
(2015) 10 AHC CK 0103

In the Allahabad High Court

Case No : First Appeal from Order No. 419 of 2006

The United India Insurance Co. Ltd.

APPELLANT

Vs

Vimlesh Tripathi and Others

RESPONDENT

Date of Decision : 12-10-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 149(2), 149(7), 170, 173

Citation : (2015) 10 AHC CK 0103

Hon'ble Judges : S.S. Chauhan and Anant Kumar, JJ.

Bench : Division Bench

Advocate : Ramesh Chandra Sharma, for the Appellant; Shachindra Dwivedi, Amrendra Nath Tripathi, Nishant Shukla and Rajendra Jaiswal, for the Respondent

Final Decision : Partly Allowed

Judgement

Anant Kumar, J.—This first appeal from order under Section 173 of Motor Vehicles Act, 1988 has been filed by the United India Insurance Company Ltd. against the judgment and award dated 28.02.2006, passed by the Motor Accident Claim Tribunal/IInd Additional District Judge, Faizabad in Motor Accident Claim Case No. 215 of 2000 (Smt. Vimlesh Tripathi and others Vs. Shyam Chandra Lal and another), whereby an award of Rs. 21,17,908/- along with 7% per annum interest on the said amount from the date of filing of the claim has been granted in favour of the claimants/respondents.

2. The brief facts relevant for disposal of this appeal are that claimants/respondents had filed a claim petition before the Motor Accident Claim Tribunal regarding the death of Dr. Deen Bandhu Tripathi, S/o late Mata Prasad Tripathi. The claimant No. 1 was the widow. Claimant No. 2 was the daughter and claimant Nos. 3 and 4 were the sons of the deceased. It was stated in the claim petition that deceased Dr. Deen Bandhu Tripathi aged about 51 years was serving as Reader in K.S. Saket P.G. College, Ayodhya, Faizabad and was earning a sum of Rs. 23,954/- per month. On the date of accident, the deceased was travelling as a pillion rider on Motorcycle No. U.P. 42 C/2094 which was driven by

respondent No. 5 Shyam Chandra Lal. At 7.00 a.m. when the motorcycle reached near Bharat Kund the motorcycle which was being driven by its driver rashly and negligently, skid due to which the driver of the motorcycle as well as the deceased fell on the ground and had sustained serious injuries. The deceased was first treated at District Hospital, Faizabad from where he was referred to Lucknow where he succumbed to his injuries.

3. Accordingly, a claim petition was filed against the driver of the said motorcycle and Insurer, United India Insurance Company.

4. After hearing the parties, the learned Tribunal held that at the time of accident the said motorcycle was being driven rashly and negligently by its driver due to which the deceased died. While assessing the compensation the learned Tribunal came to the conclusion that at the time of accident the deceased was drawing a salary of Rs. 23,954/- per month. Out of that amount 1/3rd was deducted for the personal expenses of the deceased and as such the dependency was assessed to Rs. 15,969/- per month. Looking to the age of deceased a multiplier of 11 was applied and the Tribunal came to the conclusion that the claimants are entitled for a compensation of Rs. 21,07,908/-. Apart from this, the learned Tribunal also granted Rs. 2000/- for funeral expenses, Rs. 5000/- for loss of consortium, Rs. 2500/- for loss of estate. Thus, the learned Tribunal awarded a total compensation to the tune of Rs. 21,17,908/- along with 7% interest.

5. Aggrieved with the award the United India Insurance Company has preferred this appeal.

6. We have heard the learned counsel for the parties and perused the record.

7. The learned counsel for the appellant/Insurance Company at the very outset has argued that the deceased was a pillion rider and he was not covered under the Insurance Policy, as no extra premium was charged for covering the risk of a pillion rider. It is further stated by the learned counsel for the appellant that it is an admitted fact that the deceased was traveling as a pillion rider on the motorcycle of the respondent No. 5 Shyam Chandra Lal and as such he was not covered under the Insurance Policy. So, the learned Tribunal has committed an error in imposing the liability upon the appellant/Insurance Company. In this regard on behalf of the appellant a case law reported in United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others, , has been cited. As per the facts of the said case the deceased was traveling as a pillion rider on the scooter. He sustained injuries due to the accident of the said scooter. In the said case a point was raised as to whether the policy issued by the Insurance Company covers the risk of pillion rider or not, and after discussing various case laws, the Hon'ble Apex Court held in paragraph 21 as under:-

"21. In our view, although the observations made in Asha Rani case were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant Insurance Company that it owed no

liability towards the injuries suffered by the deceased Rajinder Singh who was a pillion rider, as the insurance policy was a statutory policy, and hence it did not cover the risk of death of or bodily injury to a gratuitous passenger."

