
(2000) 12 SHI CK 0003
In the High Court Of Himachal Pradesh
Case No : F.A.O. (MVA) No. 237 of 1993

United India Insurance Co. Ltd.

APPELLANT

Vs

Prem Singh and Others

RESPONDENT

Date of Decision : 21-12-2000

Acts Referred:

Motor Vehicles Act, 1939 — Section 110A, 95

Citation : (2001) ACJ 1445

Hon'ble Judges : Kuldip Chand Sood, J; Kamlesh Sharma, J

Bench : Division Bench

Advocate : Devyani Sharma, for the Appellant; Sanjay Karol, A.G., M.L. Chauhan, D.A.G., Ashok Sharma, A.A.G., Vinod Sharma, Anjali Verma, Rajiv Jiwan and Suresh Bhardwaj, for the Respondent

Final Decision : Dismissed

Judgement

Kuldip Chand Sood, J.—The award of Motor Accidents Claims Tribunal, Bilaspur dated 13.5.1993 in M.A.C. Petition No. 15 of 1989 is under challenge in this appeal.

2. In order to appreciate the controversy, relevant facts may be noticed thus:

Prem Singh, a practising advocate at Tehsil Ghumarwin, on 1.9.1988, took a lift on a scooter No. HIB 4485, owned and driven by Lekh Ram, as pillion rider. When scooter reached near Bhapral curve, it met with an accident with a jeep No. HPS 2770 driven by Joginder Singh. Jeep was owned by respondent Nos. 2 and 3.

3. The claimant Prem Singh filed a claim petition u/s 110-A of the Motor Vehicles Act, 1939 (Act for short) for award of compensation of Rs. 10,00,000 alleging that the accident occurred due to rash and negligent driving of the jeep by Joginder Singh in which he sustained multiple injuries including fracture of the leg resulting in 100 per cent disability.

4. Respondents contested the claim. The case of the owner and driver of the jeep in their joint reply is: the jeep was being driven at a slow speed. The scooter driven by Lekh Ram, hereinafter referred to as the owner of the scooter, with claimant as pillion rider, came from the opposite direction and struck against the jeep on the centre of the bumper, as a result of which claimant sustained fracture of his leg. It is their case that the jeep was being driven on its extreme left, whereas, the scooter was driven on the wrong side of the road by its owner in a rash and negligent manner and that a false case was lodged against the driver of the jeep. Objection was also taken that the claim petition is bad for nonjoinder of the insurer and driver of the scooter.

5. Pursuant to the objection, the owner and driver of the scooter Lekh Ram and insurer, United India Insurance Co. Ltd., appellant herein, were added as parties by the petitioner. In reply, filed on behalf of appellant insurance company, it is not disputed that scooter was insured with the company under an Act policy. However, it was pleaded that claimant, being pillion rider of scooter No. HIB 4485, was passenger of the scooter and was not required to be covered u/s 95 of the Act. In the circumstances, the insurance company is not liable to indemnify the insured. It was also stated that as no negligence is attributed to the owner and driver of the scooter, therefore, the insurance company has wrongly been added as party.

6. The owner of the scooter in his reply pleaded that he was driving the scooter on the extreme left side of the road. The jeep, driven rashly and negligently by its driver, struck with the scooter as a result of which scooter skidded in which the claimant received injuries including fracture of his right leg.

7. The Tribunal settled the following issues after the appellant and owner of the scooter were added as parties:

(1) Whether the petitioner suffered injuries as a result of rash and negligent driving of Joginder? OPP

(2) In case issue No. 1 is proved, to what amount the petitioner is entitled?

(3) Whether the petition is not within time? OPR

(4) Relief.

8. The learned Tribunal, after recording the evidence of the parties, found that the accident was caused due to the composite negligence of the driver of jeep Joginder and owner of the scooter Lekh Ram and assessed Rs. 1,00,000 as compensation payable to the claimant. The Tribunal directed that owner of the jeep, i.e., State of Hima-chal Pradesh and Secretary, PWD, State of Himachal Pradesh and owner of the scooter shall pay compensation in equal shares. The contention of the insurance company that it is not liable to pay compensation to the claimant as risk of the pillion rider was not covered under the insurance policy, was repelled. The Tribunal relying upon *Ambaben v. Usmanbhai Amirmiya Sheikh* 1979 ACJ 292 and *National Insurance Co. Ltd. v. Nathibai Chatura-bhuj*

1982 ACJ 153, held that pillion rider is a third party and, therefore, the insurance company is liable to indemnify the insured.

