(2020) 07 J&K CK 0060

In the Jammu And Kashmir High Court

Case No : CMAM No. 19 Of 2011, Civil Miscellaneous No. 18, 20 Of 2011

United India Insurance Co. Ltd APPELLANT

Vs

Parveena Bano And Others RESPONDENT

Date of Decision : 14-07-2020

Acts Referred:
Motor Vehicles Act, 1988 — Section 146, 147

Citation : (2020) 07 J&K CK 0060

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : N. H. Khuroo, M. M. Dar

Judgement

Sanjay Dhar, J

1) The facts emanating from the record of the Motor Accidents Claims Tribunal, Kargil (for short ?the Tribunal'), that gave rise to filing of three separate claim petitions resulting in passing of three separate awards dated 29th of November, 2010 by the Tribunal that stand impugned by way of the instant appeals , are set out as under.

2) On 05.07.2006, a private vehicle bearing No.JK07/896 met with an accident due to rash and negligent driving of the said vehicle by its driver, namely, Haji Abdul Majid, which resulted in death of occupants of the vehicle, namely, Rubina Akhtar, Sahar Bano and Iftikhar Hussain. The legal heirs of the above named three deceased persons filed three separate claim petitions before the Tribunal seeking compensation against the owner, namely, Mubarik Shah and the insurer, namely, United India Insurance Company Limited.

3) After trial of the cases, the Tribunal passed three separate awards in the three claim petitions thereby awarding a sum of Rs.1,54,500/ along with interest @ 6% interest in favour of legal heirs of Rubina Akhtar, a sum of Rs.5,85,500 along with interest @ 6% in favour of legal heirs of Sahar Bano and a sum of Rs.3,88,500/ along with interest @ 6% in favour of legal heirs of deceased

Iftikhar Hussain. It was directed that the awarded sum in each case shall be paid by the insurance company.

4) One of the contentions raised by the insurance company before the Tribunal was that the insurer in these cases is not liable to pay the compensation to the legal heirs of the deceased because the deceased were travelling as gratuitous passengers in the offending vehicle and the risk to their lives was not covered under the terms and conditions of the policy of insurance. On the basis of this plea raised by the insurance company, a specific issue was framed by the Tribunal in all the three cases.

5) The decision rendered by the Tribunal on the aforesaid issue, whereby the insurance company has been made liable to satisfy the awards, has given rise to the instant appeals as the Insurance Company has felt dissatisfied with aforesaid finding of the Tribunal.

6) In all the three appeals, the main contention of the appellant Insurance Company is that the offending vehicle was covered under an ?Act Policy' and not a comprehensive package policy, therefore, risk to the lives of passengers travelling in the offending vehicle was not covered under the terms of the policy. On this ground, it is urged that the insurance company could not have been saddled with the liability to pay compensation to the legal heirs of the deceased in all the three cases. It is further contended that the insurance company had not received any additional premium for covering the risk to the lives of the passengers travelling in the offending vehicle but the Tribunal, while passing the impugned awards, has misdirected itself by returning a finding that the passengers travelling in a private vehicle are ?third parties' and, as such, covered under the terms of the policy of insurance.

7) Learned counsel for the respondents/claimants has placed reliance upon the judgments that have been referred by the learned Tribunal in the impugned awards to put across his point that the occupants of a private car being ?third parties' are covered under the terms of the policy.

8) I have heard learned counsel for the parties and perused the grounds of appeals, impugned awards and the record of the Tribunal. Before proceeding to determine the controversy involved in these appeals, it is necessary to note certain admitted facts.

9) The vehicle involved in the accident i.e. vehicle No.JK07/896 is a private Maruti car and it is covered by an ?Act Policy'. It is also an admitted fact that all the three deceased were occupants of the vehicle in question. Thus the only question that needs to be determined is as to whether risk to the lives of the occupants of a private car, which is covered by an ?Act Policy' and not by a package policy, is covered under the terms of the insurance policy.

10) First of all, let us understand what is meant by an ?Act Policy'. Provisions relating to grant of compensation occurring in Chapter XI and XII of the Motor

Vehicles Act have been enacted by the Parliament in order to achieve the purpose and object stated therein. Section 146 of the Motor Vehicles Act lays down the requirements for insurance against third party risk. Where a third party risk is involved, an insurance policy is mandatorily required to be taken out. The requirements of policies and limits of liability have been stated in Section 147 of the Act, which reads as under:

"147. Requirements of policies and limits of liability.-(1) In order to comply with the requirement of this Chapter, a policy of insurance must be a policy which--

(a) is issued by a person who is an authorised insurer; and

(b) 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 1[injury to any person, including owner of the goods or his authorised 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 caused by or arising out of the use of the vehicle in a public place.

Provided that a policy shall not be required-

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death, or bodily injury to, any such employee--

(a) engaged in driving the vehicle, or

(b) if it is public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a good carriage, being in the vehicle, or

(ii) to cover any contractual liability.

Explanation-For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any of a third party shall be deemed to have been caused by or to have arisen out of the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(2) Subject to the provision to sub-section (10, a policy of insurance referred to in sub-section (1) shall cover any liability incurred in respect of any accident, upto the following limits, namely--

(a) save as provided in clause (b), the amount of liability incurred ;

(b) in respect of damage to any property of a third party, limit of rupees six thousand :

Provided that any policy if of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made there under is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

11) From the above it is clear that the provisions of the Act provide for two types of insurance policies - one statutory in nature and other contractual in nature. A statutory policy or an ?Act Policy' covers only those risks which are mandatorily required to be covered in terms of the provisions contained in Section 147 quoted hereinabove. An owner of a vehicle may cover additional risks by paying extra premium. Such a policy would be contractual in nature and the same is termed as a package policy or a comprehensive policy.

