
(2005) 12 GAU CK 0022
In the Gauhati High Court
Case No : MAC APP No. 85 of 2005

United India Insurance Co. Ltd.

APPELLANT

Vs

Chandana Saha and Others

RESPONDENT

Date of Decision : 09-12-2005

Acts Referred:

Motor Vehicles Act, 1988 — Section 128, 128(1), 147, 147(1), 147(2)

Citation : (2006) 2 GLR 156 : (2006) GLT 252 Supp

Hon'ble Judges : A.B. Pal, J;A. Hazarika, J

Bench : Division Bench

Advocate : P. Gautam, for the Appellant; S. Lodh, for the Respondent

Final Decision : Dismissed

Judgement

A.B. Pal, J.—By this appeal, the United India Insurance Company Ltd being the insurer in relation to the two wheeler involved in the accident has called in question the judgment dated 20.1.2005 passed by the learned Member, Motor Accident Claims Tribunal, West Tripura, Agartala in TS (MAC) No. 182 of 2003 whereby the appellant-insurer has been slapped with an amount of Rs. 5,27,000 to be paid as compensation to the claimants for the accidental death of the deceased Narayan Chandra Saha.

2. The factual matrix giving rise to the present claim is that on 14.11.2002 the deceased while travelling as a pillion rider by the scooter TR-01-A-7070 driven by its owner Sanjib Kumar Roy met an accident and died. The allegation is that due to negligent driving by the owner Sanjib Kumar Roy the deceased fell from the scooter, sustained injuries and died on the following day. Against a claim of compensation for an amount of Rs. 38,40,000 by the wife, son and daughter of the deceased, the learned Tribunal awarded an amount of Rs. 5,27,000 after holding that the accident had taken place due to negligent driving and the appellant being the insurer is liable to pay the compensation with interest @ 6% per annum from the date of presentation of the petition on 10.4.2003 till the payment is made.

3. We have heard Mr. P. Gautam, learned Counsel for the appellant-Insurance Company and Mr. S. Lodh, learned Counsel for the claimant-respondents.

4. The insurer has assailed the award on the ground that the policy taken by the owner of the two wheeler has not covered a pillion rider who cannot be considered to be a third party and that since the owner of the two wheeler has violated the terms and conditions of the policy by taking a pillion rider, the award should have been fastened to the owner of the vehicle only. No other point has been taken in the memo of appeal calling in question the legality and correctness of the judgment and award impugned herein.

5. We have first felt it necessary to examine the status of a pillion rider in order to determine whether he is covered by the policy taken from appellant-insurer. Section 128 of the Motor Vehicles Act, 1988 (for short "the Act") has provided for safety measures for drivers and pillion riders. Sub-section (1) of that Section provides as follows:

No driver of a two-wheeled motor cycle shall carry more than one person in addition to himself on the motor cycle and no such person shall be carried otherwise than sitting on a proper seat securely fixed to the motor cycle behind the driver's seat with appropriate safety measures.

It can be safely held from the above provision that the law authorizes one person in addition to the driver to be taken as pillion rider on a two wheeler. The deceased, therefore, cannot be said to be an unauthorized person travelling as a pillion rider by the two wheeler which met the accident claiming his valuable life.

6. Once it is decided that a pillion rider of a two wheeler is authorized by law to ride, the next question which falls for consideration is whether such a pillion rider can be said to be a person within the meaning of Section 147 of the Act. A policy which is required to be taken because of the mandate of the law is said to be an "Act policy". The policies which are required to be taken u/s 147 of the Act are known as "Act policies" which are to be taken in order to comply with the requirement of Chapter XI of the Act. A policy which is taken u/s 147 of the Act being an "Act policy" must be deemed to have covered all the persons contemplated by that provision even though the policy so taken does not specifically mention all such persons or exclude any person by omission or implication. Clause (b) of Sub-section (1) of Section 147 may be gainfully quoted for better appreciation of the present controversy:

147. In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-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 authorized 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;

(ii) 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.

