
(2008) 06 MP CK 0054
In the Madhya Pradesh High Court

United India Insurance Co. Ltd.

APPELLANT

Vs

Sunita and Others

RESPONDENT

Date of Decision : 17-06-2008

Acts Referred:

Motor Vehicles Act, 1988 — Section 147

Citation : (2010) ACJ 111

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.K. Mody, J.—This order shall also govern the disposal of M.A. Nos. 3374, 3375, 3378, 3379 and 3380 of 2007 as all the appeals are arising out of one award dated 31.7.2007 passed by First M.A.C.T., Dewas in Claim Case Nos. 115, 112, 114, 111 and 110 of 2007 and also arising out of one accident.

2. The short facts of the case are that in a motor accident which took place on 26.1.1998, Omprakash Choudhary, Dilip, Kailash s/o Baburao and Kailash s/o Shivnarayan died and Kamal and Mahesh sustained injuries. The claimants Kamal and Mahesh and legal representatives of the deceased filed the claim petitions. Since the offending vehicle was a truck bearing registration No. MP 13-E 1211, therefore, learned Tribunal passed the award against respondent No. 2 and exonerated the appellant insurance company.

3. Being aggrieved by the direction of exoneration of appellant M.A. Nos. 1047, 1016, 1017, 1035, 1045 and 1055 of 1999 were filed before this Court. Vide order dated 22.11.2005, all the appeals were allowed and impugned award passed by the learned Tribunal dated 7.9.1999, was set aside and the cases were remanded back to the learned Tribunal with a direction to record the evidence and decide the claim cases afresh.

4. After the remand, learned Tribunal recorded the evidence, adduced by the appellant and respondent No. 2 and re-decide the claim applications, vide award

dated 31.8.2007, whereby the learned Tribunal held that since extra premium of Rs. 150 was charged by the appellant, therefore, appellant insurance company is liable for payment of compensation to the extent of three persons, who have died in the motor accident and so far as rest of the three claim petitions are concerned, appellant insurance company shall be liable for payment of compensation and shall have a right to recover from respondent No. 2.

5. Being aggrieved by the award whereby the appellant insurance company has been held liable for payment of compensation in three cases and rest of the cases wherein right of recovery has been given to the appellant, these appeals are being filed.

6. The statement showing the amount of award and right of recovery given by the learned Tribunal is mentioned herein below:

----- M.A. No.						
Claim	Nature	Victim	Amount	Liability	Case No.	No. of Claim awarded (Rs.)
----- 3372 of						
2007 111 of 2007	Injury	Kamal-3	18,000	Right of recovery given to appellant	3375 of 2007 111 of 2007	Death Omprakash 3,52,000 Right of recovery given to appellant
3375 of 2007 111 of 2007	Injury	Mahesh	10,000	Right of recovery given to appellant	3378 of 2007 112 of 2007	Death Dilip Sengar 4,58,708 Appellant
3379 of 2007 115 of 2007	Death	Kailash	3,95,060	Appellant	3380 of 2007 114 of 2007	Death Kailash s/o 3,77,924 Appellant Baburao

7. Mr. Pradeep Gupta, learned Counsel for appellant submits that learned Tribunal committed error in holding the appellant insurance company liable for payment of compensation. It is submitted that undoubtedly the offending vehicle was a goods vehicle and the injured and deceased persons were travelling in the truck when they were returning from Dev Darshan. It is submitted that either they were fare paying passengers or non-fare paying passengers. Learned Counsel submits that since it was a goods vehicle, therefore, appellant insurance company could not be held liable for payment of compensation. It is submitted that it is true that the appellant insurance company has charged extra premium of Rs. 150 from the insured but in spite of that appellant insurance company is not liable for payment of compensation because IMT 13 does not cover the risk of the deceased and injured as they were the passengers not falling under the category of IMT 13. Learned Counsel placed reliance on a decision of Hon''ble Apex Court in the matter of National Insurance Co. Ltd. Vs. Bommithi Subbhayamma and Others, , wherein in a goods vehicle, death or injury of a gratuitous passenger in the truck, the Hon''ble Apex Court held that insurance company is not liable and the claimants are entitled to recover the awarded compensation from the owner of the vehicle.

