(2011) 03 MP CK 0079

In the Madhya Pradesh High Court

Case No : M.A. No''s. 2910, 2911, 2914, 2916, 2917 and 2956 of 2008

United India Insurance Co. Ltd. APPELLANT

Vs

Smt. Punki Bai and Others RESPONDENT

Date of Decision : 15-03-2011

Acts Referred:
Motor Vehicles Act, 1988 — Section 147, 149(2), 173, 192(2)

Citation : (2012) 1 TAC 788

Hon'ble Judges : P.K Jaiswal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

P.K. Jaiswal, J.—All these appeals arise out of accident dated 4th August, 2006 and, therefore they were heard analogously and are being decided by this common order. Miscellaneous Appeals No. 2910/08, 2911/08, 2914/08, 2917/08 and 2916/08, except Miscellaneous Appeal No. 2956/08 have been filed by the insurer u/s 173 of the Motor Vehicles Act, 1988 (in short ''the Act''). The Insurance Company has challenged the common award dated 18th July, 2008, passed by the Additional Member, Motor Accident Claims Tribunal, Jhabua, in claim case No. 125/08, whereby the Tribunal has fastened the liability of payment of compensation on the insurer alongwith owner and driver of the offending vehicle, solely on the ground that Shankar Singh (PW-3) who lodged the first information report before the investigating agency, had stated that all the claimants where travelling in a jeep bearing registration No. MP-11/B-3989, whereas he in his Court statement has deposed that he was not travelling as a fare paid passenger and in the first information report lodged by him he has not stated that the deceased and other passengers were travelling as fare paid passengers and any fare was paid to the driver of the vehicle. The Tribunal, after appreciating the evidence on record, came to the conclusion that they were third party and as per Insurance policy (Ext. D/5) extra premium of ` 700/- was paid and risk of the deceased and other persons, who were travelling in the private vehicle was covered and no further premium is required and held that the Insurance Company is liable to pay compensation to the third party.

2. It is not disputed before this Court that the accident had occurred, that the claimants had sustained injuries and due to the accident deceased Mangilal died in the said accident.

3. Shri Pradeep Gupta, Learned Counsel for the appellant/insurer has drawn my attention to paragraphs 26 to 33 and 40 to 43 of the award passed by the Tribunal, wherein the Tribunal has led emphasis on the factum that there was discrepancy in the statement made by AW-3 in the Court and the FIR being initial report should be given credence. Being of this view the Tribunal had arrived at the conclusion that the deceased and other claimants were not travelling as passenger in the jeep and, hence, they were covered by the insurance policy.

4. It has been submitted by Shri G.K. Neema and Shri Ajay Jain, Learned Counsel for the claimants that the Tribunal has not erred by placing reliance on the FIR as well as the statement of AW-3. As per statement of AW-3, he has very categorically stated that the deceased and other persons were not travelling as fare paid passengers nor they paid any fare to the driver of the vehicle. In respect of FIR it is submitted that this witness in this statement has deposit that though the FIR was lodged by him, but he never stated that he and other persons were travelling as fare paid passengers. The Tribunal, after appreciating the evidence of AW-3, has rightly fasten the liability of payment of compensation on the insurer and prayers for dismissal of Miscellaneous Appeals No. 2910/08, 2911/08, 2914/209, 2916/08 and 2917/08.

5. I have heard the Learned Counsel for the parties and perused the record of the case. From the evidence on record it is not in dispute that the claimants and the deceased were travelling in a jeep bearing registration No. MP-11/B-3989, which was insured as private vehicle.

6. Learned Counsel appearing on behalf of the claimants contended that the FIR was placed on record for the purpose of proving the accident and not for fixing the liability on the part of the driver involved therein. In Narbada Devi Gupta Vs. Birendra Kumar Jaiswal and Another, , the Apex Court held that contents of a document are not automatically proved only because the same is marked as an exhibit. However, the factum of accident could also be proved from the FIR. In the case of Oriental Insurance Company limited v. Premlata Shukla & Others, 2007 A.C.J. 1928 : 2007 (3) T.A.C. 11 (S.C.), the Apex Court held that once a part of the contents of the documents is admitted in evidence the party bringing the same on record cannot be permitted to turn round and contended that the other contents contained in the rest part thereof had not been proved. In the case in hand both the parties have relied thereupon. It was marked as an exhibit (P-1) as both the parties intended to reply upon it. The Apex Court has further held that a party objecting to the admissibility of a document must raise its objection at the appropriate time. If the objection is not raised and the document

is allowed to be marked and that too at the instance of a party which has proved the same and where for consent of the other party has been obtained, the former in our opinion cannot be permitted to turn round and raise a contention that the contents of the documents had not been proved and, thus, should not be relied upon.

7. Shankar Singh (PW-3) though in his statement has admitted that the FIR was lodged by him, but he disputed the fact that he and other persons were travelling as fare paid passengers and any fare was paid by them, but when I consider the FIR, which was the immediate document there was no doubt with respect to correctness of the facts mentioned therein that the claimants and other persons were being carried out at the time of accident in the jeep and if that being so, the finding recorded by the learned Tribunal is not based on proper assessment of the evidence.