8. In the said case the Hon"ble Apex Court had analyzed the terms and conditions of the policy and had held that the Insurance policy was a statutory policy, and hence it did not cover the death of or bodily injury to a gratuitous passenger.

9. Now we have to test the case in hand on the touchstone of the said case law as cited by the learned counsel for the appellant. A perusal of the written statement filed by the appellant before the learned Tribunal, it is apparent that regarding the violation of the policy conditions no specific plea was taken. In paragraph 29 of the written statement only this much was stated that at the time of the accident the vehicle was being run against the terms and conditions of the policy. But in this regard neither the copy of the policy was filed by the Insurance Company to substantiate that the extra premium for pillion rider was charged or not and even no oral evidence was adduced in this regard. Regarding the violation of the policy conditions, the learned Tribunal has framed issue No. 4 and regarding the validity of the Insurance policy issue No. 2 was framed. Both the issues Nos. 2 and 4 were decided together and the learned Tribunal has given a finding that the Insurance Company had not given any evidence in this regard whereas the owner of the vehicle has filed the cover note of the Insurance policy which goes to show that the vehicle was insured with the appellant at the relevant time. Since the appellant has failed to file the policy of insurance before the learned Tribunal and also failed to adduce any evidence regarding the violation of the policy conditions, to our view the appellant/Insurance Company cannot claim any benefit of the case law of United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and others (supra). So, to our view it cannot be held that the deceased was not covered under the policy of Insurance.

10. It is further argued that inspite of the fact that an application moved before the Tribunal under Section 170 of Motor Vehicles Act, was rejected by the learned Tribunal this appeal is maintainable and the Insurance Company is entitled to contest the appeal on all and every ground available to the claimants or the owner of the vehicle. Second argument which is raised on behalf of the appellant is that out of the compensation granted by the learned Tribunal the amount of Income Tax which the deceased was paying at the time of his death should have been deducted and the learned Tribunal has committed an error in not deducting the said amount as such the calculation of the amount of compensation is erroneous which requires interference by this Court.

11. To encounter the argument advanced by the learned counsel for the appellant, it is stated by the learned counsel for the respondents/claimants that the learned Tribunal has rightly calculated the amount of compensation and has granted compensation as per the law prevalent, as such, there is no need of interference by this Court in the award.

12. To substantiate the argument the learned counsel for the appellant has cited a case law reported in United India Insurance Company Ltd. Vs. Shila Datta and Others, , in which the Hon"ble Apex Court has held in paragraph Nos. 9, 10, 11 as under:-

"9. The Act does not require the claimants to implead the insurer as a party respondent. But if the claimants choose to implead the insurer as a party, not being a noticee under Section 149(2) , the insurer can urge all grounds and not necessarily the limited grounds mentioned in Section 149(2) of the Act. If the insurer is already a respondent (having been impleaded as a party respondent), it need not seek the permission of the Tribunal under Section 170 of the Act to raise grounds other than those mentioned in Section 149(2) of the Act. The entire scheme and structure of Chapters XI and XII is that the claimant files a claim petition only against the owner and driver and the Tribunal issues notice to the insurer under Section 149(2) so that it can be made liable to pay the amount awarded against the insurer and if necessary, deny liability under the policy of insurance, on any of the grounds mentioned in Section 149(2) . If an insurer is only a noticee and not a party-respondent, having regard to the decision in Nicolletta Rohtagi, it can defend the claim only on the grounds mentioned in Section 149(2) and not any of the other grounds relating to merits available to the insured-respondent. This is the position even where the claim proceedings are initiated suo moto under Sections 149(7) and 158(6) of the Act, without any formal application by the claimants, as the insurer is only a noticee under Section 149(2) of the Act.

