(2017) 04 TP CK 0008

In the Tripura High Court

Case No : 144 of 2012

The New India Assurance Company Ltd. APPELLANT

Vs

Sri Khudiram Das RESPONDENT

Date of Decision : 20-04-2017

Acts Referred:

Motor Vehicles Act, 1988, Section 147(1)(b)(i), Section 147(1)(b)(i), Section 147(1), Section 147(1) - Requirements of policies and limits of liability - Requirements of policies and limits of liability

Citation : (2017) 04 TP CK 0008

Hon'ble Judges : Sukhendu

Bench : Single Bench

Advocate : P Chakraborty, S Deb Gupta, B Debnath

Judgement

1. Both these appeals are directed against the judgment dated 6-10-2012 passed by the learned Member, Motor Accident Claims Tribunal, West Tripura, Agartala in T.S.(MAC) No.342 of 2010 awarding a compensation of Rs.14,14,103/- together with interest @ 6% per annum in favour of the claimant. MAC Appeal No.144 of 2012 is filed by the insurer for setting aside the impugned award on the ground that the claimant respondent No.1 was a gratuitous passenger and is not entitled to compensation, whereas MAC Appeal No.1 of 2013 is filed by the claimant seeking enhancement of the compensation.

2. The facts giving rise to both the appeals are that on 24-7-2010, the claimant was proceeding towards Badarghat Stadium in Auto Truck bearing registration No. TR-01-K-0713 allegedly loaded with wooden files and bamboos for performing construction work and when the vehicle reached Shekertote market, the vehicle fell down by the side of the road while negotiating a turning. According to the claimant/appellant, the accident occurred due to rash and negligent driving of the vehicle. Due to the accident, the claimant sustained several injuries on his body and was in a senseless condition and was taken to BRAM Teaching Hospital, Hapania where he got admitted as an indoor patient on

24-7-2010. After two days, he was shifted to AGMC and GBP Hospital, Agartala as indoor patient and was discharged on 21-8-2010 with an advice to attend the OPD of the Hospital. Accordingly, he attended the OPD of the Hospital. A major operation had to be performed by which the left hand below the shoulder of the claimant was amputated. The claimant is said to have become permanently disabled to the extent of 100% though the District Disability Board, West Tripura certified him to suffer permanent disability to the extent of over 80%. The claimant was 34 years old at the time of accident and used to earn Rs.7,500/- per month as a mason. The police registered a regular case over the accident i.e. Amtali P.S. Case No.79/2010 U/s 279/338 IPC. He claimed that he had incurred Rs.1,00,000/- for his treatment and claimed a compensation of Rs.31,50,000/-.

3. Both the owner of the vehicle, respondent 1, and the insurer, appellant, contested the claim petition and filed their respective affidavits. The respondent 1 took the stand that the averments of the claimant are all false and a concocted one and submitted that if at all compensation was payable, the same would be paid by the insurer as the vehicle insured with them. The insurer, in the written statement, also submitted that the claim of the claimant was a false and concocted story and that the vehicle was a goods carrying vehicle and as per the terms of the policy, no passenger or person was allowed to travel in the vehicle in question. Nor was the claimant a labourer of the vehicle and as he was travelling in that vehicle not as a labourer, the policy did not cover him to entitle him to compensation from the insurer. The insurer, therefore, claimed that the claim petition was without merit and was liable to be dismissed. The Tribunal framed the following points for consideration: 1. Whether the vehicle met an accident on 24-7-2010 at about 9.45 AM near Sekerkote market on Agartala Bishalgarh road under Amtali PS due to rash and negligent driving of the vehicle? 2. Whether the petitioner Khudiram Das sustained injuries as a result of that accident? 3. Whether the petitioner is entitled to get any compensation and, if so, what shall be the reasonable amount?