It would appear from the above provision that an "Act policy" must cover any liability in respect of death or bodily injury to "any person" including the owner of goods or his authorized representative carried in the vehicle. Sub-section (ii), however, specifically provides that such policy must cover the liability against the death or bodily injury to any passenger of public service vehicle. In *New India Assurance Co. Ltd. Vs. Asha Rani and Others*, and *Oriental Insurance Company Ltd. Vs. Devireddy Konda Reddy and Others* etc. etc. and *Jogi Subbamma and Others* etc. etc., the Supreme Court has considered the Motor Vehicles Act, 1988 to bring the owner of the goods or the representative of the owner of the goods carried in a goods vehicle within the coverage of an Act policy and has held that when the Act did not intend to bring in a class of persons, it cannot be taken that such persons are covered by the statutory policy.

7. Mr. Gautam, learned Counsel for the appellant submits that a pillion rider has not been specifically mentioned in Section 147 of the Act and, therefore, it cannot be said that a policy taken under that provision can be deemed to have covered a pillion rider and in that view of the matter, the judgment and award in question are liable to be set aside and the liability to make the payment may be shifted from the insurer to the owner of the vehicle. Mr. Lodh, learned Counsel for the respondents, on the other hand, advanced his submission that the words "any person" appearing in Sub-clause (i) of Clause (b) of Sub-section (1) of Section 147 of the Act must be deemed to have included a pillion rider as the two wheeler is not a goods vehicle which is specifically barred from carrying any passenger other than the owner's authorised representative. As pillion rider is not a fare paying passenger, his status must be that of the other rider, that is to say, the driver of the two wheeler. In support of this contention reliance has been placed on the decision of the Kerala High Court in *United India Insurance Co. Ltd. Vs. K.S. Suneethi Ramachandran and Others*, In para 3 of the judgment, the said High Court has observed as follows:

The result is, when a policy of insurance is an Act policy, it does not necessarily mean that the Insurance Company will stand absolved from the liability in respect of a pillion rider of a motor cycle.

In our considered view, a pillion rider cannot be equated with a passenger of a goods vehicle or a passenger of a public service vehicle. He also cannot be equated to an employee of the person insured by the policy. He is, thus, covered by the expression "any person" as specifically provided in Section 147 of the Act. Thus, a pillion rider is a person within the meaning of "any person" for whom, in our view, a policy must be taken which is to be an "Act policy" within the meaning of Section 147 of the Act.

8. It has been strongly urged by the learned Counsel for the respondents that the appeal by the insurer is not maintainable in view of the restrictions imposed

by the Sub-section (2) of Section 149 of the Act which has laid down the grounds on which alone an insurer is entitled to defend against any claim for compensation. The said Sub-section clearly provides that only when there has been a breach of a specified condition of the policy the Insurer can take up appropriate defence. We find that one of such conditions relates to using the vehicle for the purposes not allowed by the permit. This condition has been laid down in Clause (c) of Sub-section (1) of that Section. A perusal of the ground taken by the appellant would show that the entire concentration in assailing the judgment and award is on the question whether a two-wheeler is permitted to be used for carrying a pillion rider which ground is certainly brought into the sweep of the above Clause. In that view of the matter, it is necessary to examine, as we have done above, the status of the pillion rider and whether having regard to the such status, the legal heirs of a deceased pillion rider are entitled to claim compensation for the death in a motor accident. We are, therefore, of the considered view that the way the appeal has been preferred and the grounds which have been taken therein necessarily attracts the provision of Sub-clause (ii) of Clause (b) of Sub-section (1) of Section 147 of the Act, and, therefore, the present appeal by the appellant-insurer is maintainable.

9. For the reasons noted above, we are of the view that a pillion rider is a person who is covered by an Act policy taken u/s 147 of the Act, and, therefore, the legal heirs of the deceased are entitled to the compensation for the death of such a pillion rider.

10. This appeal, therefore, has no merit and consequently, the same is dismissed leaving the parties to bear their own cost.