8. Mr. A.S. Garg, the learned senior counsel for respondent No. 1 submits that the learned Tribunal has rightly held the insurance company liable for payment of

compensation as extra premium was charged by appellant insurance company and after remand of the case appellant insurance company has examined one Ashok Kumar Jain who is Asstt. Manager of the appellant insurance company. It is submitted that this witness himself has admitted in his statement that extra premium of Rs. 150 was charged and that was for covering the risk of three passengers. It was further admitted by the witness that as per tariff the risk can be covered upon payment of Rs. 50 per passenger. It is submitted that learned Tribunal committed error in giving right of recovery to the appellant insurance company in three cases, because no number of passengers has been mentioned in the policy, Exh. D4. The learned Counsel submits that the injured and deceased were the third party to the accident. For this contention reliance is placed on a decision of Full Bench of this Court in the matter of Bhav Singh Vs. Smt. Savirani and Others, , wherein Hon"ble Full Bench of this Court has elaborately considered the words "third party", which reads as under:

(5) ...the expression "third party" would mean a party other than the contracting parties to the insurance policy and would include everyone, be it a person travelling in another vehicle, one walking on the road or a passenger in the vehicle itself which is the subject-matter of insurance policy...insured who is a party to the insurance is not a third party for the purpose of Chapter XI of the Act, particularly Section 147 thereof. Thus, any person other than the insurer and the insured who are parties to the insurance policy is a "third party". The insurer, however, would not be liable for any bodily injury or death of a third party in an accident unless the liability is fastened on the insurer under the provisions of Section 147 of the Act or under the terms and conditions of the policy of insurance. Hence, the mere fact that a passenger is a third party would not fasten liability on the insurer unless such liability arises u/s 147 of the Act or under the terms and conditions of the insurance policy.

(8) Similarly, an employee is a third party inasmuch as he is not a party to the insurance policy. But merely because an employee is a third party, the insurance company would not be liable to compensate in case such employee suffers bodily injury or dies in an accident in which the motor vehicle is involved unless Section 147 of the Act fixes such liability on the insured or unless the terms and conditions of the contract of insurance fixes liability on the insurer...

(12) ...the liability of the insurer to indemnify the insured in respect of death or bodily injury suffered by a passenger or an employee would be covered by the provisions of Section 147 of the Act or the terms and conditions of the insurance policy...

9. Learned Counsel submits that it is true that the offending vehicle was a goods vehicle and if only the Act Policy would have been issued, the appellant insurance company was not liable for payment of compensation but since extra premium was charged, therefore, it was not only the statutory liability but it was contractual liability, which was taken by the appellant, therefore, learned Tribunal has rightly held the appellant insurance company liable for payment of

compensation.

10. Learned Counsel for respondent No. 1 further submits that from the statement of Ashok Kumar Jain it is evident that there is ambiguity regarding the number of persons for which liability was taken by the appellant insurance company. It is submitted that this witness has admitted in his statement that number of passengers, which were covered, has not been specifically mentioned in the policy, similarly it is also not mentioned in the policy that IMT 13 is applicable. It is submitted that in case if there is a ambiguity in the policy, then it should be interpreted in such a manner which shall be beneficial to the victim. Learned Counsel placed reliance on a decision in the matter of United India Insurance Co. Ltd. v. Pushpalaya Printers 2004 CCJ 499 (SC), wherein the Hon"ble Apex Court has observed as under:

It is also settled position of law that if there is any ambiguity or a term is capable of two possible interpretations one beneficial to the insured should be accepted consistent with the purpose for which the policy is taken namely, to cover the risk on the happening of certain event. Although there is no ambiguity in the expression "impact" even otherwise applying the rule of contra proferentem, the use of the word "impact" in clause 5 in the instant policy must be construed against the appellant insurance company. Where the words of a document are ambiguous, they shall be construed against the party who prepared the document. This rule applies to contracts of insurance and clause 5 of the insurance policy in the present case should be construed against the insurer.

11. Learned Counsel further submits that there is nothing on record to show that the copy of IMT 13 is the part of the policy, therefore, the liability of the appellant insurance company is unlimited. For this contention, reliance is placed on a decision of Hon"ble Apex Court in the matter of New India Assurance Co. Ltd. Vs. Kiran Singh and Others, , wherein the insurance company filed true copy of policy with IMT 13 having endorsement to the effect that liability of insurance company was limited, it was observed that insurance company led no evidence to prove that policy document filed with written statement was genuine and same was issued to the insured. Both the courts below relied upon carbon copy of policy which was handed over to the bank at the time of insurance of vehicle and produced by Bank Manager, who proved carbon copy of policy and there was no endorsement of IMT 13, the Hon"ble Apex Court held that the courts below were justified in concluding that the liability of insurance company is unlimited.

