

(2013) 05 AHC CK 0134
In the Allahabad High Court
Case No : F.A.F.O. No. 644 of 2004

United India Insurance Co. Ltd.

APPELLANT

Vs

Smt. Reeta Srivastava and Others

RESPONDENT

Date of Decision : 29-05-2013

Acts Referred:

Citation : (2013) 4 AWC 4306

Hon'ble Judges : Satish Chandra, J;Rajiv Sharma, J

Bench : Division Bench

Advocate : T.J.S. Makkar, for the Appellant; Vimal Shukla and Prem Singh, for the Respondent

Judgement

Satish Chandra, J.—The present appeal has been filed by the appellant-United India Insurance Company Ltd., u/s 173 of the Motor Vehicles Act, 1988, against the judgment and award dated 17.8.2004 passed by the Motor Accident Claims Tribunal, Balrampur in M.A.C.P. No. 33 of 2001. The brief facts of the case are that on 7.11.1998, the deceased Sri Krishna Kant Srivastava was travelling in a Mahindra Jeep No. U.P. 45/2434 from Balrampur to Gonda and at the time of incident it was used as a good carrier vehicle. When the Jeep reached near sugar factory, at the bridge on Saryu Canal, from the opposite direction, a cyclist was coming. To save the cycle-rider, the driver of the Jeep took a sharp turn which resulted the overturn of the Jeep and fallen down in the water. The deceased died on the spot. So, the claimants-respondents have filed the claim petition before the Tribunal, who vide impugned award has awarded a total compensation of Rs. 10,46,000 alongwith interest @ 6% against the insurance company. Being aggrieved, the appellant-insurance company has preferred this appeal.

2. With this background, Sri T.J.S. Makkar, learned counsel for the appellant-insurance company has accepted the identity of deceased and the event of the accident. He also accepts that on the date of accident, the Jeep was registered with the appellant-insurance company and the driver of the Jeep was holding a valid driving licence.

3. The submissions of the learned counsel for the appellant is that the vehicle crossed the Sugar Factory, Balrampur and nearing the bridge on Saryu Canal, a cyclist suddenly appeared due to which the driver of the Jeep lost the control and the Jeep fell in the pond from the road. Due to grievous injuries, the deceased Sri Krishna Kant Srivastava died on the spot. The deceased was aged about 45 years. At the time of his death, the deceased was working as a lecturer in Electrical Engineering Department, Government Polytechnic College. His monthly salary was Rs. 9,984 per month. So, the deceased was neither the owner of the goods nor he was labourer.

4. Learned counsel also submits that the deceased was travelling in the Jeep as a passenger after paying the fare. As per the terms and conditions of the insurance policy, the passengers were not allowed to travel in the Jeep. The vehicle was used in contravention of condition mentioned in the policy without a valid route permit. The main contention of the learned counsel for the appellant is that the vehicle was registered as delivery van and not as passenger carrying vehicle. Even the vehicle was insured as such, it has been specifically mentioned in the insurance policy under the heading "Limitation as to use" as its Clause (3) which reads as under:

The policy does not cover use for carrying passenger in the vehicle except employees (other than driver) not exceeding six in number coming under purview of the Workman's Compensation Act, 1923.

5. Learned counsel further submits that as per the statement of eye-witness P.W. 2, there was 10-12 passengers in the said Jeep. The owner of the vehicle has accepted that vehicle was used for carrying the passengers after charging the fare. So, he submits that the insurance company is not liable to pay the compensation. The same can be recovered from the owner of the vehicle.

6. Learned counsel for the appellant further submits that even the gracious passengers are not allowed in the goods vehicle as per the ratio laid down in the case of National Insurance Co. Ltd. Vs. Baljit Kaur and Others, , wherein the Hon''ble Apex Court has observed in Paras 19 and 20 as under:

19.... The premium in view of the 1994 amendment would only cover a third party as also the owner of the goods or his authorised representative and not any passenger carried in a goods vehicle whether for hire or reward or otherwise.

20.... Although the owner of the goods or his authorized representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the Legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor was any premium paid to the extent of the benefit of insurance to such category of people.

Similar views were expressed in the case of National Insurance Co. Ltd. Vs. Bommithi Subbhayamma and Others, .

