

Ramchandra Yadav, Vs. Mastan Singh and Divisional Manager

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Court : Chhattisgarh

Decided On : Nov-07-2008

Reported in : 2009(1)MPHT27(CG)

Judge : Dhirendra Mishra and; Sunil Kumar Sinha, JJ.

Appellant : Ramchandra Yadav, ;raj Kishore Yadav and ;awdhesh Yadav

Respondent : Mastan Singh and Divisional Manager

Advocate for Def. : Shri. Ashish Surana, Shri. S.K. Mishra

Advocate for Pet/Ap. : Shri. Rakesh Anthoni

Disposition : Appeal dismissed

Judgement :

ORDER

Dhirendra Mishra, J.

1. This is owner's appeal against the award dated 23rd April 1998 passed in claim case No. 74/91 whereby learned Additional Motor Accident Claims Tribunal, Korba allowing the claim petition of respondents No. 1 awarded compensation of Rs. 1,60,000/- in favour of the claimant/respondent and held the owner of the vehicle liable for payment of compensation by exonerating the Insurance Company from its liability to satisfy compensation amount.

2. The appellants are legal representatives of original appellant Ram Deo Yadav, who was registered owner of the Jeep bearing registration No. U.M.B./5253.
3. Briefly stated the case of the claimant before the Claims Tribunal was that on 8-6-1991 he was going with his wife and others in the jeep from Champa to Korba. The jeep was owned by Ram Deo Yadav and driven by Ram Gopal. The driver of the jeep, rashly and negligently driving the jeep, dashed it against a culvert, as a result he sustained grievous injuries. He was admitted in the 100 bedded Hospital, Korba from where he was referred for further treatment to Bhilai Steel Plant Hospital. Ultimately, his left leg was amputated. Before the accident, he was working as a contractor and was earning Rs. 5,000/- per month from that profession. However, because of the disablement he is not able to do his business and he has lost his earning capacity. The vehicle was insured for the relevant period with Non-applicant No. 3. The claimant claimed compensation of Rs. 24,98,000/- under various heads.
4. Respondents No. 1 and 2 in their reply stated that the claimants are acquainted with the appellant as they are their neighbours. They were traveling in the jeep as gratuitous passenger and no fare was charged from them. They denied that the jeep was driven rashly and negligently. It was pleaded that the accident occurred due to mechanical failure of Tie Rod. The claimant sustained simple injuries and his leg was amputated because of his own negligence, as he did not undergo proper treatment. The claimant has made inflated claims, as he is still capable of doing his business. The Insurance Company in its reply denied allegations of the claimant and further contended that claimant was traveling in the vehicle as passenger after paying fare and, therefore, as per condition of the insurance policy, there is breach of policy condition, as private vehicle was used for hire and, therefore, Insurance Company is not liable for payment of any compensation.
5. During trial, claimant examined himself as AW-1, his wife Kuldip Kaur as AW-2, Gurudev Singh as AW-3 whereas, Non- applicant No. 1 Ram Gopal (driver) has been examined as NAW-1. Non-applicant No. 3 did not examine any witness.
6. The Tribunal after careful examination of the evidence led by the respective parties held that the accident occurred due to rash and negligent driving of the

jeep by Non-applicant No. 1; the claimant sustained grievous injuries due to accident resulting in permanent disability; the claimant is entitled for compensation of Rs. 1,60,000/- with interest @ 12% per annum from the date of award. Non-applicant No. 3 is not liable for payment of compensation amount as Non-applicants No. 1 and 2 have failed to prove that the vehicle was insured with Non-applicant No. 3 for the relevant period.

7. Shri Rakesh Anthoni, learned Counsel for the appellants contended that he had submitted original insurance policy during trial. However, original records of the claim case were destroyed due to fire in the record room. The appellant had submitted copy of the original policy, but learned Claims Tribunal refused to accept the same. He has filed copy of the insurance policy along with memo of appeal. From perusal of the insurance policy, it would be evident that vehicle was insured with Non-applicant No. 3 for the relevant period. He further argued that the amount of compensation awarded to the respondent/claimant is highly excessive.

8. Shri Ashish Surana, learned Counsel for respondent No. 1, contended that left leg of the claimant was required to be amputated as a result of the accident. Because of the amputation, the claimant suffered 100% permanent disability and there is total loss of earning capacity. The Tribunal after due consideration of the evidence available on record has rightly assessed compensation which does not call for any interference.

9. Shri Vinay Harit, learned Senior Counsel with Shri S.K. Mishra, Counsel for respondent No. 2, fairly submitted that the vehicle was insured with Non-applicant No. 3 for the relevant period and the finding of the Tribunal in this regard is erroneous. However, he contended that the vehicle in question was insured as a private vehicle. From perusal of the policy filed by the appellant along with memo of appeal, it would be evident that the appellant did not pay any extra premium for covering risk of any gratuitous passenger. The vehicle was used for hire, as the claimant pleaded in the claim petition that he was traveling in the jeep after paying fare.

