
(1996) 03 RAJ CK 0021

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No"s. 261 and 275 of 1989

United India Insurance Co. Ltd.

APPELLANT

Vs

Rukhmani and Others

RESPONDENT

Date of Decision : 19-03-1996

Acts Referred:

Motor Vehicles Act, 1988 — Section 92A

Citation : (1998) ACJ 1378

Hon'ble Judges : G.L. Gupta, J

Bench : Single Bench

Advocate : R.K. Mehta, for the Appellant; J.S. Choudhary, for the Respondent

Final Decision : Dismissed

Judgement

Gopal Lal Gupta, J.—These two appeals arise out of award passed by the learned Member, Motor Accidents Claims Tribunal, Bikaner on 26.7.1989 in Claim Case No. 23 of 1986.

2. The owner and the driver have challenged the award by filing Appeal No. 275 of 1989 pleading that the accident had occurred because of rash and negligent driving of jeep No. RJS 6395 and, the claim should have been decreed against the owner, driver and the insurer of that vehicle. The United India Insurance Co. Ltd. by filing Appeal No. 261 of 1989 has challenged this part of the direction in the award that it may recover the sum of Rs. 15,000/- and interest paid u/s 92-A of the Motor Vehicles Act by filing separate suit.

3. The claimants case was that Vijay Kumar, aged 20, was travelling in jeep RJS 774 driven by Mahi Ram on Bikaner-Nokha road and that this jeep collided with jeep RJS 6395 which was coming from opposite direction and driven by Shyam Sunder. The claimants case was that Vijay Kumar suffered fatal injuries and died after 2 days. Rs. 5,02,080/- were claimed as compensation. In the reply, Mahi Ram denied that he was driving the jeep. The case set up by Guman Giri, owner, was that he had already sold the jeep on 10.12.1985, i.e., before the accident to

one Bhagwana Ram. The United India Insurance Co. Ltd. admitted that the jeep was insured with them, but it denied the liability on the grounds that jeep had already been sold by the insured and that insured used the jeep as taxi; whereas it was registered as a private vehicle. The driver and owner of the jeep RJS 6395 did not file return. The Tribunal framed 4 issues. The claimants examined 5 witnesses and in rebuttal Guman Giri and Bhagwana Ram gave their statements. One Deepa Ram, an employee of Registration Department was also examined. The learned Tribunal after hearing the parties held that the accident had taken place because of rash and negligent driving of jeep No. RJS 774 by Mahi Ram and Guman Giri was owner of that jeep and, therefore, they were liable to pay compensation. A sum of Rs. 39,000/- was awarded as compensation. The claim was dismissed against the insurance company on the ground that there was breach of terms of policy by the insured.

4. I have heard learned Counsel for the parties and perused the record of the case.

5. Mr. Choudhary, learned Counsel for the claimants contended that the Tribunal has erred in holding that there was no fault on the part of driver of the jeep RJS 6395 and that the insurer of jeep RJS 774 should also have been held liable for payment as the vehicle was not used for carrying passengers for hire or reward.

6. On the other hand, Mr. R.K. Mehta, appearing for the insurance company has urged that the Tribunal has rightly held the insurance company not liable to make payment of award. His further submission was that the Tribunal should have directed Guman Giri to make a refund of Rs. 15,000 and interest to the insurance company which was paid on his behalf u/s 92-A of the Act.

7. I have carefully considered the rival contentions raised on behalf of both the parties.

8. Chand Mohd., AW 3, has deposed that he was also travelling in the jeep which was being driven by Mahi Ram and that besides him, there were 11-12 more passengers and that all of them paid fare for going in the jeep. He has given the details of the accident. He has clearly deposed that the jeep in which he was travelling was being driven with excessive speed and that the deceased was sitting on the right hand side of the driver of the jeep, which was right hand driven jeep. By his statement, it is amply proved that the jeep was carrying passengers for hire and not only that, it was being driven at an excessive speed and negligently inasmuch as the deceased was asked to sit on the right hand side of the driver. There could not be any place to sit when it was right hand driven jeep. Of course, it has come in the statement of Chand Mohd., AW 3, that the jeep coming from opposite direction was also coming with fast speed, but in cross-examination, he has not been able to give an estimate of speed of that jeep.

