

(2011) 04 BOM CK 0132
In the Bombay High Court
Case No : F.A. No. 136 of 2011

United India Insurance Co. Ltd.

APPELLANT

Vs

Manohar Mahadeo Kaphale and another

RESPONDENT

Date of Decision : 29-04-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 140

Citation : (2012) ACJ 1880

Hon'ble Judges : Rekha P. Sondurbaldota, J

Bench : Single Bench

Advocate : S.S. Vidyarthi and Mr. A.S. Vidyarthi, for the Appellant;

Final Decision : Allowed

Judgement

Rekha P. Sondurbaldota, J.—This first appeal is preferred by the insurance company to challenge the order dated 4.4.2008 passed by the Motor Accidents Claims Tribunal, Mumbai on the application for compensation on the basis of no fault liability u/s 140, Motor Vehicles Act. Notice of the admission of the appeal was issued on 1.4.2011. Pursuant to the directions given on that day, notice served upon the respondents indicated that the appeal may be heard and finally disposed of at the stage of admission itself, taking into consideration the fact that the appeal involves a short question which has already been decided by the pronouncements of the Apex Court and Division Bench of this court. Notice of the appeal has been served upon the respondents. None is however present in response to the notice. Learned counsel for the appellant submitted that considering the facts and circumstances of the case, the appellant insurance company is not liable to indemnify respondent No. 2, the insurer. Respondent No. 1 had filed Motor Accident Claim Petition No. 1655 of 2006 in the Tribunal seeking compensation in the sum of Rs. 19,43,053 for the injuries sustained by him in the motor vehicle accident. The facts as pleaded in the appeal are that on 14.6.2004, respondent No. 1 was commuting by a car bearing registration No. MH 04-AC 8744 from Mumbai to Chiplun. The car was driven by his friend. When

the said car reached near village Pedhe, it was on a steep descent and was to take a steep curve ahead. The car was however being driven in a reckless manner at high speed. Consequently the driver of the car lost control over the car and went to the extreme wrong side of the road and dashed against the truck, which was coming from opposite direction. The driver of the truck tried to avoid the accident by taking his truck to extreme left side of the road, however the accident could not be averted. In the accident, respondent No. 1 claimed to have sustained fracture injury of both shoulders, right foot and left femur. Respondent No. 1 filed the claim petition only against the owner and insurer of the car, in which he was travelling. The owner and insurer of the truck has not been impleaded to the proceedings. Probably the respondent No. 1 is aware that there was no fault on the part of the driver of the truck.

2. Mr. Vidyarthi points out that it is evident from the document annexed to the application of respondent No. 2 that the insurance policy was an "Act only policy". As such it covered only the third parties and not any gratuitous passenger travelling in the car. Perusal of the pleadings and copy of insurance policy produced by Mr. Vidyarthi confirms this position. In that circumstance, Mr. Vidyarthi submits relying upon decision of the Apex Court in United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others, and decision of the Division Bench of this court in New India Assurance Company Ltd. Vs. Babasaheb Anna Mali and Others, . Both decisions hold that a statutory insurance policy under the Motor Vehicles Act, 1988, intended to cover the risk to life or damage to properties of third parties would not cover the risk of death or injury to a gratuitous passenger carried in a private vehicle. In view of the direct decision on the issue, the appellant insurance company cannot be held liable to pay any amount towards compensation to respondent No. 1. The amount of compensation will include compensation towards no fault liability. The Division Bench has specifically held that under such circumstances, the insurance company cannot be saddled with no fault liability u/s 92A even under the limited and restricted inquiry. Applying the law laid down by the Supreme Court, and the Division Bench of this court to the facts and circumstances of the case, the impugned judgment and order cannot be sustained. In the circumstances, the appeal is allowed. The impugned judgment and order dated 4.4.2008 is set aside. The appellant is at liberty to withdraw the amounts deposited in this court as well as in the Tribunal.

Appeal allowed.