8. In the case of Bhav Singh Vs. Smt. Savirani and Others, Hariram was a labour working for the owner of the tractor-trolley while travelling in the tractor-trolley met with an accident and died in accident. Mere fact that a passenger is a third party would not fasten liability on the insurer unless such liability arises u/s 147 or under terms and conditions of the insurance policy.

9. Learned Counsel for the claimants placed reliance on the Division Bench decision of this Court in the case of Ramnath Vs. Prasanna Kumar Jain and Others, , Nemi Chand and Another Vs. Pradeep Kumar and Others, Bapu and Others Vs. Karan Singh and Another, , Full Bench decision of M.P. High Court in the case of Jugal Kishore and Another Vs. Ramlesh Devi and Others, and judgment of Himachal Pradesh High Court in the case of Oriental Insurance Company Vs. Darshna Kalia and Others, and submitted that there is no evidence on record to provide that the deceased and other persons were travelling as gratuitous passengers on hier or reward. The Insurance Company has failed to prove the violation of the terms and conditions of the policy by the insured. Under the policy the occupants are covered under third party risk, therefore, the Insurance Company is liable because the risk of the occupant is covered and a premium of ` 700/- was paid for that. Here, in the present case the claimants in their statement very specifically stated that since they were known to the owner and driver of the vehicle no fare was charged from them.

10. In view of the law laid down by the Apex Court in the case of Premlata Shukla & Others (supra) and Full Bench decision of this Court in the case of Bhav Singh (supra) this Court is of the view that the facts of the FIR are admissible in evidence and if is clearly established that the persons were travelling in the jeep as fare paid passengers and the vehicle was used for commercial purpose, therefore, the Tribunal has erred in fastening the liability of payment of compensation on the Insurance Company.

11. The Full Bench of the M.P. High Court in case of Jugal Kishore v. Ramlesh Devi, (supra) has held that insurer and but the insurer and insured are bound by

the conditions enumerated in the policy and the insurer is not liable to the insured if there is violation of any policy conditions. But the insurer who is made statutorily liable to pay compensation to third parties on account of the Certificate of Insurance issued shall be entitled to recover from the insured the amount paid to the third party, in any breach of policy conditions that if the vehicle is used for the purpose of other than for which it is insured other than the condition mentioned in Section 149 (2) of the Motor Vehicles Act, the Insurance Company is liable to indemnify the victim and will be entitled to recover the amount from the insured pointing out the breach of the conditions of policy.

12. Applying the above principle laid down by the Full Bench in the case of Jugal Kishore (supra), Miscellaneous Appeals No. 2910/08, 2911/08, 2914/08, 2916/08 and 2917/08 are liable to be allowed in part and the impugned award is partly set aside by directing the Insurance Company to pay the amount of compensation to the claimants and recover the same from the insured pointing out the breach of the condition of policy by filing execution proceedings before the Claims Tribunal.

13. In Miscellaneous Appeals No. 2910/08 (by filing cross objection) and Miscellaneous Appeal No. 2956/08 the claimants are praying for enhancement of compensation on the ground that at the time of accident deceased Pangla alias Pagliya was working as mason at Gujarat and as per Ext. P/1 he was also having agricultural land and his total income was ` 6,000/- to 7,000/- per month. Learned Tribunal committed an error in assessing his income @ ` 15,000/- per annum. It is further submitted that the claimants are widow and five minor children of deceased Pangla and in view of the law laid down by the Apex Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , wherein the Apex Court has opined that where the number of dependent family members is 4 to 6, the deduction towards personal and living expenses of the deceased, should be l/5th. With the above submission, Learned Counsel for the claimants prays for enhancement of compensation.

14. Learned Counsel for the Insurance Company supported the award and submitted that in absence of any consent evidence learned Tribunal has not committed any legal error in assessing the income of the deceased @ ` 15,000/- per annum and prayed for dismissal of the appeal so also the cross objection.

15. As per the statement of the widow of the deceased, the deceased was working as mason at Gujarat. Considering these facts it can be safely held that in the year 2006 the income of the deceased was ` 3,000/- per month i.e., ` 36,000/- per annum. After deducting l/5th towards personal and living expenses of the deceased, the loss of dependency comes to ` 28,800/- per annum. On applying the multiplier of 15, the total loss of dependency of the claimants comes to ` 4,32,000/- . On other hand each of the claimants are entitled to a sum of ` 10,000/- towards loss of the love and affection, ` 2,000/- towards funeral expenses and ` 10,000/- towards loss of consortium. Thus, total compensation comes to ` 5,04,000/- . The enhanced amount shall also carry interest @ 7.5%

per annum from the date of filing of the claim petition till its realization. In the result, the cross objection filed by the claimants in Miscellaneous Appeal No. 2910/08 and Miscellaneous Appeal No. 2958/08, filed by the claimants are partly allowed and consequently the amount of compensation is enhanced from ` 1,59,500/- to ` 5,04,000/- . Miscellaneous Appeals No. 2910/08, 2911/08, 2914/08, 2916/08 and 2917/08, filed by the Insurance Company are also partly allowed to the extent as indicated hereinabove. However, no order as to costs.

Order accordingly.