4. Who shall make the payment of compensation, if any,? 4. The claimant examined himself and one other witness to prove his clam and submitted some documents, which were marked as Exbt.1 Series. The insurer examined one of its Deputy Managers as DW-1 to rebut the case of the claimant. The owner of the vehicle did not examine himself or any other witness to rebut the case of the claimant. At the conclusion of the trial, the impugned order was passed. Aggrieved by the order of compensation, the insurer preferred MAC Appeal No.114 of 2012 for annulling the award, while the claimant filed MAC Appeal No.1 of 2013 for enhancement of the compensation.

5. The first point for consideration is whether the claimant is a gratuitous passenger and is not, therefore, covered by the insurance policy. If he is found to be so, he will not be entitled to any compensation from the insurer and the need for dealing with the other contentions will stand obviated. Before proceeding further, I may refer to the findings of the Tribunal in this behalf, which read thus:

"Ld. Counsel appearing for the O.P. Insurance Company has contended that the petitioner (claimant) was a gratuitous passenger in the offending Auto Truck bearing No.TR-01-K-0713 which is meant for carrying goods. Ld. Counsel has also contended that the Insurance Policy in respect of the offending vehicle does not cover the risk of any passenger other than the owner of goods who is on board of the vehicle as it is a goods carrying vehicle. As per the Insurance Policy of the vehicle seat capacity of the offending Auto Truck is 2 (two) including the driver and as such the Petitioner being the gratuitous passenger of the offending vehicle the O.P. Insurance Company is not liable to pay any compensation as per the Policy. Per contra, Ld. Counsel appearing for the Petitioner has contended that the Petitioner was carrying his goods i.e. the building materials in the offending vehicle and he was not the gratuitous passenger of the said vehicle. According to Ld. Counsel, the Petitioner, being the owner of the building material with which he boarded the vehicle with the knowledge of the driver of the offending vehicle and as such the Insurance Company cannot be absolved from paying compensation on behalf of the insured who is the owner of the offending vehicle. I have considered the submission of both sides. From the pleadings as well as the evidence on record, I have found that the Petitioner as a Mason has claimed that he had boarded the offending vehicle with wooden files, etc. in it in order to reach his construction side at Badharghat Stadium, Bishalgarh. The assertion of the Petitioner is found to have been corroborated by the evidence of PW-2 and the contents of the charge sheet which has been filed against the driver of the offending vehicle bearing No. TR-01-K-0713. The Petitioner is found to have dominium over the building materials with which he was travelling in the offending vehicle and as such I am of the considered opinion that the O.P. No.2 i.e. the insurer of the said vehicle cannot be absolved from the liability for making payment of the compensation amount which has been determined by this Tribunal. As such, the O.P. No.2, the New India Assurance Company Ltd., Agartala Branch is to make payment of the compensation with interest thereon to the Petitioner."

6. In the instant case, the undisputed fact is that the injured was travelling in a goods vehicle. The incident took place on 24-7-2010 i.e. after the amendment of Section 147(1)(b)(i) the Motor Vehicle Act, 1988 in 1994, which inserted the words "injury to any person, including owner of the goods or his authorised representative carried in the vehicle" after the words "against any liability which may be incurred by him in respect of the death or bodily". This effect of this amendment came up for consideration before the Apex Court in New India Assurance Co. Ltd. v. Satpal Singh, (2000) 1 SCC 237. The Apex Court held as follows: "10. The proviso to the said sub-section is not relevant here as it pertains to death or bodily injury to the employee mentioned therein. Sub-section (2) provides that a policy of insurance shall cover any liability incurred in respect of any accident, up to the following limits, namely: "(a) save as provided in clause (b), the amount of liability incurred; (b) in respect of damage to any property of a third party, a limit of rupees six thousand: Provided that any policy