10. Section 170 of the Act does not contemplate an insurer making an application for impleadment. Nor does it contemplate the insurer, if he is already impleaded as a party respondent by the claimants, making any application seeking permission to contest the matter on merits. Section 170 proceeds on the assumption that a claim petition is filed by the claimants, or is registered suo moto by the Tribunal, with only the owner and driver of the vehicle as the respondents. It also proceeds on the basis that in such a proceeding, a statutory notice would have been issued by the Tribunal to the insurer so that the insurer may know about its future liability in the claim petition and also resist the claim, on any of the grounds mentioned in Section 149(2) . Section 170 of the Act also assumes that the Tribunal will hold an inquiry into the claim, where only the claimants and the owner and driver will be the parties. Section 170 provides that if during the course of such inquiry, the Tribunal finds and satisfies itself that there is any collusion between the claimant and the owner/driver or where the owner/driver has failed to contest the claim, the Tribunal may suo moto, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of the claim, who was till then only a noticee, shall be treated as a party to the proceedings. The insurer so impleaded, without prejudice to the provisions of Section 149(2) , will have the right to contest the claim on all or any of the grounds that are available to the driver/owner.

11. Therefore, where the insurer is a party-respondent, either on account of being impleaded as a party by the Tribunal under Section 170 or being impleaded as a party-respondent by the claimants in the claim petition voluntarily, it will be entitled to contest the matter by raising all grounds, without being restricted to the grounds available under Section 149(2) of the Act. The claim petition is maintainable against the owner and driver without impleading the insurer as a party. When, a statutory notice is issued under Section 149(2) by the Tribunal, it is clear that such notice is issued not to implead the insurer as a party-respondent but merely to put it on notice that a claim has been made in regard to a policy issued by it and that it will have to bear the liability as and when an award is made in regard to such claim. Therefore, it cannot, as of right, require that it should be impleaded as a party-respondent. But, it can however be made a party-respondent either by the claimants voluntarily in the claim petition or by the direction of the Tribunal under Section 170 of the Act. Whatever be the reason or ground for the insurer being impleaded as a party, once it is a party-respondent, it can raise all contentions that are available to resist the claim."

13. From the case law cited on behalf of the appellant, it is abundantly clear that in this appeal the appellant-Insurance Company can take all the grounds which are available to the owner of the vehicle.

14. So far as the deduction part is concerned, it has been stated by the learned counsel for the appellant/Insurance Company that from the record it is evident that the deceased was an income tax payee and in this regard the relevant records are also available in the file of the learned Tribunal. The salary certificate of the deceased which is on record shows that a sum of Rs. 2,000/- per month was being deducted as income tax from the salary of the deceased. This apart, Form 16 of Income Tax Act pertaining to the period 01.04.1999 to 31.03.2000 is also on record which shows that in the said year a sum of Rs. 10,480/- was deducted from the salary of the deceased as income tax. The Hon"ble Apex Court in the case of Kalpanaraj and Others Vs. Tamil Nadu State Transport Corpn., , has held that while making deduction from the salary of an income tax payee, the income tax paid by the deceased is to be deducted. So, from the annual income of the deceased, a sum of Rs. 10,480/- per annum was to be deducted while granting the compensation to the claimants and the learned Tribunal has erred in not deducting the amount of income tax from the income, as is evident from the salary certificate of the deceased that income tax has separately been deducted from his income.

15. So, there is force in the argument of the learned counsel for the appellant-Insurance Company that the learned Tribunal has committed an error in not deducting the income tax. The learned Tribunal has assessed the annual income of the deceased, after deducting 1/3rd for his personal expenses, to the tune of Rs. 1,91,628/-, out of the said amount, an amount of Rs. 10,480/- shall be deducted towards the income tax. So, the annual dependency of the claimants shall come to Rs. 1,81,148/-, after deducting the income tax, and on applying

the multiplier of 11 this amount will come to Rs. 19,92,628/-. So, the amount of compensation comes to Rs. 19,92,628/-. Learned Tribunal has also granted other expenses, such as Rs. 2,000/- for funeral expenses, Rs. 5,000/- for loss of consortium, Rs. 2,500/- for loss of estate, plus Rs. 500/- for litigation expenses. Thus, the total compensation comes to Rs. 20,02,628/- (Rupees Twenty Lakhs Two Thousand Six Hundred and Twenty Eight) along with the interest @ 7% per annum.

16. In view of the above mentioned facts, the appeal is partly allowed. The Insurance Company/appellant shall pay to the claimants/respondents a compensation to the tune of Rs. 20,02,628/- (Rupees Twenty Lakhs Two Thousand Six Hundred and Twenty Eight) along with the interest @ 7% per annum. The award granted by the learned Motor Accident Claims Tribunal is modified to the aforesaid extent only. However, it is made clear that any amount already paid to the claimants either under the order of the learned Tribunal or by the order of this Court, shall be deducted while making final payment to the claimants.