

(2013) 02 RAJ CK 0133

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No's. 450 of 1998 and 551 of 2002

United India Insurance Company Ltd.

APPELLANT

Vs

Pabu Ram and Others

RESPONDENT

Date of Decision : 19-02-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 147(1), 173

Citation : (2013) 4 RLW 2840 : (2013) 2 WLN 284

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Manoj Bhandari and Mr. Sushil Bishnoi, for the Appellant; Rajesh Panwar, for the Respondent

Judgement

Arun Bhansali, J.—These two appeals have been preferred under Sec. 173 of the Motor Vehicles Act, 1988 ("the Act") feeling aggrieved by the judgment and award dt. 26.02.1998 passed by the learned Motor Accident Claims Tribunal, Sojat ("the Tribunal"). S.B. Civil Misc. Appeal No. 450/1998 has been filed by the Insurance Company questioning its liability to satisfy the award and S.B. Civil Misc. Appeal No. 551/2002 has been filed by the claimant seeking enhancement of the amount awarded by the Tribunal. The facts of the case, in brief, are that the claimant Pabu Ram alongwith his friends was travelling in a Jeep No.RJ-19C-613 from Gujarat to Merta City, when about 2 kms. from Sojat, the Jeep turned turtle. The claimant suffered injuries, which resulted in his permanent disablement.

2. A claim petition was filed by the claimant against the Driver, Owner and Insurance Company claiming a sum of Rs. 5,78,000/- towards compensation. The compensation was claimed under various heads including loss of salary, travelling expenses, expenses for attendant and other expenses. Further sum was claimed towards pain and suffering and permanent disablement.

3. The Insurance Company filed its reply to the claim petition and it was stated that a passenger in the vehicle was not covered under the policy and, therefore,

the claim against the Insurance Company was not maintainable.

4. The Owner and Driver also filed their reply to the claim petition and disputed the amount claimed as compensation. It was also claimed that the liability is that of the Insurance Company.

5. The learned Tribunal framed six issues and came to the conclusion that the respondent No. 1 was driving the Jeep rashly and negligently, which resulted in the accident injuring the claimant. On the issue relating to the liability of the Insurance Company, the Tribunal held that the claimant was travelling in the Jeep for the work of its owner and even if he was a gratuitous passenger, the Insurance Company was liable to make the payment. On the issue relating to the amount of compensation to which the claimant was entitled, the Tribunal came to the conclusion that on account of injury to the back bone of the claimant, he has suffered from "Post Traumatic Paraplegia" and awarded a sum of Rs. 1 lac towards monthly salary of Rs. 1,000/- to his attendant from the interest of the said amount, Rs. 25,000/- towards permanent disablement, Rs. 15,000/- towards loss of salary and Rs. 25,000/- towards physical pain and suffering i.e. a total sum of Rs. 1,65,000/-.

6. It was contended by the learned counsel for the appellant insurance company that it was proved on record by the policy Exhibit-D/1, which was an admitted document that the said policy was "Act only" policy and provided for only one passenger including driver. No additional premium was paid for covering the risk of passengers in the said vehicle and, therefore, the claimant who was admittedly a passenger in the vehicle, the appellant-insurance company was not liable to make any payment of the amount of compensation. Under the "Act only" policy, the risk of a passenger either fare paying or gratuitous is not covered and, therefore, the award impugned to the extent the same holds the Insurance Company liable deserves to be quashed and set aside. He relied on judgment of the Hon"ble Supreme Court in the case of United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and Others, On the appeal seeking enhancement of compensation, it was submitted by the learned counsel for the Insurance Company that an adequate sum has been awarded and, therefore, the said award does not call for any interference.

7. Learned counsel for the claimant submitted that the insurance company cannot get away from its liability and the issue has rightly been decided by the Tribunal. It was submitted that in the memo of appeal, the Insurance Company has taken a plea that it had covered the risk of a passenger besides the driver and, therefore, now it is estopped from claiming otherwise.

8. On the issue of enhancement, it was submitted by the learned counsel for the claimant that wholly inadequate sum has been awarded by the Tribunal, the claimant who was a young man of 37 years has been rendered permanently disabled and requires a constant treatment and cannot move around without the help of attendant. Wholly inadequate sum has been awarded under the head of

pain and suffering and for permanent disablement. It was prayed that just compensation be awarded under the said heads and the award be enhanced adequately.

9. None is present on behalf of the owner and driver despite service.

10. I have considered the rival submissions made at the Bar on both the appeals.

11. A bare look at the policy filed by the Insurance Company admitted by the claimant and owner of the vehicle and marked as Exhibit-D/1 reveals that the same is "Act only" policy. The law in this regard is now well settled by the pronouncement of Hon"ble Supreme Court in the case of United India Insurance Company Limited, Shimla vs. Tilak Singh & Ors. (supra), wherein after considering the entire spectrum of judgments on the issue, the Hon"ble Supreme Court held as under:-

19. The argument that the risk pertaining to the third party would extend to a person other than the parties to the insurance contract was raised in New India Assurance Co. vs. Satpal Singh where after contrasting the language of Section 95(1) of the 1939 Act with the provisions of Section 147(1) of the 1988 Act this Court held : (SCC p. 241, para 11)

11. The result is that under the new Act an insurance policy covering third-party risk is not required to exclude gratuitous passengers in a vehicle, no matter that the vehicle is of any type or class. Hence, the decisions rendered under the old Act vis-a-vis gratuitous passengers are of no avail while considering the liability of the Insurance Company in respect of any accident which occurred or would occur after the new Act came into force.

