Ramu and ors. Vs. Hari Narayan and ors.

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Court : Rajasthan

Decided On : Dec-20-2004

Reported in : II(2005)ACC807; 2005ACJ2053

Judge : Dalip Singh, J.

Acts : Motor Vehicles Act, 1939 - Sections 95(2); Motor Vehicles (Amendment) Act, 1969; Motor Vehicles Act, 1988 - Sections 147, 147(1), 147(2), 217(1) and 217(2); Code of Civil Procedure (CPC) - Sections 144

Appeal No. : S.B. Civil Misc. Appeal No. 515 of 1993

Appellant : Ramu and ors.

Respondent : Hari Narayan and ors.

Advocate for Def. : Atul Luhadiya, Adv.

Advocate for Pet/Ap. : Sandeep Mathur, Adv.

Disposition : Appeal allowed

Judgement :

Dalip Singh, J.

1. This appeal has been filed against the award passed by learned Motor Accidents Claims Tribunal, Jaipur (hereinafter referred to as 'the Tribunal') dated

15.6.1993 in Motor Accident Claim Case No. 54 of 1990 which was filed by the appellants on account of death of Lada Devi, wife of Ramu, appellant No. 1, who died in a motor accident which took place on 4.11.1989 involving a jeep bearing registration No. RST 1466 which was being driven on the fateful day by respondent No. 1, owned by respondent No. 2 and insured by respondent No. 3, insurance company.

2. The learned Tribunal assessed the dependency of the deceased as Rs. 500 per month and the age of the deceased at the time of accident as 35 years as such the annual dependency of Rs. 6,000 was multiplied by 16 and thus, on account of loss of income to the family as a result of death of the deceased an amount of Rs. 96,000 was arrived at. To that an amount of Rs. 15,000 was further awarded on account of loss of consortium and love and affection. In all, a sum of Rs. 1,11,000 was awarded by way of compensation.

3. The learned Tribunal having assessed the amount of compensation held that the insurance company was not liable as in the facts of the present case the policy of the insurance was taken by the insured, respondent No. 2, on 11.4.1989 which was valid up to 10.4.1990. The accident having occurred on 4.11.1989, i.e., after a period of more than four months from coming into force of the new Act of 1988, i.e., on 1.7.1989 and in accordance with proviso to Sub-section (2) of Section 147 of the Motor Vehicles Act, 1988 (hereinafter to be referred as 'the Act') the existing insurance policy which was taken by the insured on 11.4.1989 ceased to be effective in view of the aforesaid proviso as per the award of the learned Tribunal. The learned Tribunal was of the opinion that the period of 4 months as per proviso to Sub-section (2) of Section 147 commencing on 1.7.1989 having expired on 31.10.1989 and the accident havirig taken place on 4.11.1989, i.e., after the aforesaid period of 4 months. The original policy taken by the insured on 11.4.1989 became ineffective after the aforesaid period of 4 months and hence notwithstanding the fact that the policy of insurance as per the contract was valid up to 10.4.1990 and on the date of accident, i.e., 4.11.1989 the insurance company was totally absolved of its liability.

4. The learned counsel appearing on behalf of the appellant as in the first place submitted that the aforesaid decision of the learned Tribunal with regard to absolving the insurance company of the entire liability in accordance with the proviso to Sub-section (2) of Section 147 of the Act is contrary to the law laid down by their Lordships of Hon'ble Supreme Court in the case of National Insurance Co. Ltd. v. Behari Lal, 2000 ACJ 1428 (SC), in particular the learned counsel has drawn my attention to paras 10, 11 and 12 of the aforesaid judgment.

5. The learned counsel appearing on behalf of the respondents has supported the judgment of the Tribunal and has contended on the basis of the proviso to Sub-section (2) of Section 147 of the Act that the policy of insurance which was issued prior to the coming into force of the new Act with the clause for limited liability was required to remain effective for a period of four months only and as per the submissions of learned counsel for the respondents the insured was required to take a new policy within the aforesaid period of 4 months failing which the existing policy, notwithstanding the fact that the period of contract of coverage of insurance still remaining as in the instant case the period of policy was 11.4.1989 to 10.4.1990 the insurance company stood absolved on account of the inaction on the part of the insured to take a new coverage under the provisions of the new Act.

6. I have given my anxious consideration to the above submissions made at the Bar. The proviso to Sub-section (2) of Section 147 of the Act reads as under:

'147. Requirements of policies and limits of liability.-

xxx xxx xxx (2) Subject to the proviso to Sub-section (1), a policy of insurance referred to in Sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:

(a) save as provided in Clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective

for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.'

