
(2014) 02 BOM CK 0062
In the Bombay High Court
Case No : First Appeal No. 162 of 2004

United India Insurance Co. Ltd.

APPELLANT

Vs

Maroti

RESPONDENT

Date of Decision : 28-02-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 146

Citation : (2014) 02 BOM CK 0062

Hon'ble Judges : S.B. Shukre, J

Bench : Single Bench

Advocate : S.S. Doifode, Advocate for the Appellant

Final Decision : Allowed

Judgement

S.B. Shukre, J.—This appeal is preferred against the judgment and Award passed on 19.9.2003 in Claim Petition No. 42 of 2001 delivered by the Motor Accident Claims Tribunal, Bhandara.

2. Respondent no. 1 on 30.10.1998 boarded a vehicle-Tempo Trax bearing registration No. MH-31/H-9518 (for short jeep) for going to Dongargarh from Nagalwadi. The jeep belonged to respondent no. 2 and was ensured with the appellant. It was being driven by one Ashok Giripunje. When the jeep reached a spot within the limits of village Shaheepur on National High Way No. 6, at about 4-00 a.m., it rammed into back side of a truck standing on the road in a stationary condition. As a result, respondent no. 1 suffered severe injuries and was treated for those injuries, first at Rural Hospital, Deori and subsequently at Govt. Medical College and Hospital, Nagpur. The injuries led him to permanent disability. According to respondent no. 1, the accident occurred only due to rash and negligent driving of the jeep. Therefore, he filed a claim petition against respondent no. 2 and appellant claiming compensation of Rs. one lac. The petition proceeded against respondent no. 2 without written statement, but the petition was resisted by the appellant. However, the learned Chairman of the Tribunal by the judgment and Award passed on 19.9.2003 partly allowed the

claim petition granting compensation of Rs. 57,315/- together with interest together with interest inclusive of no-fault liability claim. It was directed to be paid by the appellant and respondent no. 2. Not satisfied, the appellant is before this Court in First Appeal.

3. I have heard Shri Dhanagare, learned counsel for the appellant, and Shri Doidfode, learned counsel for respondent no. 2. Nobody appeared on behalf of respondent no. 1 though duly served. The following points arise for my determination:

(i) Whether the appellant had proved that the jeep was being plied in breach of the conditions of insurance policy, and if yes, whether the appellant could be held liable to pay compensation?

(ii) What order?

4. Learned counsel for the appellant has submitted that the evidence on record in this case has clearly established the fact that respondent no. 1 was neither the friend nor relative of respondent no. 2, and was travelling by the jeep as a fare paying passenger or at least a gratuitous passenger and in either of the categories, has not been covered under the Insurance Policy vide Ex. 58. Therefore, according to him, the appellant is not at all liable to pay any compensation to respondent no. 1. In support, he referred to me the cases of Branch Manager, Oriental Insurance Comp. (Ltd.) Vs. MD. Yunus and Others and Dattu Nathu Kudekar and Another Vs. The National Insurance Company and Others,

5. Shri Doifode, learned counsel for respondent no. 2, has submitted that there is no evidence available on record from which it could be reasonably said that respondent no. 1 was travelling in the jeep as a fare paying passenger or had no relation whatsoever with respondent no. 2. He submits that respondent no. 1 in his evidence before the Tribunal vide Ex. 27 has denied the suggestion given to him that he had hired the jeep at the time of accident. These facts, according to him, would show that the Insurance Company failed to discharge the burden that the jeep was plied for the purposes not covered under the Insurance policy and thus it has not established any breach of the policy by the owner of the jeep.

6. Upon going through the evidence available on record, I find that there is a great substance in the contentions canvassed on behalf of the appellant in this regard and no merit in the argument of learned counsel for respondent no. 2.

7. The claimant/respondent no. 1 has examined himself as witness no. 1 vide Ex. 27. In his examination-in-chief itself in para 1, he has stated that he was going to Bambleshwari from Nagalwadi by a jeep bearing registration No. MH-31/H-9518. In his cross-examination by the Insurance Company he has admitted that the jeep owner used to ply jeep through jeep driver on hire. He has further admitted that respondent no. 2 is not his relative. He has, however, stated that respondent no. 2 is his friend. But again another admission given by him shows

that he does not know full name of a person who called him as a friend. These facts would clearly show that respondent no. 1 was travelling by the jeep as a fare paying passenger or gratuitous passenger and was having no relations whatsoever with the owner of the jeep.

