the shop, he used to earn Rs. 6,000/- monthly. Therefore, the learned tribunal ought to have calculated the income in proper manner by assuming age of deceased 20 years and must apply multiplier of 16 and looking to the self-expenses, it should deduct 50% and assess Rs. 5,76,000/- as sufficient compensation. Apart the aforesaid, the amount payable under other heads like loss of love and affection, funeral expenses and loss of estate also deserve to be enhanced. Therefore, the appellants/claimants prayed that by allowing the appeal the award amount may be enhanced up to Rs. 6,16,000/- with interest as awarded to be paid from the owner, driver and Insurance Company, in a joint or several manner.

7. Heard the learned counsel for the parties. Also perused the record of the case and the law covering the situation.

8. Two main questions arise for consideration in these cases which are as under:-

(i) Whether the injured and deceased against the terms of policy of insurance issued for agriculture and forestry were travelling on the mudguard of the tractor involved in accident and if so, the liability of the Insurance Company to indemnify the insured goes away ?

(ii) Whether the award passed by the learned tribunal is adequate or liable to be enhanced in the light of the submissions put forth by the claimants/injured ?

9 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.

10. 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.

11. In Oriental Insurance Co. Ltd. Vs. Brij Mohan and Others, , 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.

12. 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 subserved 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.

13. 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.

14. 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.

15. 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.

16. On perusal of the deposition of Om Prakash (AW-1) it appears that on 22nd November 2003 he and his son Surjeet Singh was travelling from Morena to Sukhpura while sitting on the mudguard of the offending tractor driven by Ramroop with two begs of manure. He stated that by rash and negligent act on the part of the driver, the tractor itself turned turtle as a result of which he got injuries on left leg and head with fracture. His son died in that accident. Later, he said that he and his son was sitting on the mudguard of trolley. Contrary to it, on perusal of the certified copies of the FIR lodged by Om Prakash, the injured, the spot map and mechanical report of the tractor involved in accident, it clearly postulates that no trolley was attached with a tractor and the injured with his

deceased son was travelling while sitting on the mudguard of the aforesaid tractor. The tractor was completely damaged by turning turtle near the Kwari river.

17. Further, on perusal of the policy issued for insurance of the tractor (Ex.D/1-C) and deposition of Ashok Kumar Shukla (DW-1), Assistant Administrative Officer of the New India Insurance Company, Branch Morena, it makes it clear that the offending vehicle was insured for agriculture and forestry purposes which did not cover for passengers on hire or reward purposes. Except driver no one was permitted to sit on the tractor for travelling. No additional premium was paid for transporting 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. From the averments of the claim petition and the statement of injured himself before the tribunal it is gathered that the injured and his deceased son was travelling on the mudguard of the trolley as passengers alongwith their goods contrary to the terms and conditions of the policy and the provisions of the Act. Suffice it to say in the tractor, there was no space for sitting except the driver and sitting on the mudguard was neither safe nor comfortable for a person. If anyone sits on the mudguard then he puts his life at risk. As disclosed above, since the tractor involved in accident was insured for agricultural purposes and no premium for carrying such passengers on the mudguard or travelling in trolley with/without luggage except the driver of the vehicle was paid to the Insurance Company, there is no statutory obligation on the insurer u/s 147 of the Act for indemnifying the insured. In that view of the matter, the findings of the learned tribunal to the extent of indemnifying the liability of the insured by the insurer 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. When a vehicle belonging to an owner is insured with the Insurance Company and it is being driven by a driver employed by the insured, when it meets with an accident, the primary liability under law for payment of compensation is that of the driver. Once the driver is liable, the owner of the vehicle becomes vicariously liable for payment of compensation. It is this vicarious liability of the owner that is indemnified by the Insurance Company. In the present case, after considering the evidence, this court comes to the conclusion that the owner of the vehicle shall be vicariously liable for negligent act of his driver to satisfy the award amount with interest as per terms of the Award to the claimants. Since the 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 the amount, if deposited, to the Insurance company in pending execution proceedings. Cost of the appeals shall be borne by the owner of the offending vehicle. Counsel fee Rs. 1,000/-, if certified.

18. The next question left for consideration is that as to what compensation should be awarded to the claimants.

19. Having gone through the deposition of injured and other available evidence, it appears that the deceased died at the age of 20 years. He was working as diesel motor pump mechanic and had temporary movable shop at the bus-stand of village and on the day of incident his monthly earning was Rs. 6,000/-. As per postmortem report (Ex.A/7), the age of deceased seems to be 16 years. No cogent proof relating to age of deceased is on the record of the tribunal. Again, there is no convincing material available to determine the income of the deceased. Hence, looking to the age of the deceased, it cannot be safely said that his monthly earning was Rs. 6,000/-, that too, by doing the work of diesel motor pump mechanic. Even though, looking to the economic status of the parents, the notional income of the deceased can be determined at Rs. 3,000/- p.m. Since the deceased was bachelor, therefore, dependency and economic loss in that matter would be ascertained @ 50% of the income of deceased and multiplier of 13 according to the age of parents will be applied. Thus, loss of earning would be Rs. 1500/-, annually Rs. 18,000/-. In this sum after applying multiplier of 13, amount would come to Rs. 2,34,000/-. In addition to it, compensation for love and affection @ Rs. 10,000/- and for funeral expenses @ Rs. 5,000/- is awarded. Thus, in this manner, total compensation comes to Rs. 2,49,000/- (Rs. Two lac forty nine thousand only) for the death of the son of the claimants which resulted in the accident.

20. As regards claim submitted by the injured Om Prakash, on perusing the deposition of injured and certified copies of the injury report and X-ray report from criminal case, it clearly shows that the injured got bony injury in his left leg. Though to prove the medical expenses, no cash memos or other bills regarding payment are filed on record. In these circumstances, Rs. 5,000/- for his medical treatment and Rs. 3,000/- for nourishing and healthy food during treatment may be granted. Looking to the period of ailment for three months, compensation towards loss of income @ Rs. 12,000/- and Rs. 5,000/- for his pains and sufferings may be granted. It is this amount which the tribunal has granted in all the heads which seems to be proper. As a result, the award for injuries to injured is hereby affirmed. Consequently, by allowing the appeals (Misc. Appeal No. 100/04 and Misc. Appeal No. 103/04), the Insurance Company is exonerated from the liability of satisfying the award amount on behalf of the insured. The owner of the vehicle is directed to pay enhanced award amount, as calculated above, to the claimants within a period of three months from the date of this order alongwith interest @ 9% p.a. from the date of submission of claim petition till actual payment is made. Eventually, Misc. Appeal No. 201/04 preferred by the appellant/injured is hereby dismissed, for want of substance.