The aforesaid provisions have come up for consideration before their Lordships of the Supreme Court having regard to the fact that the liability of the insurance company under Section 147 of the Act which came into effect on 1.7.1989 has been made unlimited under Clause (a) of Section 147(2) and has interpreted the provisions in favour of claimants. Their Lordships have further taken into consideration the provisions of Clause (c) of Sub-section (2) of Section 217 of the Act despite the repeal of the Act of 1939 any document referred to under the said Act of 1939, as the policy in this case, it shall be construed and held valid for the purposes of the new Act of 1988. Paras 10, 11 and 12 of the judgment of their Lordships, viz., National Insurance Co. Ltd. v. Behari Lal, 2000 ACJ 1428 (SC), may be taken note of where their Lordships deal with this position. The said paras 10, 11 and 12 read as under:

'(10) In our view the proviso cannot be so interpreted as to subject the insurance companies to different maximum liabilities under statutory policies in respect of accidents occurring during the same period. We do not think that this could be the intention of Parliament. Having fixed a date for enforcement of the new Act incorporating the requirement of a statutory policy under Section 147(2) thereof, the effect of the provision could not have been whittled down during the period which may vary from one day to four months depending upon when the existing policy expires within the said period of four months. It merely indicates the span of validity of the existing policy. Here, it is pertinent to notice the provisions of Section 217(2) of the new Act which deal with the effect of repeal of the old Act (under which a statutory policy was taken) on coming into force of the new Act. Sub-section (1) of Section 217 repeals, inter alia, the old Act. Clause (c) of Sub-section (2), which is relevant, provides that notwithstanding the repeal under Sub-section (1) of the old Act any document, referring to any of the repealed enactments or the provisions thereof, shall be construed as referring to the new Act or the corresponding provisions thereof.

(11) In this context, it will be useful to refer to the decision of this court in Padma Srinivasan v. Premier Insurance Co. Ltd., 1982 ACJ 191 (SC). In that case after the policy was taken under Section 95 (2) (a) of the old Act, it was amended in 1969 so as to increase the liability of the insurer from Rs. 15,000 to Rs. 50,000. Accident which gave rise to the appeal occurred after the amended provision came into force. Chandrachud, C.J. speaking for a three-Judge Bench observed:

'Since the liability of the insurer to pay a claim under a motor accident policy arises on the occurrence of the accident and not until then, one must necessarily have regard to the state of law obtaining at the time of the accident for determining the extent of the insurer's liability under a statutory policy. In this behalf, the governing factor for determining the application of the appropriate law is not the date on which the policy of insurance came into force but the date on which the cause of action accrued for enforcing liability arising under the terms of the policy. That we consider to be a reasonable manner in which to understand and interpret the contract of insurance entered into by the insured and the insurer in this case.'

We are not persuaded to accept the contention of Mr. Jitendra Sharma that the proviso in question is incorporated to nullify the effect of that judgment. The proviso to Sub-section (2) of Section 147 cannot be read as a proviso to Section 217(2)(c) of the new Act and it does not, in case of the existing policy being in force on the date of the occurrence of the accident, limit the liability of the insurance company to the amount mentioned in Section 95 (2) of the old Act.

(12) From the above discussion, it for lows that the proviso to Sub-section (2) of Section 147 does not limit the liability of insurance companies to payment of compensation to the extent specified in the policy of insurance in terms of Section 95 (2) of the old Act which is in force before the commencement of the new Act for a period of four months after commencement of the new Act or till the date of expiry, of such a policy, whichever is earlier. In this view of the matter, we endorse the view taken by the Division Bench of the High Court of Gujarat in Kacharabhai L. Limbachia v. Ratansinh J. Rathod-Patelia, 1998 ACJ 326 (Gujarat) and by the Division Bench of Punjab & Haryana High Court in National Insurance Co. Ltd. v. Puja Roller Flour Mills Pvt. Ltd., .'

7. In view of the aforesaid authorities and pronouncements of their Lordships of the Supreme Court the judgment of the learned Tribunal absolving the insurance company of its liability on account of the proviso to Sub-section (2) of Section 147 cannot be sustained and it is hereby held that insurance company, respondent No. 3, is liable to make the payment jointly and severally along with the owner and driver respondent Nos. 1 and 2.

8. The learned counsel appearing for the appellant has also drawn my attention to the reply filed by the insurance company, respondent No. 3, before the Tribunal and has submitted in the alternative that even as per the reply as contained in para 4 of the preliminary objections the respondent insurance company had in fact only contended that the limit of liability was restricted to a sum of Rs. 50,000 in accordance with Section 95 (2) (a) of the Act of 1939 and there was no plea to the effect that as has been decided by the learned Tribunal that as per the proviso to Sub-section (2) of Section 147 of the Act the insurance company stands absolved of its entire liability as a period of four months had elapsed without the insured having taken out an insurance coverage after the coming into force the new Act. Learned counsel appearing on behalf of the respondent submits that though there was in fact no such plea, but on the basis of the provisions contained in the Act it was open for the respondents to have contended and taken the plea that the insurance company was not liable.

