

(2001) 04 RAJ CK 0010

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 551 of 1997

United India Insurance Co. Ltd.

APPELLANT

Vs

Dharmi Devi and Others

RESPONDENT

Date of Decision : 09-04-2001

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 149

Citation : (2003) ACJ 1222 : (2001) WLC 789

Hon'ble Judges : Prakash Tatia, J

Bench : Single Bench

Advocate : Manoj Bhandari, for the Appellant; Rajesh Panwar, for the Respondent

Final Decision : Dismissed

Judgement

Prakash Tatia, J.—The present appeal is against the award dated 8.5.1997 passed by the Motor Accidents Claims Tribunal, Barmer in Accident Claim Case No. 126 of 1996, by which the Tribunal passed the award of Rs. 1,63,000 and held that the appellant insurance company is liable to make payment of the above amount. The Tribunal also awarded interest at the rate of 12 per cent per annum.

2. Being aggrieved against the above award, the appellant, United India Insurance Co. Ltd., had preferred this appeal on the ground that the appellant insurance company is not liable for the award amount because of the fact that there was a breach of condition of the insurance policy inasmuch as that the vehicle which is involved in the accident was a private Jonga jeep and it was insured as a private Jonga jeep but the same was used as a taxi for taking the passengers on hire or reward. For this purpose, learned Counsel for the appellant has cited the judgments reported in: (1) Oriental Insurance Co. Ltd. Vs. Babu Lal and Others, (2) Gyaso Bai and Another Vs. Mahendra Singh and Others, (3) Muthu Thangiah Thevar Rice Mill Vs. Mariyayee and Others, (4) United India Insurance Company Ltd. Vs. Dhanalakshmi and Others, (5) United India

Insurance Co. Ltd. Vs. Gian Chand and others, (6) New Indian Assurance Co. Ltd. Vs. Mandar Madhav Tambe and others,

3. The learned Counsel for the appellant vehemently submitted that it is an admitted case of the claimants that the vehicle involved in this accident was taken on hire and, therefore, the Tribunal should have exonerated the appellant, for which, the learned Counsel for the appellant strongly relied upon the statement of AW 1 Tulsa Ram who is son of Pratap Ram (deceased), who died in this accident caused by the above Jonga jeep. The learned Counsel for the appellant relied upon a line of the statement of witness AW 1 Tulsa Ram wherein it is mentioned that "mere pitaji gadi kirayen par karke lekar gaye the". He further relied upon the following para of the statement of this witness:

Mere pita wa Jagaram, Pancharam aur Sonaram Jonga gadi se vivah ka saman lekar Dhorimanna se Udasar aa rahe the.

4. According to the learned Counsel for the appellant this statement of AW 1 Tulsa Ram s/o Pratap Ram (deceased) clearly shows that the vehicle was taken on hire for the purpose of carrying the goods for marriage from Dhorimanna to Udasar.

5. I am unable to accept the submission made by the learned Counsel for the appellant, because of the reason that statement of a witness is required to be critically examined and in case there is any ambiguity then it requires further serious appreciation. In this case, in cross-examination, on behalf of appellant non-appellant No. 4 witness Tulsa Ram specifically stated that at the time of accident he was not in the vehicle. A bare perusal of the statement of AW 1 Tulsa Ram clearly shows that neither he has disclosed his source of knowledge of taking the vehicle on hire nor it can be believed when Tulsa Ram himself, in his cross-examination, specifically stated that at the time of accident he was not in the vehicle. A statement without there being any basis of knowledge cannot be accepted, particularly in this case, when the burden to prove the issue No. 3 was upon the appellant who was non-applicant No. 4 before the Tribunal. Not only this, the statement given by Tulsa Ram cannot be accepted for the fact which has not been admitted by the deponent. Even if it is stated that the vehicle was taken on hire by the father of the deponent who died in the accident even then there is no evidence available on record with respect to the fact from whom the vehicle was taken on hire. In cross-examination no suggestion was put to the witness Tulsa Ram that vehicle was taken on hire from the owner of the vehicle. Even the witness AW 2 Joga Ram who was travelling in the vehicle involved in the accident was not even given any suggestion in cross-examination by the appellant that the vehicle was taken on hire by the deceased Pratap Ram. Since AW 1 Tulsa Ram specifically admitted that he was not in the vehicle at the time of accident, there is no admission by AW 1 Tulsa Ram that the time of taking the vehicle by the deceased he was present and he had any knowledge of the terms and conditions of taking of vehicle on hire by deceased Pratap Ram. In view of evidence of AW 1 Tulsa Ram and AW 2 Joga Ram, it cannot be said that the

vehicle was taken on hire from the owner of the vehicle Jugta Ram.

6. NAW 1 Dewan Das who was examined as witness of the appellant stated in his evidence that the vehicle was used for the purpose of taxi but at the same time, witness Dewan Das only stated that Pratap Ram (deceased) was travelling as passenger. He nowhere stated that he was travelling in the vehicle by taking the vehicle on hire or by paying some reward. Obviously, because of the reason that he could not have any knowledge of this fact. Again it is clear that so far as statement of Dewan Das is concerned, it says that at the time of accident vehicle was used as taxi. He has not disclosed the source of knowledge. It is true that admission can be accepted but when it is highly improbable to have knowledge of fact then the statement of fact given in evidence cannot be accepted without looking to the totality of the facts.