12) The ?Act Policy' or statutory policy, as already stated, covers only those risks which are mandatorily required to be covered. The risk to the lives of occupants of a private vehicle is not mandatorily required to be covered under the provisions of Motor Vehicles Act. An ?Act Policy' stands on a different footing from a comprehensive/package policy inasmuch as ?Act Policy' does not cover third party risk of an occupant of a car whereas if the policy is a comprehensive package policy, the situation is different.

13) The Hon'ble Supreme Court in the case of New India Assurance Company Limited v. Sadanand Mukhi and others, reported in (2009) 2 SCC 417, while repelling the contention that an ?Act Policy' would cover all categories of victims of an accident arising out of use of a two wheeler as the same would come within

the purview of the term ?a person' as provided for in S.147 of the Act, observed as under:-

"13. Contract of insurance of a motor vehicle is governed by the provisions of the Insurance Act. The terms of the policy as also the quantum of the premium payable for insuring the vehicle in question depends not only upon the carrying capacity of the vehicle but also on the purpose for which the same was being used and the extent of the risk covered thereby. By taking an `Act Policy', the owner of a vehicle fulfils his statutory obligation as contained in Section 147 of the Act. The liability of the insurer is either statutory or contractual. If it is contractual its liability extends to the risk covered by the policy of insurance. If additional risks are sought to be covered, additional premium has to be paid. If the contention of the learned counsel is to be accepted, then to a large extent, the provisions of the Insurance Act become otiose. By reason of such an interpretation the insurer would be liable to cover risk of not only a third party but also others who would not otherwise come within the purview thereof. It is one thing to say that the life is uncertain and the same is required to be covered, but it is another thing to say that we must read a statute so as to grant relief to a person not contemplated by the Act. It is not for the court, unless a statute is found to be unconstitutional, to consider the rationality thereof. Even otherwise the provisions of the Act read with the provisions of the Insurance Act appear to be wholly rational.

14. Only because driving of a motor vehicle may cause accident involving loss of life and property not only of a third party but also the owner of the vehicle and the insured vehicle itself, different provisions have been made in the Insurance Act as also the Act laying down different types of insurance policies. The amount of premium required to be paid for each of the policy is governed by the Insurance Act. A statutory regulatory authority fixes the norms and the guidelines.?

14) In United India Insurance Co. Ltd. v. Tilak Singh and others, reported in (2006) 4 SCC 404, the Hon'ble Supreme Court, upon consideration of the provisions of the Motor Vehicles Act, opined that the insurance company owed no liability towards the injuries suffered by the deceased who was a pillion rider as the insurance policy was a statutory policy which did not cover the gratuitous passenger.

15) In National Insurance Company Limited. v. Balakrishnan and another, reported in (2013) 1 SCC 731, the Hon'ble Supreme Court after taking note of Circular dated 16.11.2009 of Insurance Regulatory Development Authority, discussed the extent of liability of insurance company in case of an ?Act Policy' and Comprehensive Package Policy. While doing so, the Hon'ble Court observed as under:

"In view of the aforesaid factual position, there is no scintilla of doubt that a ?comprehensive/package policy? would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an ?Act Policy? stands on a different footing from a ?Comprehensive/Package Policy?. As the circulars have made the position very clear and the IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a ?Comprehensive/Package Policy? covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the ?Act Policy? which admittedly cannot cover a third party risk of an occupant in a car. But, if the policy is a ?Comprehensive/Package Policy?, the liability would be covered........?

16) From the aforesaid discussion of law on the subject, it becomes crystal clear that in case of an ?Act Policy' the risk to the life of occupants travelling in a private car is not covered whereas if the private car is covered by a Comprehensive Package Policy, circular dated 16.11.2009 of Insurance Regulatory Development Authority will come into play and the occupants of the private car will get coverage under such policy.

17) In the instant case, admittedly the insurance policy of the offending vehicle (a private car) was an ?Act Policy' and all the deceased were travelling in the car, therefore, risk to their lives was not covered under the terms of the policy of insurance. The observation of the Tribunal that occupants of a private car are covered under the expression ?third party? is misconceived. The reliance placed by the Tribunal on the judgment rendered by this Court in New India Assurance Company v. Sh. Thokru Ram, 2002 (2) SLJ 617, is also misplaced because it was a case where the victims of the accident were travelling as passengers in a passenger vehicle and not in a private car. It was in those circumstances that the court had held that the passengers travelling in a vehicle are covered by the term ?third party'.

18) Section 147 of the Motor Vehicles Act provides for mandatory insurance of the passengers of a public service vehicle. Therefore, an Act Policy' in respect of a passenger vehicle, would necessarily cover the passengers travelling in the said vehicle without payment of any extra premium. The Tribunal has lost sight of the fact that in the instant case, the deceased were not travelling in a passenger vehicle but they were travelling in a private care and, as such, risk to their life was not required to be mandatorily covered by the insurance policy. By overlooking this important aspect, the Tribunal has landed itself into an error.

19) For the foregoing discussion, it is clear that the finding of the Tribunal on issue No.3 is perverse and against the law. The same is, therefore, set aside. The appeals are accepted to this extent and the appellant insurance company shall stand exonerated of its liability to satisfy the awards. Further, the owner of the offending vehicle is held liable to satisfy the awards.

20) Record of the Tribunal along with copy of this judgment be sent back.