7. On the other hand, Sri Vimal Shukla, learned counsel for the claimants-respondents justified the impugned award. None appeared on behalf of the owner of the vehicle inspite of sufficient service.

8. After hearing both the parties and on perusal of the record, it appears that the deceased was travelling in the Jeep which was insured with the appellant-insurance company. On the date of accident, the insurance policy was alive. The driver was having a valid driving licence. F.I.R. was lodged immediately after the accident. The deceased died on the spot. There was a negligence on the part of the driver, who took sharp turn to save the cyclist. For the purpose of quantum age, income was taken into consideration. The multiplier was rightly applied. So, the quantum is not in disputed. The only point for determination is whether the deceased was travelling in the Jeep as per the terms and conditions of the insurance policy or not?

9. From the policy available in the record of the lower court. Section II-Liability to Third Parties is reproduced as under:

Section II--Liability to Third Parties

1. Subject to the Limits of Liability as laid in the schedule hereto the Company will indemnify the insured against all sums including claimant's costs and expenses which the Insured shall become legally liable to pay in respect of:

(i) death of or bodily injury to any person caused by or arising out of the use (including the loading and/or unloading) of the Motor Vehicle.

(ii) damage to property caused by the use (including the loading and/or unloading) of the Motor Vehicles.

D.W. 1 Sri Dhruv Narain Pandey (driver) in his statement submitted before the lower court that it is wrong to say that 10-12 passengers were allowed to sit after taking the fare. Further, the persons were not labourer. D.W. 2. Sri Brijendra Pratap Singh, the owner of the vehicle in his statement submitted that the vehicle was registered and insured for carrying the goods and passengers. To this effect, the passenger tax was deposited and the vehicle was allowed to carry the passengers as well as the goods. He admits that the vehicle was plying for carrying the passengers after charging the fare.

10. By considering the totality of the facts and circumstances of the case, it appears that the deceased Sri Krishna Kant Srivastava was neither the owner of the goods nor he was labourer. In fact, he was going to attend his duties as he missed the train/bus on that very day. So, he was travelling in the Jeep alongwith other passengers who have paid the fare. In the absence of any proof pertaining to the payment of fare, the deceased can be treated as gratuitous passenger.

11. In the instant case, the owner of the vehicle has paid the passenger tax. But fact remains that for the purpose of compensation, the policy issued by the

insurance company is relevant. In the policy, there is no permission to allow the passengers in the vehicle. The deceased was a teacher in the Government Polytechnic Institution. So, he cannot be labourer. He was going to attend his duties. So, he was not the owner of the goods. In these circumstances, his status is only the passenger in the vehicle. In the absence of proof pertaining to the payment of fare, he can be treated as a gratuitous passenger.

12. It may be mentioned that the Hon''ble Supreme Court in the case of National Insurance Co. Ltd. Vs. Baljit Kaur and Others, , has decided the question whether an insurance policy in respect of a goods vehicle would also cover gratuitous passengers, in view of the legislative amendment in 1994 to Section 147 of the Motor Vehicles Act, 1988. The relevant discussion may be sum up by mentioning that it is therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to persons other than the owner of the goods or his authorized representative remains the same. Although the owner of the goods or his authorized representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the Legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor any premium was paid to the extent of the benefit of insurance to such category of people.

13. The upshot of the aforementioned discussions is that in place of the insurer, the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect not in terms of the decisions of the Hon''ble Supreme Court in the New India Assurance Company Vs. Shri Satpal Singh and Others, , as the said decision has been overruled only in New India Assurance Co. Ltd. Vs. Asha Rani and Others, .

14. We, therefore, are of the opinion that the interest of justice will be served if the appellant herein is directed to satisfy the awarded amount in favour of the claimant, if not already satisfied, which can be recovered from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit or it may initiate a proceeding before the executing court as the dispute is between the insurer and the owner and having regard to the scope and purport of Section 168 of the Motor Vehicles Act, 1988 whereof Tribunal is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as the same can be resolved by the Tribunal in such a proceeding. For the aforementioned reasons, the appeal is partly allowed to the aforementioned extent and subject to the directions aforementioned. The impugned award is modified accordingly. The registry is directed to transmit the amount, if any, deposited alongwith the lower

court record to the concerned Tribunal, who will proceed in terms mentioned above.

No cost.