of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier." Hence, under sub-section (2), there is no upper limitation for the insurer regarding the amount of compensation awarded in respect of death or bodily injury of a victim of the accident. It is, therefore, apparent that the limit contained in the old Act has been removed and the policy should insure the liability incurred and cover injury to any person including owner of the goods or his authorised representative carried in the vehicle. The legislature has also taken care of even the policies which were in force on the date of commencement of the Act by specifically providing that any policy of insurance containing any limit regarding the insurer''s liability shall continue to be effective for a period of four months from commencement of the Act or till the date of expiry of such policy, whichever is earlier. This means, after the said period of four months, a new insurance policy consistent with the new Act is required to be obtained. 11. The result is that under the new Act an insurance policy covering third-party risk is not required to exclude gratuitous passengers in a vehicle, no matter that the vehicle is of any type or class. Hence the decisions rendered under the old Act vis-?-vis gratuitous passengers are of no avail while considering the liability of the insurance company in respect of any accident which occurred or would occur after the new Act came into force." (Underlined for emphasis)

7. Thus, in terms of Satpal Singh case, even a gratuitous passenger including owner of goods or his representative were deemed to be covered by the Insurance Policy and were, therefore, entitled to be paid compensation by the insurer by indemnifying the owner of the vehicle. However, this decision was reviewed by the three-Judge Bench of the Apex Court in New India Assurance Co.Ltd. v. Asha Rani and others, (2003) 2 SCC 223. This is what the Apex Court said: "8. Under the Motor Vehicles Act, 1939 the requirements of policies and limits of liability had been provided in Section 95. Proviso to Section 95(1) of the said Act unequivocally states that the policy shall not be required in case of a goods vehicle for passengers being carried in the said vehicle. In Mallawwa v. Oriental Insurance Co. Ltd.,(1999) 1 SCC 403: 1999 SCC (Cri) 58 while approving the earlier decision of the Court in Pushpabai Purshottam Udeshi case,Pushpabai Purshottam Udeshi v. Ranjit Ginning & Pressing Co. Ltd., (1977) 2 SCC 745 the Court construed the provisions of Section 95(1)(b) of the Motor Vehicles Act, 1939 and held that while the expression "any person" and the expression "every motor vehicle" are in wide terms but by proviso (ii) it restricts the generality of the main provision by confining the requirement to cases where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, therefore, the vehicle had to be a vehicle in which passengers are carried. The Court further held that the goods vehicle cannot be held to be a passenger vehicle even if the vehicle was found to be used on some stray occasions for carrying passengers for hire or

reward. Undoubtedly, Mallawwa case2 was dealing with a situation under the Motor Vehicles Act, 1939. 9**. In Satpal case, New India Assurance Co. v. Satpal Singh, (2000) 1 SCC 237; 2000 SCC(Cri) 130 the Court assumed that the provisions of Section 95(1) of the Motor Vehicles Act, 1939 are identical with Section 147(1) of the Motor Vehicles Act, 1988, as it stood prior to its amendment. But a careful scrutiny of the provisions would make it clear that prior to the amendment of 1994 it was not necessary for the insurer to insure against the owner of the goods or his authorised representative being carried in a goods vehicle. On an erroneous impression this Court came to the conclusion that the insurer would be liable to pay compensation in respect of the death or bodily injury caused to either the owner of the goods or his authorised representative when being carried in a goods vehicle the accident occurred. If the Motor Vehicles Amendment Act of 1994 is examined, particularly Section 46, by which the expression "injury to any person" in the original Act stood substituted by the expression "injury to any person including owner of the goods or his authorised representative carried in the vehicle", the conclusion is irresistible that prior to the aforesaid Amendment Act of 1994, even if the widest interpretation is given to the expression "to any person" it will not cover either the owner of the goods or his authorised representative being carried in the vehicle. The objects and reasons of clause 46 also state that it seeks to amend Section 147 to include owner of the goods or his authorised representative carried in the vehicle for the purposes of liability under the insurance policy. It is no doubt true that sometimes the legislature amends the law by way of amplification and clarification of an inherent position which is there in the statute, but a plain meaning being given to the words used in the statute, as it stood prior to its amendment of 1994, and as it stands subsequent to its amendment in 1994 and bearing in mind the objects and reasons engrafted in the amended provisions referred to earlier, it is difficult for us to construe that the expression "including owner of the goods or his authorised representative carried in the vehicle" which was added to the pre-existing expression "injury to any person" is either clarificatory or amplification of the pre-existing statute. On the other hand it clearly demonstrates that the legislature wanted to bring within the sweep of Section 147 and making it compulsory for the insurer to insure even in case of a goods vehicle, the owner of the goods or his authorised representative being carried in a goods vehicle when that vehicle met with an accident and the owner of the goods or his representative either dies or suffers bodily injury. The judgment of this Court in Satpal case1 therefore must be held to have not been correctly decided and the impugned judgment of the Tribunal as well as that of the High Court accordingly are set aside and these appeals are allowed. It is held that the insurer will not be liable for paying compensation to the owner of the goods or his authorised representative on being carried in a goods vehicle when that vehicle meets with an accident and the owner of the goods or his representative dies or suffers any bodily injury." (Italics mine)

