
(2009) 02 CHH CK 0032
In the Chhattisgarh High Court
Case No : Misc. Appeal (C.) No. 819 of 2008

United India Insurance Company Ltd.

APPELLANT

Vs

Smt. Pramila Devi and Others

RESPONDENT

Date of Decision : 10-02-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 166

Citation : (2009) 2 CGLJ 76

Hon'ble Judges : Dilip Raosaheb Deshmukh, J

Bench : Division Bench

Advocate : H.B. Agrawal and Pankaj Agrawal, for the Appellant; Suresh Verma, and Gautam Khetrapal, for the Respondent

Final Decision : Dismissed

Judgement

D.R. Deshmukh, J.—The Appellant/insurer has assailed the award dated 03.05.2008 passed in Claim Case No. 07/2006 by the Additional Motor Accidents Claims Tribunal, Bilaspur (henceforth "the Tribunal") whereby in a death case liability to pay compensation of Rs. 2,16,000/- has been fastened upon the Appellant/insurer.

2. Admittedly, on 05.07.2002 motor cycle No. C.G.10-B/0264 (henceforth "the motor cycle") owned and driven by the deceased Bisahuram and insured by the Appellant/insurer, met with an accident in which one Arjunktant, a pillion rider on the said motor cycle died. The widow and two minor children of the deceased filed application u/s 166 of the Motor Vehicles Act (hereinafter referred to as "the Act") before the Tribunal on the ground that since the vehicle was insured, liability to pay compensation would rest squarely on the insurer. The Appellant/insurer pleaded inter alia that risk of the pillion rider not having been covered by the Appellant/insurer under the policy, it was not liable to pay any compensation. It was further pleaded that driver of the motorcycle i.e. Bisahuram Sahu did not possess a valid driving licence on the date of accident.

3. The Tribunal fastened the liability to pay compensation on the insurer since no evidence was led by the Appellant/insurer to prove that the motor cycle was driven by Bisahuram in contravention of the conditions of the policy of insurance. Since admittedly on the date of accident the motor cycle was insured, it fastened the liability to pay compensation on the Appellant/insurer.

4. The sole ground urged by Shri H.B. Agrawal, learned Senior Counsel in this appeal is that the policy of insurance of the motor cycle was an "Act only policy" under which premium was received only for covering third party risk. Placing reliance on *Oriental Insurance Co. Ltd. v. Sudhakaran K.V. and Ors.* 2008 (3) TAC 1 (SC), it was argued that the insurance company was not under any statutory liability to cover the risk of a pillion rider on the motorcycle under an "Act only policy" since the pillion rider on a two wheeler could not be treated as a third party. Reliance was also placed on *General Manager, United India Insurance Co. Ltd. v. M. Laxmi and Ors.* 2009 (1) TAC 6 (SC).

5. Shri Suresh Verma, learned Counsel for the Respondents/claimants No. 1 to 3 argued in support of the impugned award.

6. Shri Gautam Khetrapal, learned Counsel for Respondent No. 4/owner would submit that the policy in question was not an "Act only policy" but a comprehensive package policy. It was urged that while covering the risk of third party, risk of the occupants carried in the motorcycle was also covered by the insurer. Learned Counsel referred to Section II of the policy relating to Liability to Third Parties whereunder it was mentioned as under:

1. Subject to the limits of liability as laid down in the Schedule hereto the Company will indemnify the insured in the event of an accident caused by or arising out of the use of the insured vehicle against all sums which the insured shall become legally liable to pay in respect of

(i) death of or bodily injury to any person including occupants carried in the insured vehicle (Provided such occupants are not carried for hire or reward) (emphasis supplied by me) but except so far as it is necessary to meet the requirements of Motor Vehicles Act, the Company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured.

Laying great emphasis on the words "including occupants carried in the insured vehicle" it was argued that the policy of insurance was a comprehensive policy which covered the risk of a pillion rider also who was an occupant carried in the insured vehicle. It was further argued that liability of the insurance company was thus a contractual liability, and therefore, the Tribunal was justified in fastening liability to pay compensation on the Appellant/insurer. Reliance was placed on *General Manager, United India Insurance Co. Ltd. v. M. Laxmi and Ors.*, while arguing that the case law cited by the Appellant/insurer would not apply to the present case since the policy of insurance in the present case was not an Act only policy. Reliance was also placed on *National Insurance Company Limited v.*

Brijlata and Ors. 2008 (2) TAC 888 (MP).