8. The jeep involved in the accident in this case was admittedly registered as a private vehicle as can be seen from the Insurance Policy vide Ex. 58. The policy states the limitations as to its use and these limitations show that the policy does not cover (i) use for organised racing, peacemaking, reliability trial or speed testing; (ii) carriage of goods (other than samples) in connection with any trade or business or use for any purpose in connection with the Motor trade, or (iii) hire or reward. The policy further mentions that it covers use of the vehicle only for social, domestic and pleasure purposes or for the insured's own business. This would mean that Insurance Company would be liable to indemnify a person only when the loss or damage suffered by him results from use of the vehicle for the purposes, social or domestic or pleasure or for the business of the insured.

9. In the instant case, the claimant has not come forward with a case that he had boarded the jeep at Nagalwadi as a friend/relative of respondent no. 2 and on the invitation of respondent no. 2. In the claim petition, he has nowhere stated these facts and what he has stated is that on 3.10.1998 he was going to Dongargarh by Tampo-Trax at about 4 a.m. and that it was being driven in a rash and negligent manner and at a high speed by its driver. Even in his testimony before the Court, he has nowhere stated he had boarded the jeep for undertaking a journey to Dongargarh as a friend of respondent no. 2 or as a part of social or domestic or pleasure tour of respondent no. 2. On the contrary, he admits that the jeep owner used to ply the jeep on hire basis. All these facts cumulatively show that the claimant/respondent no. 1 was travelling by the jeep certainly not within the permissible limits of use of the jeep as per the Insurance Policy. Therefore, it has to be said that the jeep was being used by respondent no. 2 for the purpose not covered by the insurance policy and, as such, the Insurance Company cannot be held liable to pay any compensation to respondent no. 1, there being on record the breach of conditions of the insurance policy.

10. In the case of Dattu Nathu, *supra*, the Division Bench of High Court of Gujarat has held that the vehicle involved in the accident in that case being admittedly a private carrier, cannot, therefore, be used for carrying any passenger or goods for reward, and if any such passenger is injured in the accident, the Insurance Company will not be liable for compensating them for the injuries caused to them, either under the statute or under the insurance policy.

11. In the case of Mohammad Yunus, *supra*, learned Single Judge of Patna High Court has taken a view that when insurance policy is issued for a private vehicle and it does not cover the use of the vehicle for carriage of passengers on hire basis or reward, the insurance company would be liable to pay compensation to passengers for the loss or the injury that will be caused in the accident involving such vehicle only when it is used for the purpose covered under the policy. The

learned Judge in reaching this conclusion has referred to Section 146 of the Motor Vehicles Act. There is a prohibition upon use of a motor vehicle in a public place, by its owner, unless there is in force in relation to the use of the vehicle by that person a policy of insurance complying with the requirements of Chapter II. The requirements of this chapter are that there must be a valid, effective and enforceable policy and such policy must cover the use of vehicle by the person using it at that time and in the manner in which it is being used. In other words, the insurance for one purpose would not insure for the other purpose. Therefore, the learned Single Judge held that a policy obtained for using a private vehicle cannot be used for the purpose of using the vehicle for carrying passengers for hire or reward.

12. So the law is clear and unambiguous. It lays down that when a vehicle is used for a purpose which is not covered under the insurance policy, the insurance company cannot be fastened with the liability either under the terms of insurance contract or under the statute to pay compensation to a person travelling by the vehicle which met with the accident.

13. I have already found that respondent no. 1 was travelling by the jeep either as a fare paying passenger or gratuitous passenger and in either of these cases, the use of the vehicle was not for the purpose covered under the insurance policy. Therefore, the Tribunal has committed a serious error in holding the appellant/insurance company liable for indemnifying the respondent no. 1. The finding recorded by the Tribunal in this regard cannot be sustained in law. Consequently, the impugned judgment and Award to the extent they direct the appellant to pay respondent no. 1 need to be quashed. However, rest of the judgment and award will have to be maintained. Both the points are answered accordingly.

14. In the result, appeal is allowed with costs and impugned judgment and award directing appellant to pay compensation to respondent no. 1 are hereby quashed and set aside, and rest of the judgment and award are confirmed. The amount deposited in this Court by the appellant be refunded.