8. Thus, the decision in Satpal Singh case that even a gratuitous passengers

including owner of goods or his representative are deemed to be covered by the Insurance Policy and are, therefore, entitled to be paid compensation by the insurer by indemnifying the owner of the vehicle, does not seem to be, with due respect, the correct law when the three-Judge Bench in Asha Rani held that the insurer will not be liable for paying compensation to the owner of the goods or his authorised representative on being carried in a goods vehicle when that vehicle meets with an accident and the owner of the goods or his representative dies or suffers any bodily injury. This decision was followed by the Apex Court in National Insurance Company Ltd. v Bhukya Tara and others, (2010) 14 SCC 768. That was a case where the deceased was travelling in a goods vehicle. The Apex Court held that the case was squarely covered by the decision of a three Judge Bench of the Court in New India Assurance Company Ltd. v. Asha Rani (supra).

9. An attempt was, however, made by the P. Chakraborty, the learned counsel for the claimant that as there was solid proof that the claimant was travelling the vehicle along with his goods and sustained grievous injuries when the vehicle met with the accident resulting in his permanent disablement, the insurer is liable to indemnify the owner of the vehicle. He strongly relies on the decision of the Madhya Pradesh High Court in Bajaj Allianz General Insurance Co. Ltd. v. Prem Bai and others, 2016 ACJ 1634 to fortify his submission. In that case, the insurer disputes its liability on the ground that the owner of the goods means only the person who travels in the cabin of the vehicle and since the deceased was not travelling in the cabin he was not representative of the owner of the goods. Refuting this contention, the High Court held that the vehicle was a small auto-rickshaw type loading vehicle in which there was no cabin so that the owner of the goods could sit in the cabin and that the owner of the goods and his representatives can travel in the goods vehicle and it is immaterial whether the deceased was sitting in a cabin or not as there would be no violation of policy conditions if a representative of the owner of goods is not sitting in the cabin. Apparently, on facts so found that the High Court held that the insurer was not absolved of the liability to satisfy the award. With due respect, I am unable to accept the view taken the Hon''ble Madhya Pradesh High Court in Prem Bai and others case (supra) as it ran counter to the law laid down by the Apex Court in Asha Rani case (supra). The object of the amending Section 147(1)(b)(i) by inserting the words "injury to any person, including owner of the goods or his authorised representative in the vehicle" therein in Section 2 of the Act of 1994 cannot be overlooked. This was recognised by the Apex Court in Asha Rani case when it observed that the amendment "clearly demonstrates that the legislature wanted to bring within the sweep of Section 147 and making it compulsory for the insurer to insure even in case of a goods vehicle or his authorised representative being carried in a goods vehicle when that vehicle met with an accident and the owner of goods or his representative either dies or suffers bodily injury." Therefore, when the owner of the goods or his representative such as the claimant was not insured at the time of the accident, the insurer cannot, by any stretch of imagination, be held to be liable to satisfy the award. If the

accident had taken place prior to 14-11-1994 i.e. before the coming into force of Section 46 of the Act 54 of 1994 amending Section 147 of the Motor Vehicles Act, 1988 with the insertion noticed earlier, things would have been different and the decisions in Satpal

Singh case (supra) or Prem Bai and other (Supra) would have come to the rescue of the claimant. Unfortunately, that is not the case here.