9. Aggrieved, the insurance company filed the present appeal. The liability is sought to be avoided by the insurance company on the grounds:

(a) That the claimant was a pillion rider and, therefore, not covered under the policy, Exh. PX and the Tribunal fell in error in holding that the claimant was a third party.

(b) The claim petition was barred by the period of limitation so far appellant is concerned and no case for condonation of delay was made out and, consequently, the Tribunal erred in condoning the delay while deciding issue No. 3.

10. We have heard Ms. Devyani Sharma, the learned counsel for the appellant, Mr. Sanjay Karol, Advocate General assisted by Mr. Ashok Sharma, Assistant Advocate General for respondent Nos. 2 and 3, Ms. Anjali Verma, learned counsel for respondent Nos. 4 and 5 and Mr. Suresh Bhard-waj, learned counsel for respondent No. 6 and gone through the record.

11. There is no dispute that the claimant took lift on the scooter No. HIB 4485 owned and driven by respondent No. 6 Lekh Ram at the relevant time. There is also no dispute that this scooter was insured with the appellant at the relevant time. Neither the owner of the scooter nor the owners of the jeep have filed any appeal against this award.

Whether the insurance company is liable to indemnify the owner of the scooter?

12. Ms. Devyani Sharma, learned counsel for the appellant, strenuously urged that policy, Exh. PX, is an Act policy covering the risk of only third party and, therefore, the bodily injury to a pillion rider is not covered. She submitted that by no stretch a pillion rider can be said to be a third party for the purposes of Section 95 of the Act. Section 95 of the Act reads:

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

(a) is issued by a person who is an authorised insurer or by a cooperative society allowed u/s 108 to transact the business of an 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 injury to any person 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:

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 of, or bodily injury to, any such employee-

(a) engaged in driving the vehicle; or

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

(c) if it is a goods vehicle, being carried in the vehicle, or

(ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, to cover liability in respect of the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises, or

(iii) 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 property 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 proviso to Sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely-

(a) where the vehicle is a goods vehicle, a limit of fifty thousand rupees in all, including the liabilities, if any, arising under the Workmen's Compensation Act, 1923, in respect of the death of, or bodily injury to, employees (other than the driver), not exceeding six in number, being carried in the vehicle;

(b) where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment,-

(i) in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all;

(ii) in respect of passengers,-

(1) a limit of fifty thousand rupees in all where the vehicle is registered to carry not more than thirty passengers;

(2) a limit of seventy-five thousand rupees in all where the vehicle is registered to carry more than thirty but not more than sixty passengers;

(3) a limit of one lakh rupees in all where the vehicle is registered to carry more than sixty passengers; and

(4) subject to the limits aforesaid, ten thousand rupees for each individual passenger where the vehicle is a motor cab and five thousand rupees for each individual passenger in any other case;

(c) save as provided in clause (d), where the vehicle is a vehicle of any other class, the amount of liability incurred;

(d) irrespective of the class of the vehicle, a limit of rupees two thousand in all in respect of damage to any property of a third party.

(3) [Omitted by Act 100 of 1956]

(4) A policy shall be of no effect for the purposes of this Chapter unless and until there is 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 prescribed particulars of any conditions 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-A) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder 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 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 elsewhere contained in any law, a person 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.

13. It is true that under the Act policy, the liability of the insurance company is limited in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place.

14. Ms. Devyani Sharma, relying upon *M. Muthu Krishna v. R. Brindha* 1982 ACJ 428; *New India Assurance Co. Ltd. v. Kuppaswamy Naidu* 1988 ACJ 774 ; *New India Assurance Co. Ltd. Vs. K. Rajanna and Others*, ; *New India Assurance Company Ltd. Vs. Ashok Kumar Acharya and Others*, ; *Surjit Singh v. Santosh Kutnari* 1989 ACJ 466, submitted that pillion rider under the Act policy cannot be considered to be third party.

15. In all these cases, it was held that the Act policy does not cover the

passenger on the pillion as pillion rider is not a third party. The ratio of these cases indeed is that the pillion rider is not a third party for the purposes of Section 95 of the Act.

16. We, however, need not go into the question. We find that compensation in respect of the pillion riders was considered by the Tariff Advisory Committee and it was decided that death of or bodily injury to any person including person conveyed in or on the motor cycle would be covered provided such person is not carried for hire or reward. These instructions were made effective w.e.f. 25.3.77. The Tariff Advisory Committee had directed:

All existing policies should be deemed to incorporate this amendment automatically irrespective of the fact whether it is an "Act policy" or a "comprehensive policy".