7. Having considered the rival submissions, I have perused the record. The learned Tribunal has not applied its mind to the ground taken by the insurer that risk of the pillion rider was not covered by the Appellant/insurer under the policy. It has fastened the liability to pay compensation on the insurance company merely on the ground that motor cycle was insured on the date of accident. u/s 147 of the Motor Vehicles Act, a contract of insurance must be taken by the owner of the vehicle in regard to reimbursement of the claim of a third party. It is imperative in nature. However, an owner of a vehicle may intend to cover himself and an occupant carried in the vehicle from other risks. In such a situation, it is permissible for him to enter into a contract of insurance in which event the insurer would be bound to reimburse the owner of the vehicle strictly in terms thereof. In *Oriental Insurance Co. Ltd. v. Sudhakaran K.V. and Ors.* (supra), it was noted that the contract of insurance was entered into solely for the purpose of covering third party risk and not the risk of the owner or a pillion rider. Thus, the insurance in that case was purely under an "Act only policy". It is, therefore, necessary to first understand the terms of contract of insurance accepted by the Appellant/insurer while issuing the policy of insurance. The policy in question is a two wheeler package policy under which, besides covering basic third party risk, the risk of the owner and driver of the insured vehicle was also covered by accepting premium from the insured. The premium paid under the head "third parties" has to be read and understood in context with the terms and conditions of the policy. In Section II of the policy conditions which deals with the liability of the insurer to third parties, the insurer had accepted liability for death of or bodily injury to any person including occupants carried in the vehicle. It means that under the contract entered into between the parties, it was understood that the words "third parties" would also include "occupants who were carried in the insured vehicle." It was for the insurer to lead evidence to show that at the time of entering into the contract of insurance it was not intended to cover the risk of the occupants carried in the motorcycle. That being so, the policy in question covers not only the basic third party risks, the risk of the owner/driver but also the risk of the occupants carried in the vehicle, and must therefore be construed as a comprehensive policy of insurance and not an "Act only policy". Even under a comprehensive insurance policy, the insurer would be bound by the terms of the contract. No evidence was led by the insurer before the Tribunal to prove that although Section II of the policy dealing with the liability to third parties included occupants carried in the vehicle yet premium was not accepted by the insurer to cover the risk of the occupant carried in the insured motorcycle. The burden of proving this was squarely on the insurer. The policy condition clearly envisages under the heading "Liability to Third Parties" that the insurer shall become legally liable in respect of death of or bodily injury to any person including the occupant carried in the vehicle.

8. In *General Manager, United India Insurance Co. Ltd. v. M. Laxmi and Ors.*, a circular dated 2nd June, 1986 issued by the Tariff Advisory Committee was

referred to, under which, it was stated that the standard form for motorcycle should cover liability to pillion passengers in case of comprehensive policy. However, since the policy of insurance was an Act only policy, it was held that there was no statutory liability on the owner of a vehicle to get his vehicle insured to cover the risk of any passenger travelling in the said vehicle. On this premise, it was held that the insurer was not liable. In the present case, the situation is quite different. Under the policy condition, the risk of any person including the occupant carried in the insured vehicle was covered under the clause "Liability to Third Parties" subject to the rider that such occupants were not carried for hire or reward. In the present case, it is not disputed that the deceased was not being carried in the motorcycle for hire or reward at the time of accident. It was, therefore, for the insurer to prove that it had not accepted premium to cover the risk of the occupants who were carried in the vehicle.

9. In this view of the matter and in the peculiar fact situation of the case, I am of the considered opinion that u/s II of the policy conditions issued by the insurance company dealing with liability to third parties the risk of the occupants carried in the motorcycle having been squarely covered and no evidence having been led by the insurer to explain the terms of the contract of the insurance and the premium received under the head "Third Parties" and the policy being a comprehensive policy, the Tribunal was justified in fastening the liability to pay compensation on the insurance company.

10. In the result, there is no merit in this appeal which is accordingly dismissed.