7. Here in this case, even in reply of the appellant, it is merely stated that the deceased was travelling as passenger. The vehicle was not authorised to be used for the purpose of taxi and there is a violation of condition of policy and it is nowhere said that the deceased took the vehicle on hire nor it is the pleading of the appellant that the deceased was travelling in the vehicle by paying some hire charges or reward to the owner or in the knowledge of the owner. It is not the case of even appellant that the deceased was travelling in the vehicle taking the vehicle from the driver with expression or implied consent or knowledge of the owner to permit the (Sic.).

8. The emphasis of the learned Counsel for the appellant is that in their pleadings they specifically stated that the deceased was travelling as passenger in the vehicle. It means that he was not a gratuitous passenger but he was travelling after making the payment. I am unable to accept this submission to limit the passenger only as a passenger travelling on payment. Even a gratuitous person travelling in the vehicle is also a passenger. The learned Counsel for the appellant anticipating the arguments from respondent on the basis of judgment of the Hon''ble Apex Court in New India Assurance Company Vs. Shri Satpal Singh and Others, tried to submit that the above judgment has no application to the present case. In the above judgment, Hon''ble Supreme Court held that the risk of gratuitous passengers is also covered and the insurance company cannot deny the payment of the compensation.

9. The present vehicle is said to be a private Jonga jeep and when it is held that it was not given on hire then all the arguments raised by the learned Counsel for the appellant on the basis of Sections 149, 147(5) and 147(1)(b) of the Motor Vehicles Act, 1988 are not relevant for the purpose of decision of this appeal.

10. Section 149(2) of the aforesaid Act deals with the defence available to the insurance company wherein objection with regard to violation of condition of the policy is available, but here in this case, when it is found that there is no violation of the condition of the policy, the argument advanced by the learned Counsel by which he has tried to distinguish the judgment of New India

Assurance Company Vs. Shri Satpal Singh and Others, is not required to be considered. In the same way, the submission of learned Counsel for the appellant is based upon the provisions of Clause (b) of Sub-section (1) of Section 147 of the aforesaid Act is also not relevant.

11. Learned Counsel for the appellant further vehemently submitted that since owner of the vehicle has not appeared in the witness-box and, therefore, adverse inference is required to be drawn against the owner of the vehicle, for which, learned Counsel for the appellant relied upon the judgment of the Apex Court in United India Insurance Co. Ltd. Vs. Gian Chand and others, . In the above decision, the Hon''ble Apex Court observed:

(8) In order to resolve this controversy between the parties, it must be observed at the outset that the aforesaid decisions clearly indicate two distinct lines of cases. The first line of cases consists of fact situations wherein the insured are alleged to have committed breach of the condition of insurance policy, which required them not to permit the vehicle to be driven by an unlicensed driver. Such a breach is held to be a valid defence for the insurance company to get exonerated from meeting the claims of third parties who suffer on account of vehicular accidents which may injure them personally or which may deprive them of their breadwinner on account of such accidents caused by the insured vehicles. The other line of cases deals with the insured owners of offending motor vehicles that cause such accidents wherein the insured owners of the vehicle do not themselves commit breach of any such condition and handover the vehicles for driving to licensed drivers who on their own and without permission, express or implied, of the insured, handover vehicles or act in such a way that the vehicles get available to unlicensed drivers for being driven by the latter and which get involved in vehicular accidents by the driving of such unlicensed drivers. In such cases the insurance company cannot get benefit of the exclusionary clause and will remain liable to meet the claims of third parties for accidental injuries, whether fatal or otherwise.

12. The above judgment deals with the contingencies in which the defence of the insurance company exonerates them from the liability and the cases when the insurance company is liable for the payment of the damages.

13. Learned Counsel for the appellant further while relying upon the above judgment of the Apex Court in United India Insurance Co. Ltd. Vs. Gian Chand and others, strongly submitted that when owner of the vehicle deliberately did not appear in the witness-box, therefore, adverse inference is required to be taken against the owner of the vehicle. In the judgment of Gian Chand's case (supra), the Apex Court while dealing with a case where it was admitted fact that driver was not having valid licence and the owner of the vehicle did not appear in the witness-box, held that an adverse inference be necessarily drawn against him (owner) to the effect that the vehicle has been handed over by him or being driven by unlicensed driver. The judgment of the Apex Court has no application to the facts of this case. As held above, defendant-appellant insurance company

when failed to discharge initial burden to prove their case, therefore even in the absence of the evidence of the owner of the vehicle the issue cannot be decided in favour of the appellant insurance company. In the judgment of Gian Chand's case (supra), it was found that the vehicle was driven by an unlicensed driver. Therefore, to prove the fact that the owner had no knowledge about the driver having no valid licence, the best evidence was the owner of the vehicle. But here in this case when the issue was framed putting burden upon the insurance company, the question of rebuttal arises only when the party discharges its burden by evidence.

14. As discussed above, there is no evidence of the insurance company to the effect that the vehicle was given on hire and reward by the owner of the vehicle, therefore, he was not even required to rebut any evidence of the appellant. In view of the above I do not find any force in the submission of learned Counsel for appellant.

15. In view of the above reasoning, I do not find any force in this appeal and the same is hereby dismissed.