(2021) 11 RAJ CK 0030

In the Rajasthan High Court

Case No : S.B. Civil Miscellaneous Appeal No. 658 Of 2021

United India APPELLANT

Vs

Narsingh Tanwar And Others RESPONDENT

Date of Decision : 15-11-2021

Acts Referred:

Constitution Of India, 1950 — Article 142
Motor Vehicles Act, 1988 — Section 147, 147(1), 149, 173

Citation : (2021) 11 RAJ CK 0030

Hon'ble Judges : Rameshwar Vyas, J

Bench : Single Bench

Advocate : Aditya Singhi, Vineet Jain, Pravin Vyas

Final Decision : Allowed

Judgement

Rameshwar Vyas, J

The instant appeal under Section 173 of the Motor Vehicles Act, 1988 (Afterwards referred as 'the Act') has been filed by the appellant - Insurance Company being aggrieved against the impugned order dated 26.12.2021 passed by the Motor Accident Claims Tribunal, Bikaner (Afterwards referred as 'Tribunal') in MAC No.202/2014, whereby, learned Tribunal directed the Insurance Company to first pay the amount of compensation awarded and then recover the same from driver & owner of the vehicle.

Brief facts of the case are that injured Nar Singh Tanwar was occupant in a car being registration No. RJ07-CA-0237. On account of rash and negligent driving by the driver of the Car, the car turned turtle; Nar Singh Tanwar sustained injuries and another occupant Madan Singh died. Nar Singh Tanwar filed a claim petition before learned Tribunal.

The claim petition, inter alia, was contested by the appellant - Insurance Company on the ground that the Car was insured by it in the 'Act Only' policy; the Insurance Company did not charge any premium for covering the risk of occupant of the Car.

Learned Tribunal while accepting the plea of the insurer held that the Insurance Company is not liable to indemnify the loss to the owner of the insured vehicle. However, learned Tribunal directed Insurance Company to pay the compensation to the claimants and recover the same from driver & owner of the vehicle.

Heard learned counsel for the parties and perused the material available on record.

Learned counsel for the appellant relying on the judgments afterwards contended that the insurance policy in this case does not cover the risk of occupant in the insured vehicle. Since, injured was travelling in the insured vehicle itself, hence, he cannot be termed as thirty party. Insurance Company is liable to indemnify the owner only for the loss sustained by the third party, as it is 'Act Only' policy. There is no requirement in law to cover the risk of occupant of a private vehicle. Insurance Company did not charge any premium for covering the risk of occupant in the present case, hence, in view of provisions of Section 147 and 149 of the Act, learned Tribunal has committed grave error in directing the Insurance Company to pay the amount of compensation and then recover it from the driver & owner.

On the other hand, learned counsel for the respondent relying on the judgments of Hon'ble Apex Court in the matters of Varju & Ors. vs. United India Insurance Co. Ltd. : IV (2005) ACC 5156 and Anu Bhanvara Etc. vs. IFFCO TOKIO General Insurance Co. Ltd. : 2019 (2) RAR 209 (SC) contended that Insurance Company has been given right to recover the compensation from the driver and owner. So there is no illegality committed by learned Tribunal in passing the impugned judgment. In the aforesaid cases, the Hon'ble Apex Court has passed the order of pay and recover. In view of above circumstances, the impugned order of learned Tribunal should not be interfered with.

Having regard to the rival contentions of the learned counsel for the parties and after perusing the material available on record, in the present case, the question before this Court is whether learned Tribunal had right to order pay and recover in case of 'Act Only Policy', where the risk of the injured was not covered.

In the present case, it is not in dispute that the risk of injured was not covered under the policy of vehicle. There is no statutory requirement to cover the risk of occupants in private Car. The risk of occupant in a private Car can only be covered by paying premium, which is not the case in the present matter. It is admitted fact that no premium was paid by the owner of the Car for covering the risk of the occupant. Learned Tribunal also exonerated the Insurance Company since the policy was 'Act Only Policy'.

The injured, in the present case cannot be termed as third party, whereas, pay and recover order can only be passed for satisfying the judgment and award in respect of third party risk. The duty of the Insurance Company as indicated in

Section 149 of the Act, is only to satisfy the judgment and award irrespective of any liability as required to be covered by a policy under clause (b) of Sub-section (1) of Section 147 of the Act. As per the provisions of Section 147 of the Act, in case of private Car there is statutory requirement to cover any liability in respect of death or bodily injury to any person or damage to any third party. In this provision, there is no statutory requirement to cover the risk of occupant of private Car. As per the provisions of Section 149 of the Act, order of pay and recover in such type of cases can only be made in respect of liability caused to third party.

In the case of S.B. Civil Misc. Appeal No. 696/2003,

The Oriental Insurance Company Limited vs. Smt. Sharda Devi & Ors, decided on 4.8.2016, relied by learned counsel for the appellant, this Court while referring the judgment of Hon'ble Apex Court in the matter of Oriental Insurance Co. Ltd. vs. Meena Variyal : (2007) 7 SCC 425, National Insurance Company Limited vs. Balkrishnan & Anr : (2013) 1 SCC 731, modified the order of pay and recover of the learned Tribunal.

In the matter of Smt. Pawni & Ors. vs. G.Gobi @ Gopi & Ors, S.B. Civil Misc. Appeal No. 322/2003 decided on 13.9.2019, this Court also while relying on the judgment of National Insurance Company Ltd. vs. Balakrishnan & Anr : AIR 2013 SC 473, and Oriental Insurance Co. Ltd. vs. Meena Variyal & Ors. : (2007) 5 SCC 428, held that the risk of deceased, who was sitting in insured vehicle would not be covered by third party and hence, the appellant Insurance Company would not be liable to satisfy the award. The Court further held that it is well settled proposition of law that in such case provision of direction to pay and recover cannot be issued.

Coming to the judgments cited by the learned counsel for the respondents, this Court is of the opinion that in the said judgments, the Hon'ble Apex Court passed the order of pay and recover exercising their power under Article 142 of the Constitution. In no case, the Hon'ble Apex Court laid down any principle that Insurance Company is under obligation to satisfy the award under Section 149 of the Act in such type of cases.

In view of the settled legal position on this point, the Insurance Company cannot be directed to pay the amount of compensation awarded by the Tribunal to the claimant and then recover it from the driver & owner of the insured vehicle.

Accordingly, the appeal is allowed. The impugned judgment directing the Insurance Company to satisfy the award is set aside. However, the claimant would be entitled to get compensation from driver & owner only, as jointly and severally as per judgment of learned Tribunal.

