(2013) 12 RAJ CK 0075

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 765 of 2010

United India Insurance Co. Ltd. APPELLANT

Vs

Smt. Hudi and Others RESPONDENT

Date of Decision : 03-12-2013

Acts Referred:

Citation : (2014) 1 RLW 656

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Jagdish Vyas, for the Appellant; P. Nayak, M.A. Khan and V.N. Kalla, for the Respondent

Judgement

Arun Bhansali, J.—This appeal is directed against judgment and award dated 12.04.2010 passed by the Motor Accident Claims Tribunal (Fast Track), Banswara (''the Tribunal''), whereby, for death of one Khima, the Tribunal has awarded a sum of Rs. 3,99,000/- alongwith interest @ 6% per annum and the appellant Insurance Company has also been held liable for payment of compensation. The facts in brief may be noticed thus: an application for compensation (''the application'') was filed by the claimants, who are wife and children of deceased Khima, with the averments that on 24.06.2004 deceased Khima was travelling in Jeep No. MP 15D 4842 from village Bhurakunda to Kherali Bassi, and was being driven rashly and negligently by driver of the said jeep, which resulted in the deceased falling off the said vehicle and suffering grievous injuries and later succumbed to the said injuries. A compensation to the tune of Rs. 13,75,000/- alongwith interest was sought.

2. The appellant Insurance Company filed its reply to the application and, inter alia, raised defence that the jeep involved in the accident was a private jeep and was insured for private use and as the deceased was a fare paying passenger and no premium was charged covering the risk of any passenger in the vehicle, the Insurance Company was not liable for payment of compensation. It was also pleaded that the driver of the vehicle was not in a possession of effective and

valid driving licence and the same being violation of policy conditions, the Insurance Company was not liable for payment of compensation.

3. The Tribunal framed four issues and came to the conclusion that the vehicle was being driven rashly and negligently by its driver Ram Chand which resulted in the death of Khima. The Insurance Company was also liable to make payment of the amount of compensation and the claimants were entitled to a sum of Rs. 3,99,000/- as compensation alongwith interest @ 6% per annum.

4. It is submitted by learned counsel for the appellant that the Tribunal fell in error in deciding issue No. 3 against the appellant Insurance Company; all efforts were made by the appellant Insurance Company to prove that the driver was not in possession of valid driving licence, rather he was not in possession of any driving licence and, therefore, the violation of policy conditions was apparent; the Tribunal clearly fell in error in coming to the conclusion that the appellant Insurance Company has failed to discharge its burden. It was submitted that application under Order XI, Rule 12 and 14 CPC was filed calling upon the driver of the vehicle, who was being represented by a counsel to produce the driving licence, on which, an order was passed by the Tribunal and, when despite, seeking several opportunities, the driving licence was not produced, the defence of the said driver Ram Chand was struck off by the Tribunal. It was also submitted that police has filed challan against me owner and driver or the vehicle for violation of provisions of Sections 3 and 5 of the Motor Vehicles Act, 1988 (''the Act''), which also indicates absence of any driving licence.

5. It was emphasized that the policy (Exhibit-A/1) was an ''act only'' policy and did not cover the risk of passengers travelling therein. It was further submitted that from the statement of AW-2 Haru, it is apparent that the deceased was a fare paying passenger, inasmuch as, in the cross-examination, said Haru clearly admitted that alongwith him there were six passengers in the vehicle; the jeep driver used to charge while the passengers alight from the vehicle and then stated that he would not charge anything. It was submitted that irrespective of the fact as to whether the passenger was gratuitous or fare paying, the policy being ''act only'' policy, the Insurance Company was not liable to make, payment of the compensation and, though the issue was specifically raised, the Tribunal failed to deal with the said aspect.