10. Reliance is placed in the matter of United India Insurance Co. Ltd. Shimla v. Tilak Singh and Ors.

11. We have heard learned Counsel for the parties and have perused the impugned award and evidence available on record.

12. The Tribunal on close scrutiny of the evidence available on record and relying upon evidence of claimant Mastan Singh and other witnesses namely, Kuldip Kaur and Gurudeo Singh has held that the accident occurred due to rash and negligent driving of the driver. The evidence of the driver that the accident occurred due to mechanical failure has been disbelieved.

13. It has been further held that the claimant suffered permanent disability as a result of grievous injuries sustained in the aforesaid accident. The appellants have failed to prove that the vehicle was insured with Non-applicant No. 3 for the relevant period and, therefore, Insurance Company is not liable for satisfying compensation.

14. Rejecting the claim of the claimant that he was earning Rs. 5,000/- per month, a sum of Rs. 50,000/- was awarded towards medicine and hospital expenses incurred by the claimant after the accident. Apart from the above amount, a lump sum amount of Rs. 1 lakh has been awarded to the claimant towards loss of earning capacity due to permanent disability suffered in the accident. Apart from the above sum, a sum of Rs. 5,000/- towards expenditure in transportation and Rs. 5,000/- has been awarded as special diet. Hence, total sum of Rs. 1,60,000/- has been awarded as compensation to the claimant. Amputation of leg of the claimant as a result of the injuries sustained by him in the accident has not been disputed by the claimant. At the time of his examination the Tribunal has observed in paragraph-3 that the claimant was able to walk with the help of artificial limb, as his left leg was amputated from 4' above knee level. Looking to the permanent disability of the claimant and also considering his age, lump sum amount of Rs. 1 lakh cannot be termed to be too excessive towards loss of earning capacity of the claimant due to amputation of leg. Similarly, award of Rs. 50,000/- as expense towards treatment is also modest and proper keeping in view the fact that the claimant has submitted vouchers (Ex.-P/3 to Ex.-P/15) for a sum of Rs. 36,585.89/-. Similarly, amount of Rs. 5,000/- each towards expenses of transportation and special diet during treatment is also proper and does not call for

interference.

15. On due consideration of the evidence of the claimant and his two witnesses namely, Kuldip Kaur and Gurudeo Singh, we are of the opinion that the Tribunal has rightly disbelieved the defence of the appellant and evidence of driver Ram Gopal that the accident occurred because of mechanical failure due to breaking of Tie Rod, as the inspection report of offending vehicle has neither been produced nor proved during trial.

16. The only question for consideration in this appeal is - whether the Tribunal was justified in exonerating the Insurance Company from liability of satisfying compensation awarded to the claimant and fixing liability on the appellant, particularly, in the admitted position that offending vehicle was insured with respondent Insurance Company at the relevant time?

17. Our attention was drawn by Shri Vinay Harit, learned senior Counsel for Insurance Company that the claimants have themselves averred in their claim petition that they were traveling in the said jeep after paying fare, though claimant has denied the above fact during his examination before the Court. But claimants cannot be permitted to retract their stand which they have taken in their petition. Even otherwise, the appellant has not paid any extra premium for covering risk of passengers traveling in the jeep and in the absence of any extra premium for the gratuitous passengers traveling in a private jeep, the Insurance Company would not be liable for compensation towards any injury or death of gratuitous passenger.

18. In the matter of United India Insurance Co. Ltd. (Supra), the Hon'ble Supreme Court while dealing with question as to whether gratuitous passenger would be covered by statutory insurance policy and relying upon the judgment in the matter of New India Assurance Co. v. Asha Rani and Ors. 2 in paragraphs 20 and 21 held thus:

20. The view expressed in Satpal Singh's case (supra) however, has been specifically overruled in the subsequent judgment of a Bench of three judges in New India Assurance Co. v. Asha Rani and Ors. (2003) 2 SCC 223. In the 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's case (supra) 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 paras 25 and 27):

25. Section 147 of 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 'good carriage'.

27. Furthermore, Sub-clauses (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's case (supra) 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 gratuitous passengers.

19. Since in the instant matter the insurance policy was statutory policy and the appellant did not pay any extra premium to cover risk of any passenger, therefore, the policy did not cover risk of death or bodily injury to gratuitous passengers.

20. For the aforesaid reasons, we are of the opinion that there is no substance in the instant appeal, the same deserves to be dismissed and is accordingly dismissed.

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