National Insurance Company Ltd Vs Leelamma, W/O. Augustine

MACA NO. 1502 Of 2008

Court: High Court Of Kerala

Date of Decision: Feb. 18, 2022

Acts Referred:

Motor Vehicles Act,1988 â€" Section 147, 147(b), 147(1)(b)(I), 147(2), 163A, 166#India Motor Tariff Rules, 2002 â€" Rule 64, 70, 71

Hon'ble Judges: M.R.Anitha, J

Bench: Single Bench

Advocate: Raji T.Bhaskar, K.J.Josemon, Mathew Skaria, C.M.Tomy

Final Decision: Partly Allowed

Judgement

M.R.Anitha, J

1. This appeal has been directed against the award passed by the Motor Accidents Claims Tribunal, Thodupuzha in O.P.(M.V.)No.695/2004 by the

insurer/2nd respondent. The claim petition was filed by the respondents 1 & 2 for compensation under Section 163A of the Motor Vehicles Act,1988

(in short, the Act) out of the death of one Ann Mary Augustine @ Namitha. The deceased was travelling on the pillion of motorcycle bearing Reg.

No.KL 7A/7482 ridden by the first respondent, the father of the deceased. The accident occurred on the application of brake by the rider to avoid the

collision with a lorry proceeding from the opposite direction, but it skidded and the pillion rider was thrown to the road and thereby she sustained fatal

injuries and taken to Holy Family Hospital, Muthalakodam and further she was referred to Medical Mission Hospital, Kolencherry and thereafter to

Medical Trust Hospital, Ernakulam and after two days she succumbed to the injuries. It is alleged that the accident happened due to the rash and

negligent driving of the motorcycle by the first respondent and the appellant/second respondent is the insurer of the motorcycle who is alleged to be liable to make good the loss sustained to the claimants, the legal heirs of the deceased. A total compensation of Rs.3,29,000/- was claimed.

2. First respondent remained ex parte before the Tribunal. Second respondent filed written statement admitting the insurance coverage with respect to

the motorcycle. But it is contended that the policy was only an Act policy and as per the contract of insurance the risk of the pillion rider is not

covered and that the compensation claimed is excessive and without any basis. RW1 examined from the side of the appellant/respondent. Exts.A1 to

A11 were marked from the side of the claimants. Ext.B1 and B2 and Ext.X1 were also marked. Thereafter on evaluating the evidence adduced from

either side the Tribunal allowed the claim petition and awarded a sum of Rs.2,11,500/- with interest at the rate of 8% per annum from 27.10.2004 i.e.

the date of filing the claim petition and the 3rd respondent/1st respondent and appellant/2nd respondent were held jointly and severally liable.

3. The contention of the insurer Ã¢â,¬" appellant is that Ext.B1 policy covers only personal accident coverage of two persons for Rs.10,500/- each.

Tribunal found that as per Ext.B1 additional premium under Rule 64 of IMT has been collected for coverage of pillion rider and in the case of pillion

rider there is 100% coverage as per Rule 64 of IMT and accordingly the insurer Ã¢â,¬" appellant was held liable.

4. Aggrieved by the finding and direction of the Tribunal making the appellant/2nd respondent jointly and severally liable with the third respondent/first

respondent, (hereinafter called as owner of vehicle), the insurer (hereinafter called as appellant), came up in appeal before this Court.

5. Notice was issued to the respondents and respondents appeared through counsel. Lower court records were called for and perused. Both sides

were heard.

6. It is contended by the learned counsel for the appellant that the deceased was pillion rider on the motorcycle ridden by the owner of the vehicle and

the accident happened due to the rash and negligent riding of the motorcycle by the owner of the vehicle. The policy of insurance issued with respect

to the vehicle did not cover the risk of the pillion rider except for Rs.10,500/-. Inspite of the specific contention raised by the appellant in absolute

disregard of settled position of law the Tribunal held the appellant liable to pay the compensation.