9. I have taken into consideration the aforesaid alternative submissions also and I find that even as per the award, issue No. 5 was framed by the learned Tribunal as to whether the limit of liability of the insurance company is limited to Rs. 50,000. There was no such issue as was held by the learned Tribunal that on account of the proviso to Sub-section (2) of Section 147 of the Act of 1988 the insurance company is not liable as the insured had not taken out a new insurance coverage after the coming into force the new Act. In this view of the matter the claimant's case can be said to have been prejudiced as the findings of the learned Tribunal are not based upon a matter on which the parties raised any issue and the claimants had no opportunity to meet the aforesaid plea of the insurance company. It cannot be lost sight of that as to whether the insured took an additional insurance coverage or not is a question of fact and the parties not

having joined issues on this aspect of the matter it was not open for the Tribunal to have gone into this aspect of the matter without the parties having joined issue on it. In this view of the matter also the judgment of the learned Tribunal insofar as it has absolved the insurance company of the entire liability is liable to be set aside.

10. In cases of motor accidents where a statutory requirement of mandatory insurance has been made it cannot be lost sight of that the said provision is for the benefit of those who have suffered on account of the accident involving the use of a motor vehicle. The provision for compulsory insurance of third party risk is to mitigate the hardship of the sufferer who otherwise in the absence of insurance coverage would not be able to realise the fruits of any award/decree in their fayour as the owners and drivers more often than not had no means to pay and the amount awarded remained unrealised and the claimants on the one hand lost a breadwinner and further wasted precious time and expense trying to realise the money under the award and more often than not could not realise any amount. To say that even though there was a contractual coverage which extended up to 10.4.1990 but if the owner insured failed to take out a new policy under the new Act the insurer is not liable would not achieve the object with which the enactment of compulsory insurance has been made.

It may be looked at from another point of view as well. Under the provision of Section 95 (2) (a) and (b) there was a limited liability of insurance company under Act of 1939. Under Section 147(2)(a) the liability was made unlimited. The reason was to give more coverage of insurance to third parties. If the proviso is to be interpreted as submitted by the respondents it would defeat the very purpose of the main provision of Section 147. In which circumstance the claimants were better of with limited liability under the Act of 1939 as the insurance coverage of the existing policy would have provided them some relief at least. In this view of the matter I am not persuaded to accept the submission of the learned counsel for the respondent insurance company. A Division Bench of Gujarat High Court in the case of Kacharabhai L. Limbachia v. Ratansinh J. Rathod- Patelia, 1998 ACJ 326 (Gujarat), has also taken a similar view and I am in respectful agreement with the same.

11. The learned counsel appearing for the appellant has also drawn my attention to the fact that learned Tribunal has directed that in accordance with Section 144, Civil Procedure Code the amount paid by way of no fault liability compensation by the insurance company, respondent No. 3, is also liable to be restituted by claimants to the insurance company.

12. In view of the above decision in this appeal that the insurance company is liable in accordance with the provisions contained under Section 147(2) of the Act 1988 for the entire liability the aforesaid decision and directions given by the learned Tribunal with regard to the restitution of the amount is liable to be set aside and is consequently set aside.

13. Learned counsel for the appellant has next contended that the amount awarded by the Tribunal deserves to be enhanced as the appellant had contended that the deceased had an income of Rs. 1,200 per month. Learned counsel appearing for the appellant admits that no specific evidence with regard to the earning of the deceased has been led. The learned Tribunal has assessed the loss to the family on account of the death of Lada Devi, the housewife, notionally at Rs. 500 per month and I find no reason to interfere with the same looking to the social backdrop of the family of the deceased.

14. Consequently, this appeal is allowed to the extent that the judgment of the learned Tribunal, inasmuch as it has absolved the insurance company, respondent No. 3, of its liability, is set aside and it is held that insurance company, respondent No. 3, would be jointly and severally liable to pay the compensation to the claimants. It is further directed that the direction contained in the award with regard to the restitution of the amount paid by, way of no fault liability to the claimants is set aside. The amount so paid to the claimants by the insurance company, respondent No. 3 shall not be recovered. Amount of compensation assessed by the Tribunal as Rs. 1,11,000 remains unchanged. Since the appellants have received an amount of Rs. 25,000 out of aforesaid compensation of Rs. 1,11,000 they shall be entitled to receive the balance amount of Rs. 86,000 from the respondents. It is accordingly directed that the respondent shall pay or deposit the aforesaid amount of Rs. 86,000 as already awarded being the balance amount in

accordance with the directions in the award passed by the Claims Tribunal within a period of 3 months.