12. On the strength of aforesaid decisions, learned Counsel submits that learned Tribunal has rightly held the appellant insurance company liable for payment of compensation.

13. Mr. R.D. Bapat, learned Counsel for the claimants in other appeals submits that Ashok Kumar Jain, who was examined on behalf of the insurance company was not the person who issued the policy. It is submitted that from the policy itself it is evident that the proposal form was submitted by insured and the policy

was issued. It is submitted that proposal form was not filed by the appellant insurance company before the learned Tribunal. It is submitted that apart from this it has been admitted by the said witness that the policy was issued by one Sudarshan Garge and the proposal form was submitted by Pramod Jadhav. It is submitted that it is also admitted by Ashok Kumar Jain that both of them are in the employment of appellant insurance company. It is submitted that both of them were not examined by the insurance company. It is submitted that in the facts and circumstances of the case, learned Tribunal committed error in giving right of recovery to the appellant insurance company.

14. Mr. Sandeep Joshi, learned Counsel for the claimants submits that Exh. D5 is the tariff and in the tariff itself it is mentioned that "private and confidential", this is for the use of insurer only and is not for circulation or sale and publication. It is submitted that since injured was having no excess to the tariff, therefore, it is only the policy which can be looked into for the purpose of fixing the liability of the insured and appellant insurance company. It is submitted that it is only mentioned that a sum of Rs. 150 was charged by the appellant insurance company but no number of passengers has been mentioned, therefore, appellant is liable for payment of compensation in all the claim cases filed by legal representatives of deceased and injured.

15. Mr. G.K. Neema, learned Counsel for respondent No. 2 submits that learned Tribunal committed error in giving right of recovery to the appellant in three cases. It is submitted that in the policy, Exh. D4, it is specifically mentioned that which are the conditions that are applicable. It is submitted that in the policy it is mentioned that condition Nos. 22, 24, 17, 70 and 57 are applicable but it is not mentioned that IMT 13 is also applicable. It is submitted that Ashok Kumar Jain has specifically admitted in his statement that mistakenly it has not been mentioned in the policy that IMT 13 is applicable.

16. Mr. Pradeep Gupta, learned Counsel for the appellant submits that no efforts were made by the claimants or the owner before the learned Tribunal to have a direction from the learned Tribunal for calling the proposal form. It is submitted that in the facts and circumstances of the case no adverse inference can be drawn against the appellant.

17. From perusal of the record it is evident that in Exh. D5 it is nowhere mentioned that IMT 13 includes with the policy. In the policy it is mentioned that Rs. 150 has been charged as extra premium by the insurance company, for what purpose this amount was charged, was required to be explained by the appellant. It is true that Ashok Kumar Jain tried to explain that Rs. 150 is charged for covering the risk of three passengers only, but number of persons could not be mentioned in the policy. The person who has issued the policy has not been examined and the person by whom the proposal form was issued, also not examined. Both the persons are still in the employment of insurance company. The proposal form is also in the custody of the appellant. Since appellant is avoiding liability, therefore, it is the duty of the appellant to submit the proposal

form before the learned Tribunal to explain that as per proposal form appellant is not liable for payment of compensation, but that has also not been done. In the facts and circumstances of the case and keeping in view the law laid down by the Hon"ble Apex Court in the matter of Pushpalaya Printers, 2004 CCJ 499 (SC), the interpretation has to be made by this Court, which is more beneficial to the claimant. It will not be out of place to mention that in the tariff itself it is mentioned that it is confidential document, therefore, it is not available to the insured and on that basis Exh. D5 it cannot be held that the appellant insurance company is liable only for the limited number of person.

18. In view of this no illegality has been committed by learned Tribunal in holding the appellant insurance company liable for payment of compensation in three cases and giving right of recovery in another three cases. In view of this appeal filed by the appellant and cross-objections filed by the respondent No. 2 stands dismissed.

19. A copy of this order be placed in the record of M.A. Nos. 3374, 3375, 3378, 3379 and 3380 of 2007. No order as to costs.