7. In this context the learned counsel placed reliance on Oriental Insurance Company Ltd v. Jhuma Saha (Smt) & Ors. [(2007) 9 SCC 26]3. That

appeal was directed against judgment and order of the Gauhati High Court, wherein the appeal preferred by the appellant Ã¢â,¬" Insurance Company

was dismissed. The deceased in that case was the owner of an insured vehicle while he was driving that vehicle, in order to save a goat which was

running across the road, the steering of the vehicle failed and it dashed against a tree on the road side and later he succumbed to the injuries sustained

and a claim petition was filed for compensation under Section 166 of the Motor Vehicles Act, 1988. The Insurance Company raised a contention that as per the Motor Vehicles Act and Rules the owner is not entitled to get any compensation if he drives the vehicle and falls in an accident since the

insurance policy is third party insurance. The Tribunal found that since the vehicle was insured and additional premium for the death of the driver or

conductor has been paid, the liability is covered by the insurance policy. The appeal filed against it before the High Court was dismissed as not

maintainable and the matter was taken up before the Apex Court and the contention raised was that in view of Section 147 of the Act the jurisdiction

of the Tribunal is confined to a third party claim and hence the impugned judgment cannot be sustained. In that decision Dhanraj v. New India

Assurance Co. Ltd & Anr. [(2004) 8 SCC 533] was quoted in paragraph 12, which reads as follows:

8. Thus, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his

authorised representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle Section 147 does not

require an insurance company to assume risk for death or bodily injury to the owner of the vehicle.

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10. In this case, it has not been shown that the policy covered any risk for injury to the owner himself. We are unable to accept the contention that the premium of Rs.

4989 paid under the heading ""Own damage"" is for covering liability towards personal injury. ""Under the heading ""Own damage"", the words ""premium on vehicle and

non-electrical accessories"" appear. It is thus clear that this premium is towards damage to the vehicle and not for injury to the person of the owner. An owner of a

vehicle can only claim provided a personal accident insurance has been taken out. In this case there is not such insurance.

8. In that case finding that no additional premium was paid in respect of the entire risk of the death or bodily injury of the owner of the vehicle under

Section 147(b) of the Act which specifically covers the risk of third party only was taken note of and hence appeal was allowed and the order passed

by the Tribunal making the insurance company liable was set aside.

9. The learned counsel for the appellant further relies on United India Insurance Co. Ltd v. Tilak Singh & Ors [(2006) 4 SCC 404]. In that case, while

dealing with Section 147 of the Act and third party risk it was held that liability of insurer to pay compensation with respect to a gratuitous passenger

carried in a private vehicle, that policy under Section 147 does not cover such a risk. The question arose in that case was whether a statutory

insurance policy under the Act, 1988 intended to cover the risk to life or damage to properties of third parties, would cover the risk of death or injury

of a gratuitous passenger carried in a private vehicle. In that case it has been categorically held that unless there was a specific coverage of the risk pertaining to gratuitous passengers in the policy, the insurer was not liable.

10. In paragraph No.20 of the above decision, paragraphs 25 and 27 of the decision in New India Assurance Co.Ltd v. Asha Rani (2003 (2) SCC

223), have been quoted, which read thus :-

Ã¢â‚¬Å“The view expressed in Satpal Singh case however, has been specifically overruled in the subsequent judgment of a Bench of three Judges in New India

Assurance Co. Ltd v. 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 1939 Act, held that the judgment in Satpal Sing case had been incorrectly decided and that the insurer

will not be liable to pay compensation. In that 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'

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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.Ã¢â‚¬â€‹

11. Hence ultimately the contention of the insurance company that it owed no liability towards the injuries suffered by the gratuitous passengers as the

insurance policy was a statutory policy and hence it did not cover the risk of death of or bodily injury to gratuitous passenger was upheld. Hence the

Award making the insurance company liable was set aside and held that company is not liable to pay compensation awarded to the claimants.

12. The learned counsel also drew my attention to Mini V. v. Gireeshkumar [2016 (4) KLT 219]. In that case also the liability of Insurance company

was limited to the extent to which additional premium was collected with respect to the owner of motorcycle.