6. Reliance was placed on the judgments of Hon''ble Supreme Court in Bhuwan Singh Vs. Oriental Insurance Company Ltd. and Another, The Oriental Insurance Company Limited Vs. Meena Variyal and Others, and judgment of this Court in United India Insurance Company Ltd. Vs. Smt. Garol Bai and Others, and National Insurance Company Ltd. v. Shri Chandra Ram & Ors. : S.B. Civil Misc. Appeal No. 730/2008 decided on 11.08.2009 and ICICI Lombard General Insurance Company Ltd. v. Kesa & Ors. : 2012 R.A.R. 38 (Raj.).

7. On the other hand, learned counsel for the respondents submitted that the award impugned does not call for any interference. The Insurance Company had

failed to discharge its burden regarding the allegation that the driver was not in possession of valid driving licence.

8. Reliance was placed on the judgment of this Court in National Insurance Co. Ltd. Vs. Yogesh and Others,

9. I have heard learned counsel for the parties.

10. It is apparent that the dispute lies in a very narrow compass as the appellant Insurance Company claims violation of policy conditions and lack of coverage on account of the driver not holding any driving licence and the deceased being passenger in the vehicle and policy being act only policy respectively. Both the pleas were put forth in the reply to the application and issue No. 3 was framed by the Tribunal based on the said pleas, whereby, the appellant sought to deny its liability.

11. Efforts were made by the appellant Insurance Company to pin down the driver of the vehicle, who was appearing through counsel to produce the driving licence, as in the police papers, the absence of driving licence was indicated. The procedure under Order XI CPC, was employed as noticed here before and, on failure thereof, defence of respondent No. 4 was struck off.

12. On behalf of the Insurance Company NAW-1 Smt. Upasana Gehani was examined, who in her cross-examination admitted that no inquiry was made by the Company with District Transport Office/Regional Transport Office and no inquiry was made from the insured and no inquiry was made from Rasul Bhai, Rai Chand & Basant Bhai.

13. From the above state of evidence regarding the absence of driving licence, wherein, it was specifically admitted by the witness on behalf of the appellant Insurance Company that no inquiry whatsoever was made with the transport offices and even the insured and the driver were not questioned/no inquiry was made from them, merely because, procedure as prescribed under Order XI CPC was employed by the Insurance Company by delivering a notice to counsel for the driver, the same cannot discharge the burden, which lay on the Insurance Company to prove absence of driving licence with the driver.

14. A Division Bench judgment of this Court in the case of Yogesh (supra) has held that in such circumstances no adverse inference can be drawn against the insured.

15. Coming to the issue of non-coverage of risk of passenger on account of the policy issued by the appellant being ''act only'' policy, a look at the policy (Exhibit-A/1) would reveal that the said policy clearly indicates ''Private Car Policy A Liability Only'' and nowhere any additional premium covering risk of passenger has been recovered by the appellant Insurance Company. The law on the issue regarding coverage of risk in case of passengers in a ''act only'' policy stands settled in the case of United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others, , wherein, the Hon''ble Supreme Court held that where the policy is a

statutory policy or an act only policy, a gratuitous passenger in a private vehicle would not be covered for any bodily injury or death under the policy of insurance.

16. Recently in the case of National Insurance Company Ltd. Vs. Balakrishnan and Another, the Hon''ble Supreme Court distinguished comprehensive/package policy from the ''act policy'' and relying on the circular issued by the Insurance Regulatory and Development Authority (IRDA) held that act only policy cannot cover risk of an occupant in a car, but in a comprehensive/package policy, the liability would be covered.

17. In view of the law laid down by the Hon''ble Supreme Court and the fact that in the present case the policy (Exhibit-A/1) is only an act policy and the deceased even according to the case of the claimants was a gratuitous passenger in the jeep, which was a private vehicle, the finding on issue No. 3 is reversed and it is held that the Insurance Company is not liable for payment of compensation. Consequently, the appeal is allowed. The award dated 12.04.2010 passed by the Tribunal is modified to the extent that "appellant (non-claimant No. 3) United India Insurance Company Limited shall not be liable to make payment of the amount of compensation and the application filed by the claimants as against the appellant Insurance Company shall stand dismissed.

No costs.