10. For example, in one of the cases i.e. CA @ SLPs (C) Nos.7288-90 of 2003, decided in National Insurance Company v. Cholleti Bharatamma, (2008) 1 SCC 423, the Apex Court followed Asha Rani case (supra). To understand the implication of Cholleti Bharatamma case (supra), I take the pain of reproducing below paras 26, 27, 28, 29, 30, 31and 32 of the report, which read thus: "CAs @ SLPs (C) Nos.7288-90 of 2003

26. In this case, the accident took place on 1-5-1997. Indisputably, the respondent was travelling as a passenger. The Tribunal, while determining the issue as to whether the accident took place due to rash and negligent driving of the first respondent driver of lorry AEW 5199, held:

"... The lorry was overturned and caused the instantaneous death of four passengers. He received small injuries. He also deposed that the accident took place due to the negligence of the driver of the said lorry. On perusing his evidence I am satisfied that he is a truthful witness. He was travelling in the crime vehicle along with the deceased along with his goods as per his evidence...."

27. The learned counsel appearing for the respondent submitted that from the aforementioned finding, it is evident that the respondent was travelling as the owner of the goods. We do not think that the said submission is correct. PW 2, in his evidence, stated:

"I am doing tamarind business. I witnessed the accident which took place about 3 years back at about 6 a.m. at Borrampalem junction beyond Talluru. At the time of the accident I was in the crime lorry by the side of the driver. Myself and 6 others were carrying tamarind in that lorry belonging to us. We boarded the lorry along with our load of tamarind at Dharamavaram to go to Rajanagaram. We were selling the tamarind at Rajanagaram in retail by taking the tamarind there in our lorry from our village of Dharamavaram."

28. The Tribunal, therefore, correctly recorded that according to PW 2, he was travelling with his goods as owner thereof and not the deceased.

29. Shaik Shabbeer Pasha and Shaik Nazeer Pasha are the driver and owner respectively of the lorry which was travelling to Rajahmundry from Visakhapatnam. At Borrampalem, while trying to overtake another speeding lorry, the same turned turtle. Three persons who were travelling in the vehicle had been killed. Claims for compensation were filed before the Motor Accidents Claims Tribunal. The appellants therein opposed the claim. The Tribunal awarded

compensation to the legal heirs of the deceased.

30. Challenging the legality of the award of the Tribunal, learned counsel for the appellant contended that the deceased were gratuitous passengers and the policy did not cover their lives. Learned counsel also submitted that the decision in Satpal Singh case1 being referred to a larger Bench in Asha Rani case, (2003) 2 SCC 223: 2003 SCC (Cri) 493 , the same was not a binding authority.

31. While stating that the submissions of learned counsel for the Insurance Company could not be sustained, the High Court dismissed the appeal of the Insurance Company following Satpal Singh, (2000) 1 SCC 237: 2000 SCC (Cri) 130: 2000 ACJ 1.

32. In view of the nature of evidence available before us, we have no other option but to set aside the judgment. These appeals are, therefore, allowed accordingly. There shall be no order as to costs in each case."

11. Need I say more? The offshoot of the foregoing discussion is that the appellant-insurer succeeds in MAC No.144 of 2012, which is allowed. Conversely, MAC Appeal No.1 of 2013 filed by the claimant has no merit and is, therefore, dismissed. Consequently, the impugned judgment dated 6-10-2012 is set aside. As in Bhukya Tara case (supra), if the compensation has already been paid to the claimant as on today, the same shall not be refunded by the claimant and the same may be recovered from the owner of the vehicle by the insurer in the manner prescribed by law. However, if any amount deposited remains unpaid to the claimant, the same shall be refunded to the insurerappellant. Transmit the L.C. record forthwith.