9. In my opinion, the Tribunal has not erred in holding that the accident had occurred only on account of fault on the part of Mahi Ram and, therefore, it has

rightly decreed the claim against the driver and owner of jeep RJS 774. According to Guman Giri, he had sold the jeep to Bhagwana Ram on 10.12.1985 vide document Exh. P-2. However, Bhagwana Ram has deposed that he had purchased this jeep on 10.2.1986. It is significant to point out that it is Guman Giri himself who had got the jeep released from the Court after the accident. There is thus clear evidence on record that on the date of accident, Guman Giri was owner of the jeep.

10. A reading of the policy Exh. A-I shows that there was a condition that the policy did not cover use for hire or reward. There is ample evidence on record that in the jeep, passengers were being taken for hire. It is thus clear that though the jeep was registered as a private vehicle, yet it was being used to carry passengers for hire or reward. There was therefore clear breach of condition of licence. Section 96(2) of the Motor Vehicles Act, 1939 clearly provides that the insurance company shall not be liable if there has been a breach of a specified condition of policy, say, excluding the use of vehicle for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward. That being so, the insurance company cannot be held liable to make payment of the sum awarded against the insured.

11. It is not disputed that the insurance company had paid Rs. 15,000/- and interest u/s 92-A to the claimants. Obviously the insurance company was not liable to indemnify the owner in this case. The Tribunal, therefore, ought to have given direction to Guman Giri insured to pay to the insurance company the amount it had paid to claimants in pursuance of award u/s 92-A. Interpreting Section 96(4) of the Motor Vehicles Act in the case of New India Assurance Co. Ltd. Vs. Minguel Correia and Others, the Bombay High Court observed as follows:

If ultimately the company succeeds in establishing that under the terms and conditions of the insurance policy, it is not liable to pay compensation, then the insurance company will be entitled to get money paid u/s 92-A of Act repaid to it by the owner of the vehicle. A direction to this effect has necessarily to be made by the Tribunal itself while disposing of the application u/s 110-B of the Act, so as to avoid the insurance company to be dragged in further litigation.

Similar observations were made by Division Bench of Punjab and Haryana High Court in the case of Oriental Fire and General Insurance Co. Ltd. Vs. Beasa Devi and Others, which are to this effect:

In the event of the Tribunal coming to the conclusion for valid reasons that the owner of the vehicle was not liable to pay any compensation on the principle of the fault liability, then obviously no compensation is to be awarded on that score to the claimants u/s 110-B. Similarly, in the event of the Tribunal holding that the insurance company had proved such objections as under law avoided its responsibility to indemnify the owner of the offending vehicle totally, then the Tribunal in the final award by virtue of provisions of Sub-section (4) of Section 96

would direct the owner of the offending vehicle to pay to the insurance company the amount which the insurance company had paid to the claimants in pursuance of the award made u/s 92-A of the Act.

The Division Bench of J&K High Court also in the case of National Insurance Co. Vs. Surjit Singh and Others, observed as follows:

In that event, the Tribunal u/s 96(4) of the Act will be obliged to direct the owner to pay to the insurance company the amount which it has paid to the claimants u/s 92-A of the Act because on the plain language of Section 92-A and particularly of Sub-sections (1),(3) and (4) liability of the owner is indefeasible and total and the insurance company would not be required to enter into any prolonged litigation with the owner to recover the amount of compensation paid by it u/s 92-A of the Act.

12. In the instant case, the Tribunal, therefore, ought to have directed Guman Giri to pay the amount to the insurer paid by it u/s 92-A of the Act.

13. The Tribunal has not recorded reasons for not giving such directions and has simply observed that there was no force in the application filed by the insurance company and it could recover the amount by filing suit if law permitted. When the Tribunal had found that the insurance company was not liable to indemnify the owner because of the breach of condition of policy, it was its duty to have directed the owner to refund the amount to the insurance company. Such directions are required to be given by this Court.

14. Consequently, the appeal filed by Guman Giri and Mahi Ram, being devoid of merit, is hereby dismissed. Appeal filed by the United India Insurance Co. Ltd. is allowed and Guman Giri (owner) is directed to refund the amount paid by the insurance company to the claimants u/s 92-A of the Motor Vehicles Act.