20. The view expressed in Satpal Singh case however, has been specially overruled in the subsequent judgment of a Bench of three Judges in New India Assurance Co. Ltd. vs. Asha Rani. In that case the discussion arose in connection with carrying passengers in a goods vehicle. This Court after referring to the terms of Section 147 of the 1988 Act, as contrasted with Section 95 of the 1939 Act, held that the judgment in Satpal Singh case had been incorrectly decided and that the insurer will not be liable to pay compensation. In the concurring judgment of Sinha, J. after contrasting the language used in the 1939 Act with that of the 1988 Act, it has been observed {vide SCC p. 235, paras 25 and 27):

25. Section 147 of the 1988 Act, inter alia, prescribes compulsory coverage against the death of or bodily injury to any passenger of "public service vehicle". Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under the Workmen's Compensation Act. It does not speak of any passenger in a "goods carriage".

* * *

27. Furthermore, sub-Clause (i) of Clause (b) of sub-Section (1) of Section 147

speaks of liability which may be incurred by the Owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place, whereas sub-Clause (ii) thereof deals with liability which may be incurred by the Owner of a vehicle against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place.

21. In our view, although the observations made in Asha Rani case were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant Insurance Company that it owed no liability towards the injuries suffered by the deceased Rajinder Singh who was a pillion rider, as the insurance policy was a statutory policy, and hence it did not cover the risk of death of or bodily injury to a gratuitous passenger.

12. From the above, it is clear that the finding recorded by the learned Tribunal on issue No. 3 is against the law laid down by Hon"ble Supreme Court and the same, therefore, is reversed and it is held that the appellant-insurance company is not liable for payment of compensation awarded under the award dt. 26.02.1998. The stay application in this appeal was dismissed on 12.09.2001 and, therefore, if the appellant-insurance company has deposited and paid the compensation under the award, it would be entitled to recover the same from the Owner and Driver of the vehicle by way of filing an execution petition before the Tribunal.

13. So far as the contention raised by the learned counsel for the claimant regarding the plea taken by the Insurance Company in their memo of appeal is concerned, it is well settled that there cannot be any estoppel against a document and /or statute. The policy Exhibit-D/1 and the law laid down by the Hon"ble Supreme Court in terms of Section 147 of the Act are very clear and, therefore, whatsoever, has been mentioned in the memo of appeal cannot come in way of the appellant-insurance company seeking redressal and as such the contention cannot be sustained.

14. Coming to the issue of amount of compensation awarded to the claimant, it is evidently clear from the medical and oral evidence on record that on account of the accident the claimant suffered from post traumatic paraplegia, which rendered him permanently disabled. The claimant was a young man of 37 years and had many more fruitful years ahead of him, however, the same was cut short by the accident and the claimant has been rendered a disabled person for life, dependent on others for movement etc. The claimant was in Government service and had, in fact, started going back to the office with the help and support of attendant during the course of the trial of the claim petition and, therefore, was not awarded anything under the head of loss of income. The Tribunal has awarded a sum of Rs. 25,000/- towards pain and suffering. The claimant remained hospitalized for a long period of 247 days and, therefore, the award

under the said head of Rs. 25,000/- is apparently quite meagre and the same is, therefore, enhanced to Rs. 50,000/-.

15. Further even under the head of permanent disablement also without discussing anything, the Tribunal has awarded a sum of Rs. 25,000/- under the said head as well. Looking to the fact and as discussed above that the appellant-claimant was a young man at the time of accident and has been rendered disabled for whole of his life dependent on others, the amount under the said head also is quite meagre and the same also deserves to be enhanced to Rs. 75,000/-.

16. In view of the above, the appellant-claimant would be entitled to Rs. 75,000/- more as compensation from the respondents No. 1 & 2 i.e. driver and owner of the vehicle alongwith interest @ 7 1/2% per annum from the date of filing the claim petition i.e. 13.11.1992. In the result, the appeal filed by the Insurance Company is allowed and the appeal filed by the claimant is partly allowed. The award dt. 26.02.1998 passed by the Motor Accident Claims Tribunal, Sojat in M.A.C.T. Claim Case No. 309/1992 is modified to the extent that the appellant-insurance company would not be liable to make payment of the amount of compensation to the claimant. The claimant would be entitled to a further sum of Rs. 75,000/- alongwith interest 7 1/2% per annum from the date of application from the respondent No. 1 Babu Lal and respondent No. 2 Nand Kishore. The appellant-insurance company, if it has deposited and paid the compensation to the claimant would be entitled to recover the same from the owner and driver by way of filing execution petition before the Tribunal.

No costs.