17. We requested Ms. Devyani Sharma, learned counsel for the appellant insurance company to verify if the instructions of the Tariff Advisory Committee dated 13.3.78 were followed by the appellant insurance company. Ms. Devyani Sharma, on instructions from the appellant insurance company, fairly conceded that the instructions of the Tariff Advisory Committee were followed by the appellant insurance company. These instructions were noticed by a Division Bench of Kerala High Court in *Oriental Insurance Co. Ltd. Vs. Daniel*,

18. In this view of the matter, we hold that pillion rider is covered under the Act policy, Exh. PX and insurance company is liable to indemnify the insured.

Limitation

19. Ms. Devyani Sharma then contended with considerable emphasis that claim against the insurance company was barred by the period of limitation when insurance company was added as party on 7.8.1990 and, therefore, insurance company cannot be fastened with the liability.

20. Section 110-A (3) of the Act contemplates that application for compensation arising out of an accident has to be made to the Claims Tribunal within six months of the accident. Proviso to this sub-section stipulates that the Tribunal may entertain such application after the expiry of the period of six months if it is satisfied that the applicant was prevented by sufficient cause from making the application in time.

21. Learned Tribunal dealing with the question held:

No doubt respondent Nos. 4 and 5 were added as parties to the present petition on 7.8.1990 on an application under Order 1 Rule 10, CPC filed on behalf of the petitioner yet the petition itself was filed well within time, i.e., within six months from the accident and in such circumstances it shall relate even to the respondent Nos. 4 and 5. Even otherwise, if there is any delay, factual or legal, in filing the claim petition against respondent No. 5 it is well within the rights of this Tribunal to condone the same and the same is accordingly condoned.

22. The contention of Ms. Devyani Sharma was that no cause much less sufficient cause for condonation of delay was either pleaded or made out. The Tribunal, she submitted, was not justified in condoning the delay of its own. She contended that this was not a case of rustic, illiterate or simpleton villager unaware of the legal position. It was a case of practising lawyer who ought to have known that the owner of the scooter and insurer were necessary party in the proceedings.

23. The argument though attractive, does not stand the test of legal scrutiny. It is to be noticed that u/s 110-A, limitation is prescribed for instituting a petition and if the petition is filed within the time, with some of the necessary parties but without adding other necessary parties, then addition of such necessary parties could be made later. Sub-section (2) of Section 110-A provides that every application shall be made to the Claims Tribunal in "such form and contain such particulars as may be prescribed". The form prescribed for making application for compensation u/s 110-A requires a claimant under column Nos. 14, 15 and 16 to furnish correct information and particulars about the vehicle involved in the accident as also about the name(s) of the owner(s) and insurer(s). Apparent as it is, if in a given case more than one vehicle is involved in an accident, resulting into the claim petition, it is the duty of the claimant to furnish the particulars of all the vehicles. At the same time, the Tribunal is charged with duty to find out the names and particulars of the concerned parties and give finding as to which of the parties is responsible for the accident. [See M. Krishnappa v. Madras Motor & Genl. Ins. Co. 1971 ACJ 240].

24. A Division Bench of Karnataka High Court in Karnataka State Road Transport Corporation Vs. Reny Mammen, after considering all the relevant provisions of the Act concluded:

The period of limitation of six months prescribed under Sub-section (3) of Section 110-A of the Act does not operate as a limitation for issuing notice to the owner and insurer or driver of a vehicle whose particulars were not furnished in the application filed in time and came to be furnished subsequently after the expiry of the period of six months.

(Emphasis supplied)

25. A Division Bench of Kerala High Court in National Insurance Co. Ltd. Vs. Sivasankara Pillay and Others, relying upon Karnataka State Road Transport Corporation Vs. Reny Mammen, held that if a claim petition is filed within time with some of the relevant parties, then addition of other necessary parties can be made later and such addition will not be adversely affected by period prescribed u/s 110-A of the Act. In that case, in a collision between the two motor vehicles, the claimants, who were passengers in one of the vehicles, received injuries. One of the vehicles was not made party in the claim petition. The Tribunal after holding that the accident was result of composite negligence of both the drivers, passed an award against the driver and owner of one of the vehicles directing the

appellant insurance company to pay the entire amount of damages. The Tribunal, however, permitted the appellant company to recover 25 per cent of the award amount from the owner/driver and/or insurer of the other vehicle. A contention was raised before the Division Bench that the claimant having failed to implead the driver or insurer of the second vehicle as party to the proceedings should suffer the consequences. The contention was repelled by the Division Bench. It was held that appropriate remedy would be to make an application for amendment for the purpose of bringing the insurer of the other vehicle on record and such an application for amendment would not be affected by period prescribed in Section 110-A. Relying upon *Basappa v. K.H. Sreenivasa Reddy* 1982 ACJ 585, the Division Bench speaking through Thomas, J., as his Lordship then was, observed in para 16:

16. Such an application for amendment is not affected by the period prescribed in section 110-A (corresponding to Section 166 of the Motor Vehicles Act, 1988) for making the claim. In *Basappa v. K.H. Sreenivasa Reddy* 1982 ACJ 585 , a Division Bench has held that there is no substance in the contention that some of the respondents who were added as parties only after the period of limitation (prescribed for making a claim petition) cannot be mulcted with any liability. When once the claim petition has been instituted within time at least with some of the relevant parties, addition of other necessary parties can be made later. The said view was followed by the Division Karnataka State Road Transport Corporation Vs. Reny Mammen, We too are in respectful agreement with the said view.

(Emphasis supplied)

26. We are in agreement with the view taken by the Karnataka and Kerala High Courts. In our view if a claim petition is filed within time with some of the parties, addition of other necessary parties can be made later and such addition is not affected by the period of limitation prescribed u/s 110-A of the Act.

27. The view we have taken is strengthened from the ratio in *Shikharchand Jain Vs. Digamber Jain Praband Karini Sabha and Others*, wherein their Lordships observed that it is open to the court including a court of appeal to take notice of events which have happened after the institution of the suit and afford relief to the parties in changed circumstances to do complete justice between the parties.

28. In the end, Ms. Devyani Sharma contended that this was a case of composite negligence and it was not open to the Tribunal to have apportioned the liability to the extent of 50 per cent each.

29. We are not persuaded. It is no longer *res integra* that in a case of composite negligence of drivers of two vehicles, the claimant has a choice to realize the entire amount of award from any one of the joint tortfeasors. [See: *United India Insurance Co. Ltd. v. Premakumaran* 1988 ACJ 597; *United India Fire & Genl. Ins. Co. Ltd. v. Varghese* 1989 ACJ 472].

30. But the question is whether the drivers of the two vehicles involved in the accident in this case are joint tortfeasors or not.

31. Under the common law, tortfeasors are broadly classified in two categories "joint tortfeasors" and "several tortfeasors". Joint tortfeasors are those who concur in the act of tort. In other words, separate act or acts done by different tortfeasors must have been done in concert with each other resulting in the tort. In case of several tortfeasors, there is neither concert nor any common design in wrongful act(s) or omission resulting in tort. When an accident occurs because of collision of two vehicles without any preconcert and independent of each other, as in the present case, then drivers of the two vehicles would be several tortfeasors. A Division Bench of the Karnataka High Court in *Karnataka State Road Transport Corporation Vs. Reny Mammen*, relying upon *Drupad Kumar Barua Vs. Assam State Trans. Corpn. and Others*, held:

From the above conclusion, it follows that, in a motor accident resulting from rash and negligent driving of more than one vehicle, the drivers of all the vehicles are several tortfeasors, whose separate and independent act of rash and negligent driving of the respective vehicles resulted in a common harm or injury.

It logically follows that it becomes the duty of the Tribunal to record a finding regarding proportion of their respective negligence and apportion the compensation awarded on that basis and specify the liability of each set of parties, namely, the driver, owner and insurer of each of the vehicles.

32. This view was reiterated by a Division Bench of Kerala High Court in *National Insurance Co. Ltd. Vs. Sivasankara Pillay and Others*,

33. In this case, the driver of the jeep as also of the scooter were several tortfeasors and, therefore, the owners and drivers of the jeep and the scooter are liable to the extent of their negligence. Apart from this, we notice that the Tribunal u/s 110-B of the Act is duty-bound not only to determine the amount of compensation but also to specify the amount which is payable by the insurer or owner or driver of the vehicle involved in the accident or "all or any one of them", as the case may be.

34. The Tribunal, in the facts and circumstances of this case, has rightly determined the proportion of the liability of the driver and owner of each of the vehicles involved in the accident.

35. The conclusion reached by the Tribunal cannot be faulted with though for different reasons.

36. No other point is urged before us. In result, appeal fails and is dismissed with no order as to costs.