13. The learned counsel for the appellant drew my attention to Ext.B1 certified copy of the policy of insurance issued with respect to the offending

vehicle. The learned counsel also highlighted that the basic premium accepted is Rs.77/- and an amount of Rs.15.75 is further collected for P A pass and an amount of Rs.50/- is collected towards third party and it is specifically stated as unlimited and a net premium of Rs.143/-along with service tax

of Rs.7/-, a total amount of Rs.150/- has been collected. So according to the learned counsel for the appellant the policy issued with respect to this

vehicle is only an Act policy and that is borne out from the first page of Ext.B1 itself. The learned counsel for the respondents on the other hand

would contend that there is specific endorsement of IMT endorsement Nos.64, 70 and 71 on the policy which according to him indicates coverage of

persons coming under Rule 64, 70 and 71 of India Motor Tariff Rules and that is the indication of the above in Ext.B1. But RW1 the Administrative

Officer of the appellant Ã¢â‚¬" insurance company was examined from the side of the respondent. He produced Ext.B2, which is the relevant page of the

India Motor Tariff. He would also depose that as per Ext.B1 P.A. Coverage is Rs.10,500/- each for two persons and the premium of Rs.15.75 has

been collected on that account. He would also depose that as per sheet No.26 of Ext.B2 that Ext.B1 has been issued. During cross examination it was

brought out that in Ext.B1 premium was collected based on IMT 70+71 and further that no amount was collected as per IMT 64. IMT 70 as per

Ext.B2 deals with Increase in the Limits of Liability of Property Damage and it is also made clear that it is applicable to Ã¢â‚¬Å"BÃ¢â‚¬ policies only and

limited P.A coverage and IMT 71 states about the Limited P.A. Cover to drivers (other than paid drivers). So the endorsement 70 & 71 in Ext.B1

would only indicate the collection of premium of Rs.15.75 with respect to P.A. Cover of two persons and the coverage is also specified as Rs.10,500/-

. Ext.B1 further makes it clear that it is only an Act only policy and additional premium has been collected with respect to two persons limiting the

liability of the company upto Rs.10,500/- each. So, the deceased, being a pillion rider, as per the settled position of law above discussed, the liability of

the insurer would be limited to Rs.10,500/-.

14. Section 147 (1)(b) of the Act specifically provides that a policy of insurance insures persons or classes of persons specified in the policy to the

extent specified in sub-section (2). Section 147(1) (b)(i) specifically provides that the policy of insurance is against any liability which may be incurred

by insured in respect of the death of or bodily injury to any person including owner of the goods or his authorized representative carried in the motor

vehicle or damage to any property of a third party caused by or arising out of the use of the motor vehicle in a public place. Section 147 (2) of the Act

starts with non-obstante clause and provides that for the purpose of third party insurance related to either death of a person or grievous hurt to a

person, the Central Government shall prescribe a base premium and the liability of an insurer in relation to such premium for an insurance policy under

sub-section (1) in consultation with the Insurance Regulatory and Development Authority.

15. Ext.B1 also would reveal that only for third party liability it is specifically stated as unlimited and P.A cover with respect to two persons is limited

to Rs.10,500/- each. Ext.B1 also make it clear that it is only an Act only policy. So as has been held in Jhuma Saha's case referred above since no

additional premiumÃ, has been paid by the insured for covering the risk of the pillion rider except to the extent of Rs.10,500/- since the accident

happened due to the negligence of the rider of the motorcycle, the owner, the pillion rider will not be entitled to get any amount than has been agreed

as per the contract of insurance. It is to be noted that in Jhuma Saha's case the owner himself was driving the vehicle and due to his negligence the

vehicle dashed against a tree and as a result of which he died. Finding that Section 147(1)(b) covers only third party risk the liability of the insurance

company with respect to the claim of the owner was negatived by the Apex Court. The situation is identical to the case in hand. Hence, the award

passed by the Tribunal making the appellant/2nd respondent jointly and severally liable to the compensation awarded less Rs.10,500/- for which the

appellant is liable, is liable to be set aside.

16. In the result, appeal allowed in part and the liability of the appellant Ã¢â,¬" insurer is limited to the extent of Rs.10,500/- as covered by Ext.B1 and for

the rest of the amount the third respondent Ã¢â,¬" owner cum rider of the motorcycle is held liable. So the award passed by the Tribunal is modified to

the above extent. In all other aspects, the Award passed by the Tribunal is hereby confirmed.